

TORT LAW
MODEL EXAM



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IRAC method of completing exams

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules that are relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the hard part!).
- Conclusion** - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

Question One

Eddie Nash is a former politician, who has been a Member of Parliament for twenty-five years. He represented the Openness in Government Party, which campaigns to expose bribery and argues for all politicians to be open in their personal finances and to declare all transactions, so as to ensure that there are no corrupt dealings, resulting in a more accountable and fair system of Government. After a very personal and heated campaign, Eddie lost the last election by a landslide to his opponent, Daniel Youngman, who represented the Anti-Hypocrisy Party. Over the past twenty-five years, the Openness in Government Party has immensely increased its membership and power in

countries all over the world. However, this success has been offset by various newspaper reports over the years, which have implicated many party representatives in corruption and bribery allegations. Whilst no representatives have ever been found guilty of any criminal offence, no defamation actions have ever been brought by the party against any newspapers for their allegations. This has led the media, in recent years, to make fiercer attacks on the party.....

Answer

a. The Openness in Government Party wish to know whether a claim in defamation against the *Honesty Herald* will stand up in court. If an action in defamation is to be brought, it will necessarily concern a number of statements that appeared in the front-page article of an issue of the newspaper. The Editor will also be responsible for the opinion page, even though he did not write it. This is because he cannot be considered a “mechanical distributor” or someone who disseminates the material without being expected to read it (such as a newsagent). In cases such as *Reynolds v. Times Newspapers Ltd.* and *Jameel v. Wall Street Journal Europe SPRL*, judges have emphasised the need for “responsible journalism” and Editors will be as liable for publishing defamatory statements as the writers themselves.....

Question Two

‘The way in which the courts have reached flexible decisions in some causation cases, but inflexible decisions in others has led to unfair results.’ Discuss.....

Answer

The purpose of the requirement of causation is to ensure that those who receive compensation are properly entitled to it. If the defendant cannot be said with any certainty to have caused the alleged injury, they will not be held liable. This applies even where they negligently breached their duty to the claimant. The rationale behind this rule is obvious: there will sometimes be cases, in which the defendant has been negligent, but the claimant would have suffered anyway or the harm could have been caused by other negligent people. The burden of proof lies with the claimant to show that the defendant had indeed caused the injury. The standard of proof is that it must be beyond the balance of probabilities that the defendant caused the injury. Problems have arisen with regard to this requirement.....

Question Three

'The courts have taken too cautious an approach to psychiatric injury claims, using control mechanisms to limit the potential number of claims. The result is that the law is at present a piecemeal set of incompatible rules because principle has been diminished in order to do justice.' Discuss'.....

Answer

The main reason why claims for psychiatric illness are treated differently to ordinary claims in negligence is that it is far more difficult to verify the nature of the injury. The simple fact is that if it is made too easy to make a claim for a psychiatric illness, the floodgates would be opened and innumerable people would claim. Anyone would be able to claim for psychiatric injuries which could arise from the most trivial circumstances, such as an argument. The courts are very cautious about this, and a number of limitations have been established in order to ensure that only the most clear-cut cases of psychiatric injury merit compensation. If the claimant is a primary victim, where the psychiatric illness arises from a physical injury, it will be recoverable.....



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