



Principles of Common Law

4 January 2018

Duration: 120 minutes

- Please check both at receipt as well as at submission of the exam the number of question sheets. The examination contains 2 pages and three ('3') questions.

Note to students on solving the questions

- For all questions below, there is not one single correct answer. Points will be awarded for identifying the relevant issues, analysing the applicable law to the facts of the case. Your answer must be based on information from lectures and readings.

Notes on marking

- When marking the exam each question is weighted separately. Points are distributed to the individual questions as follows:

Question 1	40 %
Question 2	25 %
Question 3	35 %

Total	100 %
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We wish you a lot of success!



Question 1 (40%) - Problem question on negligence

Adam is a lawyer and Brigitte is a trainee lawyer at the same law firm. On 14 November 2017, Adam was driving his car through the city of Camford with Brigitte as a passenger. Adam was driving within the appropriate speed limit. Adam saw Roger standing on the pavement by a pedestrian crossing. As he approached the pedestrian crossing, Roger, without looking to see if any vehicle was approaching, stepped out into the road immediately in front of his car.

Adam braked very hard but was unable to avoid knocking Roger off balance, causing Roger to stumble into the opposite lane of the road where he was hit again by a delivery van driven by Darren. The delivery van was travelling within the appropriate speed limit, in the opposite direction. Each collision was very minor but, because Roger has brittle bones, his leg was badly fractured.

Brigitte was not wearing her seatbelt, and, when Adam braked hard, she was thrown forward and hit her head on the windscreen of Adam's car. Brigitte suffered severe bruising to her head and face, and she had a bad concussion. Both Roger and Brigitte were taken by ambulance to Camford General Hospital.

Brigitte was given an X-ray (*Röntgen*) at the hospital and was admitted for 24 hours for observation. Unfortunately, Dr Singh failed to notice the next day a fracture to Brigitte's skull and Brigitte was allowed to go home that day without treatment. As a result of the fractured skull, Brigitte later suffered brain damage.

- (a) Explain what must be shown in order to establish that a defendant caused damage to a claimant.
- (b) Apply the above rules to show who is liable for the injuries caused to Roger.
- (c) Explain what statutory defence would be available to Adam in order to reduce his liability to Roger.
- (d) Advise Adam whether this defence is likely to succeed.
- (e) By what date would Brigitte have to bring any action in negligence for her injuries?



Question 2 (25%) - Public Law

How does the UK constitutional system uphold the rule of law? Critically discuss the principles from the lectures and readings, giving particular attention to the merits and faults of the UK legal system.

How does the Brexit Supreme Court Case (*R (Miller) v Secretary of State for Exiting the European Union*) put in play the rule of law and other UK constitutional requirements and principles?

Suggest ways to improve the system, including comparison with other types of legal systems.

Note: you will not receive full points simply for copying information off the lecture slides. Please make an effort of analysis, comparison and criticism to achieve full marks.

Question 3 (35%) - Contract law

In the question below, discuss and analyse the issues and remedies available to all parties and analyse any related issues.

Aspin Football Club agrees to allow Denise, a music promoter, to use its football stadium for a concert. Aspin agreed to allow use of the stadium, including providing stewards to manage the attending crowd, for a total fee of 20,000 euros. The concert was to be given by the rap duo RatyEd.

Unfortunately, the day after the agreement was signed, both members of RatyEd were injured in a car crash. Because of their injuries, they would be unable to perform in any concerts for the foreseeable future. When Denise found this out, she immediately called Aspin saying: 'Of course, you realise that the deal is off now'. Aspin replied: 'It certainly is not off. As far we are concerned, the show goes on: you will just have to find another act to replace them'.

On the date of the concert, Aspin duly opened the gates to the football stadium and provided the Stewards. However, nobody attended the event, because Denise had cancelled the concert. Can Aspin sue Denise for 20,000 euros or any sum?

--- End of exam question sheet ---

Question 1 – 40%	40 Points
Introduction: Did Adam drive negligently in causing damages to Roger and Brigitte, did Darren drive negligently in causing damages to Roger, and Did Dr Singh act negligently in treating (or failing to treat) Brigitte. Summarize whether the case supports holding any one of these three individuals negligent based on the facts in question	1
<p>a) Elements of negligence to show that defendant is liable</p> <ul style="list-style-type: none"> • To establish that Adam or Darren is liable for causing damages to Roger and whether Dr Singh is liable for Brigitte’s brain damage, one must show that they had a <u>duty of care</u> + breach of duty • A duty of care depends on whether or not it was foreseeable (objective test) if a reasonable person in the defendant’s position would have foreseen that the claimant might be injured or harmed by the conduct in question? If so, a duty of care exists. • Damage/Injuries + Causation The person injured would then have to show that their injuries (physical, property, emotional etc) were proximate (close enough, or “but for” test) enough to have caused injuries suffered. • Adam had a duty of care to Roger to drive safely so that Roger could cross the road without being hit. It was foreseeable for Adam to know that Roger could be hit by his car while he crossed the street. • Dr Singh had a duty of care to Brigitte to take reasonable measures to assess any medical condition or problems that may have resulted from the accident before allowing her to be released from hospital • Discussion of the types of injuries suffered by claimant and whether they can serve as a basis for remedies against defendant <p>Compensatory damages for damage to body, property, emotions or economic loss.</p> <p>Remoteness: It was foreseeable for Adam that Brigitte as his passenger could have suffered the injuries that she did as a result of a collision resulting from Adam breaching the duty of care to a third party who was injured by his careless driving.</p>	<p>Total: 9</p> <p>4 (more if details)</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p>
Extra credit: Adam had a duty of care to Brigitte to drive safely so she would not suffer injuries. He drove within speed limit but possibly should have stopped to allow Roger to cross at the pedestrian crossing. His potential negligence to Roger is <u>transferrable to Brigitte if she suffered injuries directly action arising from Adam’s negligence.</u>	+2
<p>b) liability for injuries of Roger</p> <ul style="list-style-type: none"> • Adam and Darren were aware that Roger was crossing the road and so they had a duty of care to act reasonably and carefully in driving their car where Roger was crossing the road. 	<p>Total: 14</p> <p>2</p>

<ul style="list-style-type: none"> Adam and Darren were driving their cars within the speed limit when they came across Roger at the pedestrian crossing. 	2
<ul style="list-style-type: none"> Adam saw Roger at the pedestrian crossing, and so had reason to know that he should yield or stop for Roger. But no evidence that Darren saw Roger until he was knocked into his van moving in the opposite lane. 	2
<ul style="list-style-type: none"> Adam did not stop at the pedestrian crossing to allow Roger to cross the street. Adam possibly breached the duty of care by not stopping at the crossing. By not stopping he triggered the accident by hitting Roger and causing Roger to be hit by Darren's van. Also, Adam's collision caused Brigitte's injuries. Adam has potential liability for negligently causing Roger's injuries. 	2
<ul style="list-style-type: none"> Darren less likely to be liable for breaching duty of care to Roger because Darren driving within speed limit and unclear if he was required to stop, and Adam's car hit Roger first and knocked him into Darren's car. 	2
<ul style="list-style-type: none"> Roger voluntarily and without looking walked into the street so it is arguable whether Roger was contributorily negligent and therefore whether Adam was liable at all for the damages /losses suffered by Roger and/or Brigitte (if Roger was contributorily negligent). 	2
<ul style="list-style-type: none"> Extra credit: Brigitte's damages in the initial collision are relevant because Adam's negligence is potentially transferrable to Brigitte, if he is found to be Negligent to Roger. 	+2
<ul style="list-style-type: none"> How much in damages. Roger hit also by delivery van. He suffers serious physical damages because of brittle bones. Egg shell skull rule applies – defendant must "take his victim as he finds him". That means that Adam and Darren must take Roger as they find him and compensate him for all the damages/losses arising from the automobiles' impact on his brittle bones. 	2
<p>c+d) Statutory defences for Adam</p> <ul style="list-style-type: none"> Roger however crossed the street without looking for any vehicles, stepped in the road immediately before Adam's car. Possibly contributory negligence, used to relieve defendant of all liability but modified by statute. Contributory negligence – sharing of responsibility between defendant and claimant results in a proportionate sharing depending on the extent of the responsibility between the parties for damages suffered. Roger's damages caused more by intervening factor of Darren's van collision, not with Adam, and so collision with Adam not a proximate cause of Roger's injury. However the 'but for' test would show that without Adam's car hitting Roger he would never have been hit by Darren's van. The 'but for' test would show that there was proximate cause. <i>Volenti non fit injuria</i> - "to a willing person, injury is not done" Roger voluntarily waked into the street and did not look and was hit by the car as a result. 	<p>Total: 10</p> <p>2</p> <p>1</p> <p>1</p> <p>2</p>

<p>Adam can also argue that <i>Novus actus interveniens</i>: action by third party/external factor (Darren's car hitting Roger second) caused most of Roger's injuries.</p>	<p>2</p>
<ul style="list-style-type: none"> • The evidence required to prevail against Adam is the 'balance of probabilities'. Roger must submit evidence first (burden of production) to show that Adam was liable. Adam then must rebut this presumption of the established evidence by arguing his defences or that the claimant's evidence is not adequate to establish presumption of liability. 	<p>2</p>
<p>Extra credit: Discussion of US states having comparative negligence statutes that would apply that would allow the claimant (Roger) and the defendant (Adam) to share the costs of damages depending the percentage of fault of each party</p>	<p>+2</p>
<p>e) Brigitte's claims for negligence would have to be brought within 6 years</p> <ul style="list-style-type: none"> • at common law: • Her claim against Adam would have to be brought within 6 years of 14 November 2017 (the date that her claim arose against him) • Her claim against Dr Singh would have to brought within 6 years of 15 November 2017 (the day she was released from Camford General Hospital) • Or her claim against Dr Singh is subject to 6 year limitation period but not clear the date it began to run because it would be based on damages arising from brain damage. The question states only that she 'later suffered brain damage'. Whatever date that is, is the date the limitations period begins to run. • You can also use the specific conditions for medical negligence 	<p>Total:6</p> <p>2</p> <p>2</p> <p>2</p>
<p>Total Question 1</p>	<p>40</p>

Question 2 – 25%	25 points
The rule of law	5 points
Various definitions of the rule of law, what it is, what it means, what it entails	1
The rule of law is preferable to the rule of any individual.	0.5
Absence of arbitrary power.	0.5
All laws and their making should be prospective, clear, accessible, stable, applied by an independent judiciary.	1
Links to morality, freedom, order, safety in society, Human Rights	1
Additional definition components from readings	1
In the UK – upholding of the rule of law	5 points
Sovereignty of Parliament	2
<ul style="list-style-type: none"> - Limit the (arbitrary) powers of the King - Royal Prerogative exercised by Prime Minister+Cabinet - Constitutional conventions limiting the Queen’s power - Parliament has the right to make or unmake any law - The law comes first - Protection of citizens - House of Commons elected by citizens - Law are clear and accessible - Additional comments 	
Separation of powers – checks and balances	1
Constant changes in the system to make sure there is more separation of powers	0.5
Judicial Review of Administrative Actions	
Independence of the judiciary	0.5
Protection of Human Rights	0.5
	0.5
Critical discussion + Merits and faults	5 points
Uncodified constitution: Easy adaptability of the UK Constitution to new situations	1
Discussion of monism and dualism + criticism	
Problem with Human Rights	+1
<ul style="list-style-type: none"> - Not very well protected, messy, cherry-picked - Can be easily repealed and replaced - Prisoners’ voting rights 	0.5
	0.5
	+0.5
No constitutional review – check new law for “constitutionality”	
Doctrine of Precedent	1
<ul style="list-style-type: none"> - merits (adaptability) + faults (chaotic, case-by-case, not uniform) 	0.5
Uncodified constitution: Problem with lex posteriori	0.5
	1
Examples	
	+1
Brexit Supreme Court Case	5 points
Art. 50 – withdrawal of a MS from the EU “in accordance with its own constitutional requirements” – matter of domestic law	0.5
ECJ cannot review this accordance or national constitutionality	0.5
UK Government wanted to leave by executive decision using the Royal Prerogative	0.5

<p><u>Case</u>: Judicial review challenging the legality of the proposed use of powers <u>Judgment</u>: requirement for Ministers of the authority of primary legislation Puts into play the principle of <u>Sovereignty of Parliament</u> vs the <u>Royal Prerogative</u></p>	0.5
<p>Parliament passed the European Union (Notification of Withdrawal) Act 2017 ≠ Brexit Act ≠ Brexit UK-EU Deal “Brexit Act” will repeal the European Communities Act because it is possible in UK</p>	0.5
<p>It is for Parliament, not ministers, to change the constitution of the UK <u>Separation of Powers</u> and checks-and-balances on each other Government argued that Ministers have always had the power to make and break treaties and the European Communities Act is just a vessel to put EU law into practical domestic law But the Supreme Court disagreed – the ECA constitutes EU law as an overriding source of domestic law and it is not for the ministers to change domestic law Upholds the <u>Rule of Law</u> through independence of law-makers and Sovereignty of Parliament</p>	0,5 0,5 0,5 0.5 0.5
Extra credit: Any additional examples + devolved parliaments	+2
Ways to improve the system	5 points
<p>Suggestions to improve <i>Students get points for their own suggestions</i></p> <ul style="list-style-type: none"> - Codify parts of the law – which parts and why - Making the constitution more certain, more entrenched - Introduce Constitutional Review - Abolish the doctrine of precedent? - Abolish jury trials? - Abolish the monarchy? Why? Unelected head of state? But the PM is the “executive” head of state? - Abolish the House of Lords? Why? - Better protection of Human Rights, no cherry picking of Convention rights 	3
<p>Comparison with other systems – what is better (or worse?) there</p> <ul style="list-style-type: none"> - French Civil Code - Swiss Constitution - German Grundgesetz - Other, etc. 	2
Total Question 2	25

Question 3 – 35%	35 points
The question asks if Denise is liable for cancelling the concert and if so for what amount? Does the injury to the band constitute a legitimate excuse to avoid the obligation to pay 20,000?	1
The elements of contract – offer and acceptance involving a promise in return for consideration (ie., another promise of something of value).	3
There was a promise to use the stadium for a concert in return for a promise to pay 20,000. + other conditions met = Valid contract	2
The contract had express terms “use of the football stadium for a concert’. Was an implicit term of the contract to have the band ‘Ratyed’, or was it just an obligation to provide any kind of band or performer?	2
AFC agreed to allow use of stewards for the vent and therefore acted in reliance on the promise to use the stadium for a concert.	1
But freedom of contract in common law and generally no duty of good faith in exercising a right under a contract. If you have a right under contract, you can exercise no matter if you have a good or a foul motive. <i>Caveat emptor</i>	1 +1
Contract can be verbal for such agreement in UK and other CL jurisdictions	1
<p>Doctrine of estoppel - Should be applied to the facts of the case.</p> <ul style="list-style-type: none"> • Clear and unequivocal promise/representation by the promisor to the promisee • Promise/representation to be acted upon was in fact acted upon by the promisee by making stadium available • Reliance by the promisee to his detriment (hired stewards for the stadium) • It is inequitable to allow the promisor to go back on his promise: Would it be inequitable for the concert promoter Denise to go back on her word and not pay for renting the stadium. • Estoppel can only be used as a shield (for the promisee to defend themselves) • But not as a sword (for the promisee to extract something) 	<p>Total: 6</p> <p>1 1 1 1 1 1 1</p>
<p>Vitiating factors and discharge of contract</p> <ul style="list-style-type: none"> • Common Mistake - <i>Res extincta</i> – the subject-matter of the contract no longer exists – the band injured in car accident and could not play on the date • <u>Mistake as to quality</u> – renders the subject-matter essentially different to what it was believed to be. AFC believed that the promisor (Denise) could replace the band within reasonable time, but she thought the band RatyEd was essential to the agreement. • Discharge of contract – 4 ways: performance, termination, frustration & breach. • Termination, frustration and breach seemed to be most relevant • Analyse to facts: Denise may have terminated the contract by saying the deal is off. Was it unreasonable for AFC not to accept her effort to terminate the contract? 	<p>Total: 8</p> <p>2 2 2 2</p>

<p>Frustration</p> <ul style="list-style-type: none"> • <u>Frustration</u> of purpose of contract a more likely defence that vitiates the contract. To show the promisor (Denise) would have to show that there was a change in the circumstances of the contract after it had been made – makes it impossible to perform the contract or deprives the contract of its commercial purpose • The change in circumstances could not be the fault of either party • Could not have been predicted at the time of signing the contract • Each party is discharged of all future obligations • Neither party can sue for breach 	<p>Total: 6</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p>
<p>Extra credit: Anticipatory breach if AFC had declared breach earlier and sought damages and mitigated its own losses by closing the stadium on the day of event and even allowing to be rented by another party. And AFC declared the contract still alive (affirmation of contract) after the promisor (Denise) repudiated after the band's accident.</p>	<p>+2</p>
<p>Remedies</p> <ul style="list-style-type: none"> • AFC should be able to recover <ol style="list-style-type: none"> 1) Compensatory damages (loss of rent of stadium)(20,000 euros) 2) Expectation damages (loss of any related revenues from use of stadium during event, ie., sale to attendees during event) 3) Reliance damages (incurred costs for promises made to hold the event, costs to stewards to work at stadium and related commitments incurred in reliance on promise to rent the stadium) <p>Was it reasonable given the facts for the AFC to have incurred these costs in reliance on the promise to rent the stadium? Opinion</p> 	<p>Total: 4</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p>
<p>Total Question 3</p>	<p>35</p>