

3^e année licence droit

DROIT ANGLAIS DE LA RESPONSABILITE

Durée de l'épreuve : 1 heure.

SUJET SUR 6 PAGES

The number of CORRECT/EXPECTED replies is mentioned within brackets.

1/ Following the 1987 Consumer Protection Act (CPA), the claimant bringing a case about product liability. (1)

- A. Can only sue in negligence ✓
- B. Can only sue under the 1987 CPA
- C. Is entitled to sue only under contract law ✓
- D. Has all options (negligence, contract law and CPA)

2/ The Wilkes v De Puy International Ltd (2016) judgment introduces and/or confirms (2)

- A. The distinction between standard and non-standard products
- B. The objective test concerning the reasonable expectation of safety ✓
- C. The balance of risk and benefit test.

3/ The 2013 Defamation Act (2)

- A. Adds a new requirement of a threshold of causing 'substantial harm' ✓
- B. Reduces the number of defences
- C. Introduces the balance test with article 10 ECHR (European Convention of Human Rights).

4/ The defamatory statement is (2)

- A. About an express or implicit identified C ✓
- B. About only an express identified C ✓
- C. Potentially about fictional characters.

5/ A web host providing a platform for other users to upload defamatory material such as Blogger may be sued for defamation (1)

- A. Never
- B. Always
- C. Under the condition that he knew about the defamatory materials and had a reasonable time within which to act to remove them. ✓

6/ According to the 'making it worse principle', (1)

- A. A public authority may owe a duty of care to C where, by some act, the authority has put C in a worse position than if the authority had done nothing at all; ✓
- B. A public authority may owe a duty of care to C where, by some omission, the authority has put C in a worse position;
- C. C has worsened the injury committed by the public liability; ✓

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17/ A general tort of invasion of privacy is not recognized because of (1)

- A. The 1998 Human Rights Act
- B. The floodgates concern
- C. The existence of a wide statutory action for breach of confidence
- D. The lacking definition of privacy

18/ Under the Rylands v Fletcher rule, a non-natural use of the land is assessed through (2)

- A. accumulation of large quantities of the thing
- B. accumulation of the thing in a special way that created danger
- C. the benefit to the community of the activity on the land

19/ Remoteness and causation are applied similarly for the Rylands v Fletcher rule and private nuisance (1)

- A. FALSE
- B. TRUE
- C. It depends

20/ When life of expectancy is shortened, damages are awarded (1)

- A. If the victim is an adult
- B. If the victim is a child
- C. In all situations

21/ In British tort law there are three main remedies: Damages, injunctions and apologies (1)

- A. TRUE
- B. FALSE

22/ In 1998, the Law Commission on damages recommended (2)

- A. To set up a threshold for recovery of non-pecuniary damages
- B. To set up a threshold for recovery of pecuniary damages
- C. To have damages increased for very serious personal injuries
- D. To adopt the functional approach to the assessment of damages
- E. Courts themselves to increase damages for very serious personal injuries

23/ Aggravated damages are rarely awarded because (1)

- A. They tend to punish D
- B. They are usually covered by compensatory damages
- C. They are difficult of assessment

24/ According to the common employment doctrine, the employer was (1)

- A. Liable only for personal negligence
- B. Never liable
- C. Liable for personal negligence and injuries caused by his employees.

25/ A strict liability regime exists (3)

- A. For employers when they are vicariously liable
- B. For product liability under the Consumer Protection Act
- C. Under the Rylands v Fletcher rule
- D. In negligence
- E. For none of them.

26/ A temporary employer may be vicariously liable for the employee on loan (1)

- A. TRUE
- B. FALSE

27/ The Salmond test helps to determine (1)

- A. The type of relationship between employers-employees
- B. Whether the injury was committed during the course of employment
- C. None of them.

28/ The burden of proof of Defences relies (1)

- A. Always on the Defendant
- B. Always on the Claimant/appellant/Victim
- C. It depends on whether there exists any evidentiary gap.

29/ Currently, contributory negligence (3)

- A. Is a complete defense
- B. Is a partial defense
- C. Is the most common defence used in negligence
- D. Has to be proven by D (proving that C has contributed to the tort)
- E. Has to be proven by C (proving he/she has not contributed to the tort)

20/ Where a rescuer C is plunged into an emergency to assist X because of D's conduct, the defence of voluntary consent may apply (1)

- A. FALSE
- B. TRUE
- C. It depends on circumstances

21/ The benefits of tort law are that (3)

- A. It offers victims compensation
- B. It offers appropriate remedies for victims of very serious violations
- C. It offers a non-violent reply to injuries
- D. The wrongdoer will be held responsible to the whole community.

29/ According to the Bolam test, there was no breach of standard of care if a responsible body of similar professionals supported the practice that had caused the injury. (1)

- A. FALSE
- B. TRUE

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30/ It is easier for C to sue a public authority for negligence where, in undertaking its statutory powers or duties, that authority had assumed responsibility for the safety or welfare of C as an individual. (1)

- A. TRUE
- B. FALSE
- C. It depends.

31/ Pure psychiatric injury may be acknowledged (2)

- A. If it is a recognizable psychiatric injury
- B. If C can provide a medical certificate
- C. If C is a secondary victim having direct perception of the harm
- D. If C is a secondary victim to the traumatic event without any relationship of love and affection with the primary victim.

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32/ D's liability for third parties' acts is challenging because (3)

- A. TP cases often involve public authorities
- B. TP cases are often about omissions rather than acts
- C. Of the negligence regime as a whole
- D. Of the policy reasons being potentially raised.

33/ The exceptions to the 'but for' test facilitate the proof for C... And apply when the 'but for' test would fail (1)

- A. YES...YES
- B. NO...NO
- C. YES...NO
- D. NO...YES

34/ When concurrent defendants caused C's harm. (1)

- A. The 'but for' test applies
- B. 'the material contribution test' applies.
- C. C needs to prove that D's actions were the sole cause of the injury.

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35/ British Tort law has evolved because of (3)

- A. Industrialization
- B. The separation of powers between the judiciary and the legislative
- C. The evolution of criminal law
- D. The move to a welfare State and now to a risk society
- E. The impact of human rights.

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Mark = between 9 and 20

22/ The Donoghue v Stevenson (1932) judgment acknowledges (3)

- A. The importance of neighbourhood in nuisance
- B. The neighbour principle in tort law
- C. The separation between criminal and tort law
- D. The duty of care of the manufacturer to the consumer
- E. A general tort of negligence

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23/ The corrective justice approach to tort law considers crucial (2)

- A. The cheapest way to distributing justice
- B. Empowering victims to sue in justice
- C. reinforcing protected/moral interests

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24/ Harmonisation of tort law in Europe is difficult because of (2)

- A. Various liability regimes
- B. A different conception of judicial activism
- C. A different approach to protected interests
- D. The difference between jury and judge-made decisions

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25/ This quotation 'the duty to avoid doing or omitting to do anything the doing or omitting to do which may have as its reasonable and probable consequence injury to others and the duty is owed to those to whom injury may reasonably and probably be anticipated if the duty is not observed' (Lord McMillan), offers a definition for (1)

- A. The obligation of positive duty in tort law
- B. The duty of care in negligence law
- C. None of them.

26/ A duty of care in negligence is presumed (2)

- A. In Drivers and Road-users relationships
- B. In Employers and employees relationships
- C. When D omitted to perform a task
- D. It is never presumed.

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27/ In negligence law, at the duty of care stage, the foreseeability test is made very widely (so is easy to satisfy) (1)

- A. TRUE
- B. FALSE
- C. It depends.

28/ In English common law, there is a duty of care imposed upon D, a bystander, to intervene and to offer assistance to a stranger, C, who is endangered, imperiled or injured. (1)

- A. TRUE
- B. FALSE
- C. Yes, only when minimal effort is required.