

THE DICKSON POON SCHOOL OF LAW  
Essay Report Form on class performance 2016/7

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| <b>Examiner</b>             | James Lee  |
| <b>Additional Examiners</b> | Judith Skillen, Emily Barritt, Cees Van Dam, Ori Herstein, Ozlem Gurses, Kim Bouwer, Adrian Chan |
| <b>Programme</b>            | LLB and associated programmes  |
| <b>Module code</b>          | 6FFLK001   |
| <b>Module Title</b>         | LAW OF TORT  |
| <b>Submission deadline</b>  | 3pm, 11 <sup>th</sup> April 2017   |
| <b>Word count</b>           | 3,000 words  |
| <b>Notes</b>                |  |

*To be completed in sufficient detail to support student progress.*

**Overview/General Comments**

There were common themes across all the research essays as to what was done well and what could have been done better. In particular, all students benefited throughout the year from advice and generic feedback along very similar lines to the comments below. Those who attempted the formative assessment had individualised feedback on that. Therefore, those students who took on board that feedback and applied it are likely to have done better than students who did not reflect on and incorporate that same feedback.

***Following the Instructions***

The instructions clearly referred to two requirements (and this was reiterated in the formative essay feedback): (1) it was necessary to refer to material from more than one seminar, and (2) candidates were expected to undertake independent research (although quality rather than quantity of independent research was emphasised). It cannot be stressed enough that, for any assessment, it is crucial to comply with the instructions: one is inevitably limiting one's mark otherwise. It was generally the case that those who synthesised material from more than one seminar into a coherent argument scored highly, whereas those who only referred to material from a single seminar, or who only added a single paragraph referring to another seminar towards the end of an essay in a tokenistic acknowledgement of the requirement, did not score as highly. As was stressed throughout the module, the team have worked to develop themes across the research seminars, making links between them. In particular, many answers to question 2 did not refer to material from seminars other than seminar 2.

***Derivative Essays***

Again, compared to previous years, and indeed compared to the timed formative, the essays this year were generally less dependent upon single sources than before. Where it did occur, answers did not score highly: it was simply a case of not displaying sufficient independent thought to merit a mark above a low 2:1, as is clear from the marking criteria ('The essay contains a clear and independent argument, which addresses the question asked. An upper second class argument should address its weaknesses as well as presenting its strengths, and will be appropriately referenced').

***Structure***

The structure of the better answers was well thought-out, clear and supported the development of a coherent argument. Less good answers lacked such a structure, or simply mimicked the seminar or lecture handout on the cognate topic (see particularly the comments on question 3 below). It is very helpful to a marker, and to any reader, to have a clear 'roadmap' for an essay: start with an introduction setting up the essay's argument, then develop this argument throughout the essay, finishing with a conclusion that brings together and reinforces the argument that has gone before. This was made clear in revision lectures.

***Presentation and Referencing***

In the case of some weaker answers, the presentation was disappointing, with odd formatting. The general standard of referencing could also have been improved: it is always necessary to provide a pinpoint page reference (or paragraph in the case of modern cases) for any citation of cases or articles. Failure to reference properly is at best lazy academic practice – which in some cases contributed to a reduced mark being awarded – and at worst academic misconduct indicative of plagiarism. Candidates should take some time to familiarise themselves closely with the rules of the legal citation method in OSCOLA during the course of their LLB degree. Clear and accurate legal communication is an important skill set for law students to master.

Please note that it is not possible to challenge the academic judgment of the markers.

**Marking Range**

35-80 (not including cases where incomplete essays were submitted, or where students are under investigation for possible academic misconduct)

Module average 61

**Essay Question 1**

'It is important to recognise that we are being asked to authorise an extension of the law of negligence... into a new field. [It is also important to note that] we are concerned with duties at common law, rather than under statute.' (Lord Carnwath JSC, *Smith v Ministry of Defence* [2013] UKSC 41 [157]).

To what extent are tort law obligations informed by statutory developments, and to what extent should they be so informed? Consider this question in light of Lord Carnwath's approach above.

**Comment on the class performance**

*what made for a good answer, and what made for a bad answer*

This question was not attempted by many candidates (perhaps surprisingly, given how many students had attempted a related answer in the formative assessment). Better answers to this question engaged closely with this quote and question, addressing the material on the influence of statutory developments on obligations in tort. Better candidates noted that this question required an evaluation of the current role (to what extent are...) and then a normative argument (to what extent should...), and in the case of the normative element drew upon theories of tort, or comparative law. Less good answers tended to focus only on the first element. Further features of less good answers included relying too heavily on the article by Burrows, repeating his examples, without focusing on the specific question. Other less good answers effectively wrote a case comment on *Smith v Ministry of Defence*, which was not the exercise: it was of course relevant to refer to the Human Rights Act, but that should not have been the sole statute considered, given the wording of the question.

**Essay Question 2**

'The payment of damages through strict liability does not express a condemnation of the conduct involved in the infliction of injury, it merely ensures that the activity is conducted on fair terms.' (Gregory C. Keating)

To what extent do you agree with this statement?

**Comment on the class performance**

*what made for a good answer, and what made for a bad answer*

This was the second most popular question. There were some very good answers to this question, which engaged carefully with the quote. Such answers reflected upon whether we should be content with a system which does 'not express condemnation of conduct involved in the infliction of injury': this pointed towards different roles for individual responsibility or interpersonal justice offered by corrective or distributive justice accounts. As noted in the introductory section above, it was for this question that less good candidates most commonly failed to refer to material from more than one seminar. Such answers tended to describe the debate between Fletcher and Keating in a general way, perhaps with the illustration of examples of strict liability which had been addressed in seminar 2. Better answers drew appropriately on other tort theories, or illustrations from other jurisdictions, both to support their points and to meet the requirement to refer to material from more than one seminar.

**Essay Question 3**

**'Many problems in the law of Tort are universal across civilised and sophisticated legal systems. This universality calls for those applying English law to consider the responses of other jurisdictions, and of theorists, to the same problems.'**  
**To what extent do you agree with this statement?**

**Comment on the class performance**

*what made for a good answer, and what made for a bad answer*

**This was, by far, the most popular question. There were some excellent answers to the question, which displayed the following qualities: close focus on the question, paying attention in particular to the quote's reference to "the response of other jurisdictions and of theorists to the same problems". The reference to theorists was intended as a helpful gateway into discussion of material from other seminars, and those who engaged with that generally did so well. Better candidates also reflected upon who were "those applying English law", and whether the utility of referring to other jurisdictions and theories is of the same magnitude in the case of judges, students or academics, for example. Some very good answers also engaged in interesting ways with the claim about the universality of legal problems in the quote. Less good answers offered merely a close paraphrase of either Prof Van Dam's article or his lecture handout, without either focusing on the particular question in the ways outlined above, or referring to any other materials beyond those from Seminar 4.**