**SUMMARY QUESTIONS**

**ESSAY QUESTIONS**

1. Cases such as Bolton v Stone and Miller v Jackson provide examples of the different approaches taken by the judiciary in relation to determining whether a defendant has breached their duty to take reasonable care. Describe the tests used to establish the negligence of a defendant and explain how the law has developed to make the exercise of these tests more relevant in the modern era.

**Indicative content outline answer:**

* Having established a duty of care exists between the claimant and defendant, the claimant must demonstrate that the defendant fell below the standard required by law and breached this duty.
* In Bolton v Stone, a woman, standing outside her house, was struck by a cricket ball hit from an adjourning cricket club. She sought to recover damages for her injuries but the House of Lords held that the club had reasonably minimized the risk of harm through erecting a fence some 17 feet high at the perimeter of the ground. The fact that balls had only ever been struck over the fence six times in 28 years led to the judgment that the claimant had not been exposed to an unreasonable risk of harm.
* The case reflected on the main elements to consider when assessing a breach of duty of care. Those are:
	+ the ‘reasonable man’ standard;
	+ the principle of risk (exposure to unreasonable risk of harm;
	+ the social utility and desirability of the defendant’s actions; and
	+ the cost/practicality of the measures to reduce the risk of harm.
* The failure of Miss Stone to establish a breach of duty that prevented her successful claim can be compared with Miller v Jackson [1977] 3 WLR 20. This case also involved a cricket ground, whose Chairman, Mr Jackson, was sued for negligence by the Miller’s. The garden of the Miller’s was only 102 feet from the centre of the cricket ground. Mr Miller claimed that cricket balls were struck from the club into his garden which had caused damage to his property, and were so intrusive that he and his wife spent time away from the property during matches, and would not enter the garden for fear of being hit by stray cricket balls.
* The cricket club had erected a six-foot concrete wall at the end of the garden, and also a fence of 14 feet nine inches (the fence could not be made higher due to stability problems).
* In 1975, six balls went over the fence into the neighbouring houses; in 1976 nine balls went over the fence and therefore in the first case the court held that there had been a breach of the cricket club’s duty to take reasonable care.
* The frequency of the cricket balls entering the garden in *Miller*, but the relative lack of frequency of the balls leaving the cricket club’s ground in *Bolton* was the deciding factor between the cases. It is whether the defendant has exposed the claimant to unreasonable risk of harm in pursuing the activity which led to the damage.
* The courts are mindful not just to impose liability where a person has been injured, but rather to place such a decision in the context of the desirability of the function and it social function. This places the decision in context and makes it more ‘fair’ for each of the parties and the wider community.

2. Critically assess the defences available to a claim of nuisance. Do you feel they are fair or at least adequate and what suggestions could you make for improvements? Justify your answer through a critique of the case law.

**Indicative content outline answer:**

* Defences exist where: a claimant has alleged a nuisance and the defendant can point to a statutory authority, the consent of the claimant, or where the act has continued for over 20 years.
* Statutory authority: Where a statute authorizes an act that is then subject to a claim of nuisance, the courts will assess whether the claim of nuisance is able to proceed. However, simply because a statute gives a right to perform some action, does not remove potential liability of the defendant.
* In Allen v Gulf Oil Refining Ltd [1981] a statute was passed to build an oil refinery on land to ensure a supply of oil was available, and this was in the public interest. In the building of the refinery, and its operation, local residents complained of the noise and smell of the activities. The House of Lords held that no nuisance had been caused as the statute required that the oil refinery be built and operated, rather than merely giving the right for the erection and operation of such a venture.
* Consent: If a party consents to a nuisance, then he/she is unlikely to succeed in an action. This is a complete defence if the defendant can establish that the injured party had accepted the danger of the noise, smell, vibration, or other nuisance, having been aware of its existence. This is a grey area, as merely occupying land in the knowledge of a nuisance will not establish an effective defence of consent. It is the willingness to accept the possibility of the nuisance that is the key element.
* Prescription: Here, a defence is available where the nuisance has been committed for over 20 years without complaint. It is important that the nuisance has been committed for 20 years, rather than simply the carrying out of that activity for the period of time (Sturges v Bridgman [1879]).
* The adequacy of the defences requires examination of the competing interests of the parties. The party causing the nuisance, but perhaps is doing so due to permission, having been in the place for a long period of time, or where they have previously had permission to do so. The victim of the consequences of the nuisance, the effect on their health, enjoyment of property, value of the premises and so on must also be taken into consideration.
* There is ultimately no right or wrong answer, but the case law appears to strike an appropriate balance between these competing interests.

**PROBLEM QUESTIONS**

1. All Bright Consumables (ABC) Ltd has recently diversified its business into supplying and fitting quality kitchens and bathrooms. Part of this business involves the company manufacturing its own tiles and furniture to offer the full bespoke service that it believes customers want. Dora is employed by ABC Ltd as a wood machinist operating a bench mounted circular saw. Today, while operating the circular saw Dora caught her right (dominant) hand in the saw’s blade, severed four fingers and sliced the top off her thumb. On the day in question, she had worked a 12-hour shift and for the last six hours of her shift, her supervisor, Abe, asked her to lend her push stick (which she had been told she should use for feeding small pieces of wood into the machine) to a colleague. At the time of the accident, she was working on an urgent job which had to be completed that day for fitting by ABC’s bathroom firm the next. Dora admitted that while working she had been distracted and had been chatting animatedly to another colleague.

Consider the negligence liability (if any) of ABC Ltd.

**Indicative content outline answer:**

* The question requires an outline of the law establishing negligence liability, and any defences available to the defendant following a finding of negligence liability.
* A definition of negligence is the breach of a duty to take care, owed in law by the defendant to the claimant, causing the claimant damage. In order to establish a successful claim in negligence, three tests must be satisfied. Each of these will be discussed in turn:

1) The defendant owes the claimant a duty of care;

Identified by the tests of: a) Proximity (*Donoghue v Stevenson*; *Caparo Industries Plc v Dickman and Others*).

b) Forseeability (*Caparo*.).

c) Fair, just and reasonable to impose the duty (*Caparo*.).

2) There was a breach of that duty;

Identified by the tests of:

a) Whether the defendant exposed the claimant to unreasonable risk of harm (*Bolton v Stone*);

b) What was the social utility and desirability of the defendant’s action(s);

c) The cost and practicality of the measures needed to minimise the risk; and

d) Did the defendant breach the ‘reasonable man’ standard (*Blyth v Birmingham Waterworks Co*).

3) Damage as a consequence of the breach (*Cork v Kirby Maclean*).

* Consequential damage should include a discussion of the causation in law and causation in fact analysis – especially the ‘but for’ test.
* Having established negligence liability on the part of ABC - Abe asked Dora to lend her the push stick; the employer owed the employees a duty to take for their health and safety; Abe breached this by taking Dora’s push stick and this caused her injury (it would not have occurred ‘but for’ Abe taking the stick and exposing Dora’s hand to potential and reasonably foreseeable injury in the saw) – ABC may attempt to amount the partial defence of contributory negligence.
* Consequential Damage - Section 1(1) of the Law Reform (Contributory Negligence) Act 1945 provides ‘Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant’s share in the responsibility for the damage.’
* Contributory negligence is a partial defence to a claim where injury has been caused and the claimant seeks damages. Contributory negligence is only applicable where the claimant was (at least in some part) responsible for their damage.
* In contributory negligence, the claimant is referred to as having ‘contributed to their own misfortune’ and if they have been at fault in any activities that has led to their injury, then the court will reflect this in the damages awarded. The Court of Appeal has also held that the claimant may even be entitled to succeed in an action for damages where they are 60% liable for his/her injuries.
* ABC will be liable for the injuries sustained to Dora in civil law. There may be a potential issue of breach of Health and Safety legislation and criminal liability for ABC.

2. Alain is employed by Tasty Butchers (TB) Ltd to deliver meat to various retailers. Alain is expressly told not to race or drive dangerously in his company vehicle. However, today Alain ignores this instruction and decides to race against the driver of their rival company, Crusty Butchers Ltd, when the two drivers meet each other at traffic lights.

During the race Alain damages the car of Delia, which further causes the sealed door on the refrigeration unit of his company vehicle to be broken and the meat begins to thaw. At the end of the day Alain returns to TB Ltd’s base and is told about cases of sickness being reported by customers at the shops he has delivered meat to. The view is that the meat has gone bad and caused food poisoning.

The manager of TB Ltd has also seen the damage to the company vehicle and been contacted by Delia who blames Alain for causing damage to her car.

Outline the potential liability of the parties in the above situation.

**Indicative content outline answer:**

* Alain has been given an express instruction not to race – however, *Limpus v London General Omnibus* should be used to explain the limitation of such an instruction to remove an employer’s liability for the torts of employees committed during the course of employment.
* Alain is performing an authorized task (delivering the meat) but doing so in an unauthorized manner (racing against the instructions of the employer).
* TB will be liable for the injury to individuals who have been made sick due to the thawing meat (*Donoghue v Stevenson* should be used as authority here).
* TB would also be vicariously liable for the damage to Delia’s car.
* Having applied the rules regarding vicarious liability and the key element of ‘the course of employment’ criterion, the answer should also identify that Alain does not escape liability. TB can attempt to recover their costs for liability against him and they may also, following appropriate employment laws, begin proceedings to dismiss Alain for gross misconduct.
* It may be useful in this last aspect to explain one of the rationales for vicarious liability’s existence – accident prevention. By holding TB liable for the damages incurred in this situation they would almost certainly change their rules regarding employment practices and introduce various safety systems to ensure employees comply with the employment rules.