PEPERIKSAAN AKHIR SEMESTER KEDUA SESI 2011/2012
FINAL EXAMINATION SECOND SEMESTER SESSION 2011/2012

KOD / NAMA KURSUS: GLUP2044 UNDANG-UNDANG TORT IN LAW OF TORT
COURSE CODE / NAME: GLUP2044

TARIKH / DATE: 27 JUN 2012 (KHAMIS / THURSDAY)

MASA / TIME: 9.00 AM - 12.00 YENGAHARI / NOON (3 HOURS)

TEMATIK / SUBJECT: GLUP 6 BKH (W8)

ARAHAN
INSTRUCTIONS:

1. Kertas soalan ini menerang bahawa EMPAT (4) soalan di dalam EMPAT (4) halaman bercetak untuk
   jawapan kuat kerana
   This book contains FOUR (4) questions in FOUR (4) printed pages, excluding the cover page.

2. Anda dikehendaki mengejawab SEMUA soalan.
   You are required to answer ALL the questions.

NO. MATRIK:
MATRIC NO. [blank]
(dengan perkataan / with word):
(dengan angka / with number)

NO. KAD PENGENALAN:
IDENTIFICATION CARD NO. [blank]

PENYARAH:
LECTURER

KUMPULAN
GROUP

JANGAN BUKA KERTAS PEPERIKSAAN INI SEHINGGA DIBERI ARAHAN
DO NOT OPEN THIS EXAMINATION PAPER UNTIL INSTRUCTED.
SOALAN SATU/QUESTION ONE

Wan Rahman and Wan Rahim were close friends studying law at Universiti Utara Malaysia. They have known each other from their primary school days in Kelantan at Sekolah Agama Sains Islam. Immediately before the semester break, Wan Rahman requested the help of Wan Rahim to accompany him to a clinic in Changloon in order to seek medical treatment after complaining of fatigue and tiredness. Being close friends, Wan Rahim agreed to accompany Wan Rahman to a clinic in Changloon. As they entered the clinic, Dr David, the owner of the clinic, gave them a warm reception. As a general practitioner, Dr David prescribed certain tablets for Wan Rahman, who was very fat. A recent article in a specialist journal of cardiology had suggested that there may be some risks in giving these tablets to overweight patients. Wan Rahman had a heart attack and according to the medical report issued by Sultanah Bahiyah Hospital in Alor Setar, the possible cause of the attack could be attributed to the tablets that was prescribed by Dr David. Wan Rahman now intends to file a civil suit against Dr David for negligence.
Advise Wan Rahman.  

(25 markah/marks)

SOALAN DUA/QUESTION TWO

“A claim for nervous shock may succeed if firstly, it is reasonably foreseeable that the plaintiff will sustain psychiatric illness due to his close relationship of love and affection with the primary victim, and there is physical proximity between the plaintiff and the victim in terms of time and space. The nature of the relationship between the plaintiff and the victim is also an important factor... the shock must be caused by actual sight or sound of the accident or its immediate aftermath... per Lord Oliver in Alcock v Chief Constable of South Yorkshire [1991] 4 All ER 907”.

Berdasarkan pernyataan di atas, bincangkan secara kritikal sifat tanggungan ke atas kecuaian menyebabkan kejutan saraf.

Based on the above statement, critically discuss the nature of liability for negligently inflicted nervous shock.

(25 markah/marks)

SOALAN TIGA/QUESTION THREE

i. Terangkan TIGA (3) kehendak yang perlu dipenuhi untuk dikenakan tort tanggungan beralih. Berikan contoh kepada jawapan anda.

Explain THREE (3) requirements that must be satisfied in order to impose the tort of vicarious liability. Illustrate your answer with examples.

(10 markah/marks)

ii. Bincangkan pelbagai ujian yang digunakan untuk menentukan kewujudan satu kontrak untuk perkhidmatan dalam membentuk tanggungan beralih. Sokong jawapan anda dengan kes undang-undang.
Discuss the various tests used in determining the existence of a contract of service in establishing vicarious liability. Support your answer with case law.

(15 markah/marks)

SOALAN EMPAT/QUESTION FOUR


Nasihatkan Zaidi dan Raihana sama ada Ramli mempunyai tanggungjawab terhadap mereka.

Ramli owns a food stall by the roadside near his house in Kampung Alor Gajah. From this food stall he sells Nasi Lemak to commuters, some of which enter the food stall to eat at a table. He opens the food stall from 8.00 am to 4.30 pm, after which he locks it with a big padlock. Zaidi is a regular customer during opening hours. However, he recently injured himself when eating at the food stall, when he stood on a large nail. There is a notice making customers aware of the fact that there are some big nails on the floor. Nonetheless, he wishes to sue Ramli.
Another regular customer is Raihana. Raihana, however, often breaks into the food stall after hours, helping herself to leftover Nasi Lemak. Ramli had been annoyed by her and so had hidden the Nasi Lemak in a corner of the food stall, coincidentally next to a dangerous mantrap. When Raihana went to find the Nasi Lemak, the mantrap activated and caught her arm, and as a direct consequence her arm had to be amputated.

Advise Zaidi and Raihana as to whether Ramli owed any duties to them.

(25 markah/marks)