

COUNCIL OF LEGAL EDUCATION

ENTRANCE EXAMINATION

July 8, 2009

Instructions to Candidates:

- (a) Duration: 3 Hours
- (b) Answer **ONE** question from each subject area.
- (c) **EACH QUESTION MUST BE ANSWERED ON A SEPARATE ANSWER BOOKLET AND SHOULD BEAR THE NAME OF THE SUBJECT AREA.**
- (d) It is not necessary to transcribe the questions you attempt.
- (e) Please ensure that you **use only your ID number** to identify each answer booklet.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

LAW OF TORT

1. Bartholomew, a convicted prisoner, escaped from the General Penitentiary in Kingston. He entered Carol's dwelling house on Duke Street, where he attacked and seriously injured her with a knife. On the day of his escape, Bartholomew was one of a number of prisoners being instructed in woodwork in the carpentry shop at the prison. They were being supervised by two prison officers. One of them left for a short period, and during his absence, Bartholomew escaped. Carol alleged that Bartholomew's escape was caused by the negligence of the Superintendent of Prisons whose duty it was to supervise, control and be responsible for the conduct of prisoners, and that the Attorney General was vicariously liable in negligence.
 - (a) Advise Carol on her chances of success.
 - (b) To what extent does remoteness of damage affect the situation described above?
 - (c) Would your answers be any different if the person injured was not Carol but George, a fellow prisoner at the General Penitentiary?

2. Peter bought a farmhouse and the surrounding farm buildings in Toddington. He converted the house into a 50-bedroom private hospital retaining an apartment for his private use. Planning permission to convert the land from agricultural use had been granted by the Toddington Planning Authority.

During the building works, Desmond, a neighbouring landowner, complained that the dust produced by Bashitt Ltd, the building contractor employed by Peter to convert the farm buildings, had clogged up the engine of Desmond's car. When the hospital opened, Desmond objected to the increased traffic to the premises and retaliated by firing guns, day and night, on his own land. Desmond claimed that this was necessary in order to control the rabbit population and to frighten off birds.

Some weeks after Peter's private hospital received its first patients, Desmond let some of his outbuildings to John, who organized a loud party on one night only. On that night, many of the patients at the hospital were unable to sleep and one of the patients, Mary, suffered a broken arm when she fell down some stairs on her way to complain to Peter about the noise. Many of the patients asked to be transferred elsewhere resulting in loss of income to Peter.

Electrical discharge from the generator, installed by John to power the amplifiers for the party, caused interference with Peter's television reception. As a result Peter could not view an open university transmission forming part of his part-time degree studies.

- (a) Advise Peter, Bashitt Ltd, Desmond and John of their liability in tort.
- (b) How, if at all, can Peter prevent loud parties from taking place in the future?

EQUITY

3. With regard to the so-called new model constructive trusts the criticism has been expressed to the effect that, “it opens up the possibility of finding a constructive trust in any situation in which the established rules lead to a result which would appear to be inconsistent with equity, justice and good conscience.”

With the aid of decided cases evaluate this criticism of the new model as it has been used in the solution of property disputes between parties in family contexts.

4. “The injunction is a useful progeny of equity which has fashioned it to meet the demands of a variety of modern problems.”

Discuss this in relation to either the Anton Piller injunction (search order) or the Mareva injunction (freezing order) and illustrate with decided cases.

REAL PROPERTY

5. Answer both (a) and (b).
- (a) Explain and discuss the relevance of the term “the four unities” in co-ownership of an interest in land.
 - (b) The principle of “*Jus accrescendi*” is inconsistent with equity. Discuss.
6. In 1990, Angela granted a 30-year lease of commercial premises to Burchell. The lease contains a forfeiture clause and the following covenants:
- (i) that the lessee would pay rent of \$5,000 monthly;
 - (ii) that the lessee would not assign or sub-let the premises without the prior written consent of the lessor;
 - (iii) that the lessee would service and maintain all vehicles owned by Angela.

In 1994, Burchell assigned the lease to Devon with Angela’s consent.

In 2004, Devon assigned the lease to Conrad but omitted to obtain Angela’s consent. However, Angela knew of the assignment and accepted rent from Conrad.

In January 2009, Conrad fell into arrears and asked Angela for permission to assign the lease to Elaine, a herbalist. Angela refused, saying that she

did not want a 'bush doctor' as a tenant, but Conrad nonetheless went ahead with the assignment.

Burchell has refused to service any of Angela's vehicles.

Advise Angela as to what remedies she may be entitled.

CONTRACT

7. Discuss each of the following with examples:
- (a) “estoppel can act as a shield but not as a sword”;
 - (b) “consideration must be sufficient but it need not be adequate”; and
 - (c) “the doctrine of intention to create legal relations has nothing to do with the intention of the parties.”
8. John and Paul are students who share an apartment. They are not on very good terms with each other. John advertises his latest model Bling Phone on the notice board at the university.

On Tuesday, May 15, Peter, a fellow student, telephoned and said, “I agree to buy the Bling Phone at the advertised price. I’ll fax to confirm.” However it was Paul who took the message because John had gone out and left his phone in the apartment. When John got back Paul said, “Some guy called and says he wants to buy the phone.”

On Friday, May 18, John received Peter’s fax and replied immediately by email saying, “I agree the phone is yours at the agreed price.” Peter did not get the message until Saturday, May 19, due to technical problems. On Wednesday, May 16, Technoline Co. who makes Bling Phone, had launched their new model and John’s phone is now worth half the price. Peter no longer wants the phone.

Advise John.

CRIMINAL LAW

9. Peter and his wife Helen had been married for seven years. During the marriage they had argued fiercely about many things including family finances and how to raise the children.

Peter became quite fed up of this situation and decided that he needed to “do away with” Helen. He had a word with a local thug named Harry. He enquired as to whether Harry would kill Helen and if so, how much would it cost. Harry said he would do it for five thousand dollars. Peter gave Harry a gun and went home. Peter did not give Harry any money.

Two weeks later, Helen disappeared on her way to work. Her dead body, with two gunshot wounds to the head, was later found in a local forested area.

The police in your jurisdiction investigated the matter and later arrested Harry. Harry told the police that he had been contracted by Peter to kill his wife and he had done so. Peter was then arrested. Both men have been charged with the murder of Helen.

Peter has contacted you and indicated that he believes that he has a good defence because he did not kill Helen, and that at the time he was out of the country on a business trip.

Advise Peter.

10. With the use of decided cases explain the following concepts in detail:

- (a) causation;
 - (b) recklessness;
 - (c) intention; and
 - (d) transferred malice
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