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Family Name					
Given Name/s					
Student Number					
Teaching Period	Semester 2, 2017				

LWZ116 – Torts	DURATION	
	Reading Time:	20 minutes
	Writing Time:	120 minutes
INSTRUCTIONS TO CANDIDATES		
<p>Answer ALL questions. Answer each question in a separate Answer Booklet. Each question is worth 20 marks. Total 60 marks Suggested Time Allocation is 40 minutes for each question.</p>		
EXAM CONDITIONS		
<p><u>You may begin writing from the commencement of the examination session.</u> The reading time indicated above is provided as a guide only.</p>		
This is an OPEN BOOK examination		
No calculators are permitted		
Any handwritten material is permitted		
Any hard copy, English dictionary is permitted (annotated allowed)		
ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED	
Any printed material with the exception of CDU Library books	3 x 8 Page Book 2 x Scrap Paper	

**THIS EXAMINATION IS PRINTED
DOUBLE-SIDED.**

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LEFT BLANK.**

Question 1

David was contracted by Central Darwin Spot Pty Ltd (CDS) to clean the common areas of its multi-story office building. David's contract stated that he was an independent cleaning contractor. David provided all cleaning equipment, including a van for carrying his floor polisher, vacuum cleaner, cleaning equipment and consumables. David was required to wear a specified uniform and provide his ABN. David was not permitted to be absent or to have someone else perform his cleaning duties without written approval. David submitted invoices for 20 hours work each week at a rate of \$50 per hour. David could set his own hours of work, provided these were outside normal business hours. As David was the primary carer for his young children he worked to suit his parental responsibilities.

CDS gave David a detailed manual that set out the specific cleaning procedures he had to use. This included using "Danger Wet Floor" warning signs, whenever he was mopping the floors. CDS specifically instructed David on this requirement. At 7 pm on a Friday evening David was in a hurry to get to his children's school concert. Thinking that he was alone in the building, he did not use the warning signs when he mopped the foyer.

Just after David left for the concert, Eliza who worked in the building entered the wet foyer. Eliza had been having a few after work drinks to celebrate her birthday. Eliza slipped on the wet floor and fell heavily. Fred the security guard found Eliza groaning in pain when doing his evening rounds. He helped Eliza to her feet but she was unable to stand and collapsed again, landing on her right arm. Fred then called for the ambulance and Eliza was transported to hospital. Eliza's blood alcohol level was 0.09 at hospital.

Eliza sustained a fractured leg, a dislocated shoulder and fractured right arm, minor bruising and muscle strains. She is deeply distressed as a result of the accident and her doctor has referred her for counselling. Medical evidence is that Eliza's leg was fractured in the initial fall, however her shoulder and right arm were probably injured in the 2nd fall when Fred helped her to her feet. Eliza has a sedentary office job and would have been able to return to work after 2 weeks if she had only broken her leg, however because she is right handed she will be unable to work until her arm and shoulder are healed which may be 3 months.

Separately advise DSC, David and Fred whether they can each avoid or minimise their liability for Eliza's injuries.

(Marks 20) – suggested time 40 minutes

Question 2

Jo was the proprietor of Jo's Café in Central Business District (CBD) of Darwin. Due to a downturn in business activity in the area and increased competition, her business became less profitable, and Jo decided to sell it. Tony worked as a waiter at another local café. Tony had no business experience, but was a talented amateur cook who had enjoyed some success as a contestant on a television cooking show. Tony enquired about purchasing the Café. He asked to see the accounting figures for the past 2 years. Jo arranged for Tony to obtain the figures through her accountant, Melissa.

When Tony arrived, Melissa was absent and her assistant, Gavin, showed Tony the most recent accounts. These contained an obvious error which put the profit at \$100,000 instead of \$10,000. Tony was only interested in the "bottom line" and didn't bother to read the accounts thoroughly, nor get professional advice on them.

A few days later, Tony met Brian, the Minister for Small Business, at a party. Tony said he was considering buying a Café but had concerns regarding the downturn in business activity. Brian had been indulging heavily in the free drinks and was talking loudly and enthusiastically about the government's business revitalisation project. Brian was slightly unsteady on his feet as he announced "Our government will reverse the current business activity downturn. We will re-energise the CBD and all small businesses will prosper".

Tony decided to purchase the Café. His solicitor, Cara Careful advised him that an expert accountant should review the financial figures as the sale contract contained a clause stating that "no representations" had been made by Jo as to the financial performance of the Café.

Shortly after the sale was completed the government announced budget cuts that included the scrapping of the business revitalisation project. Business at Jo's Café continued to decline. Tony appointed Eagle Eye Accounting (EEA) to review his situation. EEA advised him that the profits had been wrongly stated by Jo's accountant, that the accounts showed a downward trend, and in their opinion it will take at least 3 years before the Café is profitable again.

Advise Tony who, if anyone, he can successfully sue in negligence to recover his substantial economic losses.

Please ignore any claim in contract or any other area of the law apart from negligence.

(Marks 20) – suggested time 40 minutes

Question Three

Recently the local newspaper “The City Bumbler” reported that a group of teenagers calling themselves the “Kaz Boyz” had been involved in a crime spree including car thefts, criminal damage such as breaking windows, and break-ins involving minor theft. The City Bumbler published a photo of Luke Smith in the “Kaz Boyz” story although it did not refer to him by name. The photo was captioned “Troubled Youth”.

Luke runs a local charitable drop in centre for troubled youth called the “Cas Camp”. Luke is 25 but has a small frame, and looks much younger than he is. As a 15-year-old, Luke fell in with what he calls “a bad crowd” and was convicted in juvenile court of stealing a car and 2 charges of unlawful entry. Luke has since turned his life around and attributes his experiences as a troubled teenager with inspiring him to provide a safe and positive place for other youngsters to hang out and get positive guidance. Luke has been nominated for a “Young Citizen of the Year Award” for his remarkable achievements.

Matteo is the head of security at the local shopping centre. After publication of the article he observed Luke on CCTV at one of the centre shops. Matteo immediately made his way to the shop and touched Luke on the shoulder and asked “Are you Luke Smith? I’d like a word - come with me”. Obliging Luke followed Matteo towards his office. Matteo stopped by the closest exit and said “I don’t want you Kaz Boyz scum here – get out and stay out or I’ll make sure you won’t be walking back in here any time soon”.

When Luke protested that there had been a mistake, Matteo raised his baton and gestured forcefully towards Luke’s head saying “Do you get the message yet – I’m running out of patience?” Frightened, Luke ran and got into his car to leave. Matteo’s offsider Nigel had observed the interaction on CCTV and assumed that Luke was an escaping suspect. From the control room Nigel lowered the car park boom gate just as Luke was about to drive out. The boom gate hit Luke’s car causing several thousand dollars of damage. Nigel, a former professional boxer pulled Luke from the car. Fortunately Constable Smart from the local police station happened to pass by and intervened so Luke suffered no physical injury.

Luke is furious and wants to take legal action to protect his reputation and “send a message” to people like Matteo and Nigel. Advise Luke.

(Marks 20) – suggested time 40 minutes