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Family Name					
Given Name/s					
Student Number					
Teaching Period	Semester 2, 2018				

LWZ116 – Torts	DURATION	
	Reading Time:	20 minutes
	Writing Time:	120 minutes
INSTRUCTIONS TO CANDIDATES		
<p>Answer ALL questions. 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	1 x 20 Page Book 2 x Scrap Paper	

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

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LEFT BLANK.**

Question One

Cyril was enjoying a recreational bicycle ride around Lovely Lake Reserve in the Northern Territory. The Reserve is owned by the Lovely Lake Council. The Reserve has a shared bike and pedestrian path with a bicycle speed limit of 20 km per hour. Signs at the entry to the bike path read "Ride at own risk. Keep under 20km per hour. Beware pedestrians, wildlife and vegetation eg tree roots. Enjoy your ride – Lovely Lake Council"

As he looked ahead approximately 100 metres, he saw a family of three, Duncan, Elizabeth and their daughter Felicity (aged 5), riding towards him on the other side of the path. Felicity was wobbling from side to side and appeared unstable. Felicity's parents were calling instructions to her to stay on their side of the path.

Cyril moved further to the left of the bike path as he passed Felicity and her parents. He was riding very close to the fence beside the bike path. Just after he passed them, Cyril's left handlebar became tangled in a vine that was growing over the fence and projecting approximately 25cm into the bike path. Cyril fell off his bicycle fracturing his skull, and sustaining a neck injury.

Cyril was not wearing a helmet at the time and his GPS recorder shows he was travelling at approximately 25 km/h. Duncan heard Cyril's shout of pain and went to his rescue. Concerned about an oncoming group of cyclists who were approaching quickly, Duncan dragged Cyril from the bike path and called an ambulance.

At hospital Cyril was treated by Dr Dubious, a hospital employee. Dr Dubious explained to Cyril that he needed an operation to fuse an unstable and severely fractured vertebrae in his neck which involved a risk of complications such as infection, scarring and temporary paralysis. Cyril consented to the surgery. Unfortunately in the course of the operation Dr Dubious damaged Cyril's spinal cord, rendering him a quadriplegic.

An expert medical review concluded that Cyril's original injury was a stable fracture which would have healed by itself with rest, traction and physiotherapy and that Dr Dubious was grossly negligent in both his diagnosis and the performance of the surgery. After considerable adverse publicity Dr Dubious left Australia and his whereabouts are unknown.

Cyril has claimed in negligence against

1. Lovely Lakes Council;
2. the Hospital; and
3. Duncan

You may assume that all defendants owe Cyril a duty of care and that breach has been established.

Advise Cyril regarding issues of causation and any applicable defences that may reduce or prevent his recovery against each defendant.

20 Marks – suggested time 40 minutes

Question Two

Derek is the CEO of a not for profit organisation called Green Goals Inc. Green Goals has a strong environmental platform and wants to ban all commercial activity in Top City Council (“the Council”) parks and reserves.

Edward is a local business entrepreneur. Edward favours large-scale commercial activities to increase the Council revenue and proposed a particularly lucrative deal for consideration by the Council at their meeting last month. Derek and Green Goals organised a peaceful protest to coincide with the Council meeting. Derek and fellow protestors stood in the car park of the Council offices holding placards and chanting slogans as councillors arrived at the meeting. On instructions from the Mayor, Fred, the Council’s security guard politely asked Derek and the protestors to leave the Council premises. The protestors were about to depart when Edward arrived.

“What are you brainless gits doing here?” he said rudely. “Stop wasting everyone’s time, and money. If you morons cost me this deal you had better watch out.”

Derek was standing behind Edward who was now blocking the footpath. “Excuse me please, can you make way” said Derek tapping Edward gently on the shoulder, “We were just leaving.”

“Don’t touch me” shouted Edward as he violently shoved Derek away. Derek fell to the ground, sustaining minor bruising.

Constable Quick had just arrived to check on the protest and seeing the incident between Edward and Derek he intervened. After Derek declined to press charges against Edward, Constable Quick escorted Derek safely away, and told Edward to get inside and stay away from Derek.

Unfortunately Sarah Sloppy, the reporter from the Local Bumbler arrived late and assumed that Derek was under arrest. She quickly photographed Constable Quick and Derek and then posted an article on Facebook and the Local Bumbler’s homepage stating “*Derek arrested after violent Green Goals protest.*” A large number of Facebook “sponsored” posts started to appear referring to Derek’s “*criminal actions*”. After this, google searches of Derek’s name bring up search results that include notorious violent criminals and the autocomplete function suggests “criminal” and “violent” when you enter Derek’s name.

Derek believes Edward is behind this “fake news” campaign and seeks your advice as to all tortious causes of action he and Green Goals may be able to make against Edward, Facebook and Google

20 Marks – suggested time 40 minutes

Question Three

Ray purchased a large parcel of rural land on the outskirts of Top City, Northern Territory. Ray wanted to subdivide the land and develop it into a residential housing estate ("the Development"). Ray borrowed a large sum of money from Easybank to fund the purchase and the costs of the Development. Ray calculated that he would make a profit of \$10 million when the Development was complete.

Ray contacted the Top Water Authority ("TWA") and inquired about the processes and costs of arranging connection of the water supply to the Development. TWA is a statutory authority responsible for the safe and efficient provision of water to the residents of Top City. Ray spoke to a number of TWA employees who gave him clear and correct information on the relevant permits, independent certifications and processes. Ray became concerned that he may have underestimated the cost of the water connection to the Development.

Finally, Ray called Tessa Toobusy, at TWA. Ray explained he was concerned about the cost of the connection. Tessa replied that Ray needed to get independent advice. Ray persisted in questioning Tessa and said "Come on you must have some idea what similar developments have cost?" An exasperated Tessa finally said "Off the top of my head - Well it could be up to \$2 million or more depending on various factors but I can't discuss this anymore – I have another call". Tessa then hung up.

Easybank refused to provide the additional \$2 million that Ray said was needed for the water connection and Ray was unable to proceed with the Development. Ray subsequently sold the land. Ray has now discovered that the actual cost of the connection would have only been \$250,000 which was well within his original budget. Ray seeks your advice as to whether he can recover his lost \$10 million profit from TWA.

20 Marks – suggested time 40 minutes