

Problem Based Assignment

Weight:	45%
Collaboration:	Individual
Due:	1 November 2021, before 12pm (12noon)
Submission:	Online through Turnitin on the vUWS site.
Format:	The second written assignment will be in the form of a hypothetical fact scenario(s) which gives rise to legal issues about which students will need to provide advice.
Length:	2,500 words (not to be exceeded)
Curriculum Mode:	Essay (Problem based question and answer)

Assignments should be undertaken individually, without discussion with or help from anyone else. They are designed to measure and reinforce your learning. Academic misconduct will be treated seriously and can be an impediment/bar to being admitted as a legal professional.

Students should use headings and sub-headings, structure your assignment in a logical way, write clearly and concisely, and use footnote references to cite authority.

Use of AGLC is required for this assignment, your referencing style should show attention to detail, and be clear and uniform.

E.g., *Smith v Jones* (2002) 1 CLR 573.

Italics

Not-Italics

Full stop at the end of footnote

The word limit ***does not*** include **short headings/sub-headings** or **footnotes**. Footnotes should be limited to primary (cases/statutes) and secondary (articles, books, etc) sources. Footnotes should not include discussion, and such discussion will not be read.

NB. A long sentence or paragraph is not a heading. E.g., Headings (Using AGLC style)

I INTRODUCTION = a heading

II MATHEW V MORRIS = a heading

A Preliminary Matters = a sub-heading

B Duty of Care = a sub-heading

Did Mary Johnson get hit by a car while going shopping and this gives rise to a negligence claim? **Not a heading** – this is a full sentence (while you may ask questions as part of your discussion, they are not headings).

Do not use ‘ISSUE’ ‘RULE’ ‘ANALYSIS’ as headings. Complex problem questions are best addressed using headings that are indicative of, for example, the parties, cause of action, elements/sub-elements/issues, and conclusion. IRAC is a process of legal analysis, that you do over and over again for each issue/sub-issue (i.e., you identify the issue; you identify the relevant legal rule(s); you discuss the rule(s) applying and analysing them in relation to the facts; you may draw analogies to cases where relevant (not a mini-case summary); you draw a mini-conclusion; you move to the next issue and do the same again, and again. It may also not be this ‘neat’ for example a paragraph might have IRRAAC; or IRARAC; etc.)

Consider the examples drawn from the last assignment that illustrate this point:

ISSUE

E.g. 1, Margarita will claim that Charlotte is liable for assault. Assault occurs when someone intentionally creates apprehension of imminent harmful or offensive contact in another.¹ There must be a direct act or statement by Charlotte intended to cause Margarita to apprehend imminent contact with her person.² Margarita will argue that Charlotte calling her on the phone and declaring she was going to “knock some sense” into Margarita was a direct statement. [further discussion] ...

The onus of proof will then shift to Charlotte to disprove intent. Charlotte will not likely be able to disprove her intention to create the apprehension of imminent contact because....

However, she may argue that as the words contained a conditional threat...
.... In *Tuberville v Savage*...
....

She will also argue in her defence....
....

In light of these arguments it is likely/unlikely that this action will ...

ANALOGOUS CASE

E.g. 2, In *Munro v Southern Dairies* the court found that substantial interference emerged from the horse noises resulting in the loss of a ‘single night’s sleep’.³ Here, Charlotte will argue that the situation is more severe as she is constantly losing sleep due to the loud music, Margarita is playing over the baby crying. Charlotte will argue that this would satisfy the requirement that the intangible interference be substantial. However, Margarita will argue that the facts of the case should be differentiated from *Munro* as the baby is crying and music being played in the middle of the day...

There is no requirement for a coversheet.

There is no requirement to have a reference list or bibliography at the end of the assignment.

¹ *Rixon v Star City Pty Ltd* (2001) 53 NSWLR.

² *White v South Australia* [2010] SASC 95; *Hutchins v Maughan* [1947] VLR 131.

³ *Munro v Southern Dairies Ltd* [1955] VLR 332.

**** The following facts are fictitious. They are written to elicit an answer that assesses your learning, understanding, and ability to apply the law you have studied in Torts this year. Take time to read the facts carefully.**

PROBLEM SCENARIO

Tabbot House is one of Sydney's few 19th-century mansions still surrounded by its original gardens and wooded grounds. In the early 20th century, it became Australia's first official house museum. It has ever since enticed visitors to its lush and secluded grounds. Tabbot Pty Ltd charges people a \$10 entry fee to enter the grounds where they can enjoy walking in the gardens and wooded grounds, touring the house museum, and dining in the restaurant (which is rented out by Andre Bella Rosa, a talented Italian chef).

On 27th October 2020, the weather was warming up, and it was a particularly busy day at Tabbot House. The two tour guides on duty – Dalia and Derek – were having a busy day. They lamented that Tabbot Pty Ltd had cut the number of tour guides from four (4) to two (2) and instead of taking groups in pairs they now had to do it on their own. Dalia and Derek just couldn't keep up. Dalia told Derek she had just finished her law exams, and was hoping to maintain her High Distinction average, but was worried that her grades might be slipping with all the work she had been doing. The groups were larger than they should be, it was hard to keep an eye on everyone. With all the study as well as work, Dalia was tired. She reached into her pocket and took out a bottle of pills. "What's that?" asked Derek. "Don't worry. It's prescription medication, my doctor gave it to me so that I can stay awake." Although the label said take one pill, Dalia popped two pills into her mouth and swallowed them, saying "An extra one to keep me going!". Fifteen minutes later, Dalia was 'buzzing', speeding through her tours, speaking rapidly, and feeling very awake. "Just the pick-me-up I needed", she said to herself.

Meanwhile, the sole Safety and Security Guard, Penelope, was also struggling due to staff cuts. While Tabbot Pty Ltd used to employ two such guards, Penelope was now working alone. She was at a loss as to how to supervise people who were wandering the grounds as well as those in the house. Although it was her responsibility to ensure several of the older rooms upstairs of the house were locked, as they posed a hazard to visitors, she had forgotten to do so, as she had been called out into the grounds to help the gardener put up a pergola.

Inside the house, Dalia started her fifth tour for the morning. Her tour group had fifteen people, including a family of three, Rosa and her twin 10-year-old children, Lauren and Noel. Dalia told the group before they headed off to always stay with the group and to take care as the house is very old. Lauren and Noel were busy messing about and Rosa was telling them to be quiet, so wasn't paying attention. Lauren and Noel were not listening either, they wanted to see who could get to the top of the stairs first and set off running and laughing. Dalia yelled 'Stop, you can't go up there!' but it was too late, the children had reached the top of the stairs and entered one of the unlocked rooms. It was only a few seconds afterwards that a horrible shriek was heard by the group. Dalia who had rushed up the stairs after Lauren and Noel had entered the room to see Noel was positioned half in and half out of the window and was holding onto Lauren's hair who was dangling in the air. Lauren had climbed out of the window onto a small rotten balcony that had collapsed as soon as she set foot on it. 'Hold on!', Dalia shouted, but Noel could not keep hold of Lauren's hair. As it slipped through Noel's small hand, Lauren fell to the ground below, hitting her head. Dalia caught hold of Noel's foot, preventing him from falling too.

The mother of the children, Rosa, reached the room just after Lauren fell, hearing Noel sobbing 'Farrah's fallen out of the window'. Rosa let out what could only be described as a 'blood curdling' scream. The remainder of the tour group, including a Ms. Mary Jones, stood at the bottom of the stairs. On hearing Rosa's scream, Mary, who was of nervous disposition, fainted.

Penelope, the Safety and Security Guard heard the screams and rushed toward the house. As she did so, she saw Lauren was lying beneath the collapsed balcony on the ground and ran over to her. However, on seeing the child close up, Penelope panicked about what to do next. Despite her training, instead of calling an ambulance immediately, she ran away from Lauren into the house to get a blanket and pillows. She then stopped to use the bathroom, before returning to Lauren, covering Lauren with the blanket and placing Lauren's head on the pillow. She then called an ambulance. On arrival the ambulance officers rushed Lauren to hospital. It was discovered at the hospital that Lauren had a broken neck and spine. The medical evidence obtained indicates that moving her head to place it on the pillow made worse the injury to her neck. Lauren will remain a quadriplegic and has suffered brain damage. The delay in treatment is found to have made things worse. Lauren will require 24-hour care for the rest of her life.

Dalia is guilt ridden about the incident, and subsequently is diagnosed with clinical depression. Her life unravels. She is unable to work and drops out of law school, unable to focus on her studies. She begins drinking wine heavily, damaging her liver. Her doctors have said she can expect a reduced life of at least 15 years if she does not get a liver transplant.

Rosa, the mother, is diagnosed with Post-Traumatic-Stress-Disorder (also a serious psychiatric illness). She struggles to look after Lauren and Noel, to clean the house, and to find joy in life. Her marriage subsequently breaks down. Unable to afford to pay for Lauren's care requirements, she does it herself getting Noel to help her with the cleaning of the house and other chores.

Mary Jones is unable to rid herself of regular nightmares in which she is wandering through an old house in which she hears the screams of Lauren and Rosa over and over again. She subsequently is also diagnosed as suffering anxiety and depression. She is unable to leave her house, and no longer enjoys visiting museums. She engages in regular weekly tele-health psychology sessions.

Following the incident crowds stopped coming to Tabbot House after multiple news stories recounted the event and pictures of a small, injured girl lying at the bottom of the house were circulated on the internet. With few customers over summer, and those who came often leaving because the restaurant windows look out over where Lauren fell, Andre Bella Rosa could not generate enough money to keep the restaurant open. Consequently, he has not only lost his livelihood (his means of income), but also his home as he could not meet the mortgage repayments.

Provide advice regarding all possible claims in negligence that may arise as a result of the above scenario. In your answer you should identify any relevant plaintiff(s) and defendant(s), identify all relevant legal issues, identify the applicable law, and engage in legal analysis based upon the facts and law. Include in your advice discussion of any relevant defences and damages. (DO NOT DISCUSS ANY OTHER CAUSES OF ACTION OTHER THAN NEGLIGENCE; APPLY ONLY THE LAW YOU HAVE STUDIED IN TORTS) (45 marks)

MARKING CRITERIA

The assignment is worth 45% of your final mark for Torts. It will be marked using the following rubric.
The final mark will be entered into gradebook as a mark out of 45.

Criteria	High Distinction	Distinction	Credit	Pass	Unsatisfactory
Identifies the relevant legal issues (15%)	Identifies all legal issues, showing an ability to identify material facts as relevant to the legal issues identified, an ability to identify relevant parties, and an ability to identify the weight that should be given the issue.	Identifies most legal issues, showing an ability to identify material facts as relevant to the legal issues identified, an ability to identify relevant parties, and an ability to identify the weight that should be given the issue.	Identifies some legal issues but misses others, showing moderate connection with facts and ability to identify relevant parties.	Identifies very few legal issues. Demonstrates basic connection with facts and basic ability to identify relevant parties.	Omits to identify the relevant legal issues in the factual problem. Copies the facts.
Identifies relevant rules of law derived from statute and case law and refers to relevant authority. (15%)	Identifies the relevant law, and breaks it down into elements, demonstrating understanding of key elements derived from statute/case law and provides correct authority.	Identifies the relevant law, and breaks it down into elements, demonstrating understanding of key elements derived from statute/case law and provides almost all of the correct authority without error.	Identifies most of the relevant law, demonstrating understanding of key elements derived from statute/case law and provides some correct authority.	Some identification of relevant law. However, refers to the law in a superficial way, writes out slabs of the relevant statutes or large quotes from relevant judgments. Includes some relevant authorities.	Omits to describe the relevant law or does so incorrectly or showing little ability to identify relevant law.
Applies legal reasoning to the factual problem(s) demonstrating an ability to provide sound and nuanced legal advice reflecting an ability to give appropriate weight to various legal issues. (50%)	Makes linkages between all of the elements of the relevant law, the factual problem, and the legal issues identified. Makes any assumptions clear. Identifies the additional facts required and follows through with analysis. Able to demonstrate excellent ability to consider alternate modes of action, arguments and counterarguments. Demonstrates an excellent ability to provide sound and	Makes linkages between all of the elements of the relevant law, the factual problem, and issues identified. Makes any assumptions clear. Able to identify need for additional facts, and follow through with analysis. Able to demonstrate good ability to consider alternate modes of actions, and arguments and counterarguments. Demonstrates a good ability	Makes linkages between all of the elements of the relevant law, the factual problem, and legal issues identified. Able to demonstrate some ability to consider alternate modes of action/outcomes, and arguments and counterarguments. Demonstrates a reasonable ability to provide sound and nuanced legal advice reflecting	Makes linkages between the key elements of the relevant law and the factual problem. Does not offer or offers very little reasoned legal advice or nuanced argument.	Omits to apply legal reasoning to the factual problem or does so incorrectly or showing little understanding or ability to convey such reasoning.

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	nuanced legal advice reflecting an ability to give appropriate weight to various legal issues.	to provide sound and nuanced legal advice reflecting an ability to give appropriate weight to various legal issues.	an ability to give appropriate weight to various legal issues.		
Reaches arguable Conclusions (10%)	Reaches a convincing conclusion on all of the legal issues in the factual problem based on strong support from statute and case law and flowing from the arguments made. Justifies why alternative conclusions were not reached.	Reaches an arguable conclusion on all of the legal issues in the factual problem based on strong support from statute and case law and flowing from the arguments made.	Reaches an arguable conclusion on most of the legal issues in the factual problem based on support from statute and case law and flowing from the arguments made.	Reaches a conclusion on most of the legal issues identified in the factual problem only using yes/no, approach; or does not justify the conclusions.	Omits conclusions or conclusions do not follow from arguments presented.
Organisation, clarity, conciseness, uses AGLC style guide (10%)	Paper is presented in a manner that is very well organized and makes good use of headings, language and writing style is clear and concise, excellent use of AGLC	Paper is presented in a manner that is well organized. Good use of headings. Language and writing style is clear and concise. AGLC is utilized well.	Paper is presented in a manner that is well organized and makes use of headings. Language use and writing style is good. AGLC is utilized but is not used well.	Paper is presented in a manner that has basic elements of organization. May only use a few headings; language use and/or writing style needs improvement; and/or does not use AGLC well or at all.	Paper is poorly organised, lacks headings or only has very basic headings, language use/writing style is unclear. Poor style or no referencing style utilised.

Note – the paper and rubric can only be marked where there is original work. It is not possible to assess a person’s learning/ability/understanding of course content and whether they have met the learning objectives when the work submitted is unoriginal or copied from another source. Academic misconduct is required to be reported to the Deputy Dean.