



THE UNIVERSITY OF THE WEST INDIES

EXAMINATIONS OF JULY/AUGUST 2002

CODE AND NAME OF COURSE: LA13A - LAW OF TORTS I

DATE AND TIME:

DURATION: 2 HOURS

INSTRUCTIONS TO CANDIDATES: This paper has 2 pages and 6 questions.

Answer **THREE (3)** questions. Answers may be confined to the law of any jurisdiction in the Commonwealth unless the context indicates otherwise.

1. Answer **EITHER (a) OR (b)**

- (a) Critically discuss the elements which a plaintiff must establish in order to succeed in a claim for malicious prosecution.

OR

- (b) Is it possible to distinguish between a breach of contract and a tort?

2. "Whether or not there has been a breach of the duty of care owed depends on the standard of care to be expected in the circumstances . . ."

What factors are relevant to a determination of the standard of care to be attained in a given situation?

3. Analyse the nature of the duty owed by an occupier to his lawful visitors in any Commonwealth Caribbean jurisdiction of your choice.

4. Tony is always at loggerheads with his neighbour, Venkata. Late one Friday night, Tony sees Venkata and a young dreadlocked fellow, Othello, throw a crocus bag over Angela's fence, jump over the fence and come back over about twenty minutes later with the bag full. Angela is overseas on holiday. Tony immediately contacts a local police officer, Owen, and tells him that he has just seen Venkata committing a burglary with an accomplice.

Owen goes to Othello's house and asks him what was in the bag. Othello tells him that it was some old junk which Angela had sold to Venkata some months earlier. Owen immediately dismisses this as unlikely and places both Othello and Venkata under arrest without further investigation.

D T O

The two are kept in the police lock-up until Tuesday, when they are taken before a Magistrate and charged with burglary. Othello's story is corroborated and the charges are dismissed.

Advise Venkata.

5. Theo, a twelve (12) year old boy, frequently passes through a track next to Gordon's yard. One day, he sneaks through a hole in Gordon's fence to pick a few mangoes. A branch of the tree breaks and Theo falls and breaks his arm. Gordon is aware that all the neighbourhood boys used to steal his mangoes, but he has never taken any steps to prevent them from doing so, since they always left more than enough for him.

Hearing Theo's cry of pain, Douglas, who is visiting Gordon for a morning chat, rushes out of the house, trips on the mossy back step and crashes to the ground, breaking his nose.

Gordon then attempts to drive both Theo and Douglas to hospital but, on the way there, the car skids, mounts the pavement and crashes into an electricity pole causing a power cut in the area.

Empire Bread Co. Ltd., a bakery, has to throw away the bread which was in their ovens at the time of the power cut. This loss of profit is valued at \$5,000. In addition, no bread can be made until power is returned six hours later. This loss is said to be about \$25,000.

Advise the parties.

6. Sylvester lives in Rhinestone Mews, an upper middle class residential area in Trinidad. He has only recently moved in. Taylor keeps a chicken farm upwind from Rhinestone Mews. He has been doing so for the last twenty (20) years. Not far from Rhinestone Mews is Urban Manufacturing Corporation (UMC) which manufactures margarine, lard and vegetable oils.

Sylvester's daughter, Ursula, complains that the smell of the chicken farm has worsened her pre-existing asthmatic condition. Even though none of the other members of the family suffers from asthma, they all agree that the smell is highly offensive.

Late one afternoon, a large tub of hot oil explodes over at UMC showering Rhinestone Mews. Yolande, Sylvester's wife is scalded by some of the drops and Sylvester's prized carnations are destroyed.

Advise on the issues.