(A) This question is related to the tort of negligence.

There are three elements that must be present for an act or omission to be negligent; (1) The defendant owed a duty of care towards the plaintiff; (2) The defendant breached the duty of care by an act or omission; (3) The plaintiff must suffer damage as a result - be it physical, emotional or financial.

The court might decide that Freddy (the plaintiff) was owed a duty of care by Elvis (the defendant) if they find that what happened to Freddy was in the realm of reasonable forseeability - any harm that could be caused to a 'neighbour' by Elvis' actions that he could reasonably have expected to happen. The 'neighbour principle' was established in the case of *Donoghue v. Stevenson (1932)*. Donoghue was bought a ginger beer by her friend from an ice-cream parlour. She discovered a partially decomposed snail inside the opaque bottle. She claimed that she suffered from gastro-enteritis and nervous shock as a result, and sued the manufacturer. She could not sue for breach of contract (the contract being that the manufacturer would provide the consumer with products that would not harm her) because her friend had purchased it for her, so she sued for negligence. Lord Atkinson, who was the judge at the trial, said the case hinged on the question, do the manufacturers owe the consumer, as well as the buyer (the parlour), a duty of care? Is the plaintiff the defendant's 'neighbour', to whom the plaintiff owed a duty of care? Lord Atkinson said that a neighbour is anyone that you might closely and directly affect by your actions. So it was established that the manufacturer did owe a duty of care to Mrs. Donoghue, in that it was up to them to make sure that snails did not get into their bottles of ginger beer, as it directly affected Mrs. Donoghue's well-being.

From this legal precedent, I would say that Elvis harmed his neighbour, Freddy, negligently, because he did closely and directly affect his well-being by not taking into account what might reasonably happen when he carelessly dropped some bricks.

(B) This case relates to negligence (as defined above) and the principle of *Res Ipsa Loquitur* - the facts speak for themselves.

In cases involving proven Res Ipsa Loquitur, the burden to show that the defendant was negligent (or whatever the tort may be) by the plaintiff shifts to the defendant, who must prove that there is another reasonable explanation for

whatever misfortune befell the plaintiff. If s/he cannot, then the plaintiff wins the case.

Res Ipsa Loquitur occurred in the case of *Scott v. London and St. Katherine Docks (1865),* where the plaintiff was walking past the warehouse of the defendant when he was struck on the head with six bags of sugar. He sued the defendant, and Res Ipsa Loquitur was established. The defendant could not offer any other reasonable explanation for what had happened, so Scott (the plaintiff) won the case.

I would say that the principle of Res Ipsa Loquitur would help Freddy in his action, in that there isn't any other reasonable explanation apparent, so when the burden shifts to Elvis, he may not be able to come up with one, and so Freddy will win his case.

(C) This case again relates to negligence (defined above), and the principle of *contributory negligence*.

Contributory negligence is where a plaintiff is in part the cause of his/her own injury/ies, then the blame is shared, on a percentage basis, and s/he receives less compensation than s/he normally would have from the defendant had s/he not been contributorily negligent.

A plaintiff was found to be contributorily negligent in the case of *Sayers v. Harlow UDC (1958).* A woman became trapped in a public toilet, and after calling for help attempted to climb out. She fell and was injured. The court found her to be 25% responsible for her accident, and Harlow UDC to be 75% responsible, so they only awarded 75% of the damages she would normally have received. Freddy may have been partially the cause of his injury, in that he was not wearing a hard hat on the building site when he was required to.

Freddy may have been contributorily negligent in causing his injury, although it would be up to the court to decide exactly how much of it was his fault.

(D) (I) This question relates to negligence (defined above), the principle of *vicarious liability*, and the principle of *occupier's liability*.

Vicarious liability is where an one person is responsible for the torts of another (although the other is liable *also*) - in this case, the employer being liable for the torts of the employee. For a company to be vicariously liable, the employer-employee relationship must be that of 'master-servant' - usually independent contractors don't count.

Several tests are used to determine this; method of payment (servants by wage, independent contractors by lump sum at completion of contract); supply of tools, premises etc.; taxation; pension schemes; power of 'hire and fire'; and the integration test - the extent to which everyone is acting as a unit. Occupier's liability is defined by the Occupiers Liability Act 1957 and the Occupiers Liability Act 1984. It is the common duty of care owed by an occupier to a lawful visitor to make sure that they are reasonably safe during their stay, and the duty owed to trespassers to make sure that there is not any outstanding danger(s) that they could be harmed by, that a reasonably humane person would have kept away safely e.g. a tiger in the living-room is not something that a reasonably humane person would keep to attack burglars.

Freddy would need to fulfill all the above qualifications for the test of vicarious liability to prove that Darratts Homes Ltd. and Elvis have a master-servant relationship, leaving Freddy free to sue either or both of them. He might also have to prove that Darratts were liable as occupiers of the property to make sure that he was reasonably safe. However, it seems that if Darratts were building the house to sell it, until the time that they do, *they* will be the occupiers, and so have occupiers liability.

(D) (II) This question is on vicarious liability, as defined above.

The good points of employers being liable in most cases for the torts of their employees are that the employer is usually a lot more able to pay out large amounts of compensation than the employee. It probably won't hurt the company to pay the compensation as much as it would hurt the employee. And the company will probably have insurance to cover just such an eventuality, meaning that an insurance group will pay the compensation. They, in turn, will probably raise their premiums, meaning that the burden of the debt is spread much more thinly and widely. Of course, this is based on the assumption that the plaintiff doesn't take both the employer *and* employee to court - in which case, this isn't really an advantage. Secondly, the threat of such an action might be the impetus that some companies need to raise their standards of training, supervision and safety to adequate levels. Finally, some people would say that the employee is merely an extension of the employer, given that s/he must have approved of the subordinate when s/he was first employed, so the torts are really those of the employer, committed indirectly. The bad points of this law are that there is a much greater capacity for fraud to occur, with employees intentionally harming a collaborator to get employers to compensate them, then

splitting the money. This is just one way that this law could be manipulated for the benefit of either the employer or employee. If the employer wanted to sack an employee but had no good reason, then they could stage an 'accident' which pointed to the negligence of the employee, giving them an excuse to fire them and avoid an unfair dismissal action. The action would obviously be dropped once the offending employee was removed. Secondly, although the employee is supposedly an extension of the employer, can the employer really be held responsible for the actions of another person with free will? What if the employee started well in his/her duties, but quickly became lax in performing their job, and then committing a tort. Admittedly, they should really have been supervised better, but if the transformation was rapid (perhaps due to a death in the employee's family) then there really wasn't much that the employer could have done to make sure that it didn't happen.