ST MARY’S UNIVERSITY

TWICKENHAM, LONDON

LLB, CRIMINOLOGY & BUSINESS LAW Degree Examination students registered for

Level **FIVE**

Title: **TORT LAW**

Code: **LAW5020**

Semester: **RESIT**

Date: **5TH July 2019**

Time: **09:30-11:30**

TIME ALLOWED: **TWO** HOURS

Answer **BOTH** questions. Both carry equal marks.

**Exam Question 1**

Maisie, 6, drops her ice cream which was bought for her by her mum on a hot day while they are waiting for the train to take them to Brighton beach for the day. Shelley, who is employed by Southern Rail to keep Victoria Station clean, notices the spill but is too tired to bother clearing it up right away. She has been on her feet all night during her shift, and thinks that the spill will dry up in no time anyway in the heat. Unfortunately, Frederick, who is in a rush to get to his amateur dramatics rehearsal on time, runs right over the spill and falls badly on his left hip, which fractures. He was carrying a large box full of majorette batons, which roll everywhere as he drops them. Several batons roll directly beneath the wheels of a trolley being pushed across the station concourse by Arthur, upon which are priceless antique marbles being transported to the British Museum. Despite great care being taken in their packaging, the marbles fall from the trolley as its wheels jam, causing them to smash.

**Advise Southern Rail regarding their vicarious tortious liabilities as employers, with reference to duty of care, causation, remoteness, and the distinction between tortious and contractual liability.**

**Exam Question 2**

Penelope works at Irresponsible Batteries Ltd on the factory floor, operating a ladle that transports lithium, a highly explosive chemical, from one machine to another. Irresponsible Batteries Ltd are expanding, and have hired an assistant for Penelope to help with her workload, after running a competition to attract applicants to their Youth Apprenticeship programme.

The new assistant, Sonny, is 16 years old and well known to be a practical joker. Indeed, Irresponsible Batteries Ltd made their final decision to hire him as their new apprentice based on what they call ‘Sonny’s wacky sense of humour and team-building potential shown during his interview’. They think he will be a good person to fast-track to management. Penelope is given the job of training Sonny to use the ladle for transporting lithium, but she finds his attention span short and his attitude to health and safety light-hearted. She complains to her floor manager, Keith, that Sonny does not have the right qualifications or attributes to work with explosive materials yet, and that she needs help training him. However, Keith tells her there is nothing he can do as management have made their decision, and that she will just have to persevere. Penelope finds the situation increasingly stressful, especially because she herself has not been given any extra support in training new colleagues to work with dangerous materials. She keeps a note of all this in her work log, and plans to bring it up at their next annual meeting.

One day, Sonny tries to amuse his co-workers by making fun of Penelope’s exhortations to be safe by doing an impression of Jonny Cash’s ‘Hurt’. Unfortunately, while he is singing he falls over backwards, and crashes into a water cooler, causing it to spill over the ladle holding the explosive lithium. An enormous blast occurs, seriously injuring Penelope. Keith, the floor manager, is blinded in one eye as a result of the explosion. It is factory regulations that all employees wear safety goggles when working on the factory floor, but Keith finds them uncomfortable, and often takes them off as he spends a lot of his time in the office. Sonny himself is also very badly burned as a result of the explosion. He thinks that the explosion would not have happened if Irresponsible Batteries Ltd had invested in newer, state-of-the-art equipment, and thinks that the ladles provided were substandard.

**Advise Penelope, Keith, and Sonny of their likely grounds for a claim against their employer for breach of their personal, non-delegable duty of care.**

**END OF EXAMINATION**