



K A M A I N E N T I E R O

CODE AND NAME OF COURSE: LA 20A (LAW2010) - LAW OF TORTS II

DATE AND TIME:

DURATION: 2 HOURS

INSTRUCTIONS TO CANDIDATES: This paper has 3 pages and 6 ' questions.

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

1. "Keen competition between traders is the very oxygen of trade in the open market place. The law is supportive of the economic system and does not lend its aid to monopolistic practices among traders": *per* Gonsalves – Sabola J in *Emeralds of Colombia v Specific Investments Ltd* (1989).

Discuss the extent to which the law of passing-off reconciles the above objective with that of protecting traders from unfair competition. ,

2. "Politicians, like ordinary people, are entitled to look to the courts to protect their reputations, and the fact that the public might be legitimately interested in their behaviour or conduct has not of itself been treated as sufficient to give rise to the defence of qualified privilege": *per* Sylvester J in *Mitchell v Charles* (2002).

Comment on this statement in the light of the House of Lords' decision in *Reynolds v Times Newspapers Ltd* (1999).

PLEASE TURN OVER

3. Answer **BOTH** (a) AND (b)

(a) Explain, in the light of decided cases, the concept of innuendo in the law of defamation.

AND

(b) David, who runs a small business in the town of Bay Largo, is persuaded by a rogue to pay out \$500 (US) for an entry in a trade directory which turns out to be non-existent. The rogue was using the name 'Keystone Directories'. David sends an e-mail message through the local internet service provider, Hooya Inc., to all his fellow-members of the Bay Largo Chamber of Commerce, saying,

"Beware of a rogue selling entries in a bogus directory. Any name like 'Keystone Directories' should be treated with suspicion."

Unknown to David, an entirely reputable firm, 'Keystone Directories', is attempting to attract business in the Bay Largo area. The firm alleges that it has lost many orders as a result of the suspicions raised about it.

Advise Keystone Directories.

4. Britney was a secretary employed by Diva Manufacturing Co. One afternoon, Britney left her office to visit her boyfriend, Justin, who worked in the manufacturing plant, although she knew that she had no permission to be in that area. As Britney and Justin were chatting, Puffy, another employee, who was known to be in the habit of consuming large quantities of beer during his lunch break, suddenly lurched into Britney, knocking her over onto the concrete floor. Britney's head was badly cut and owing to the fact that she suffered from a rare blood disorder, she bled to death before medical help arrived. Britney was a single mother with two young children, and was the sole support of her elderly mother.

Advise Britney's personal representatives.

5. Ivan was a van driver employed by Florida Express Inc. One evening, during a heavy downpour, he was proceeding along his route when he saw his friend, Charlie, waiting at a bus stop. Although all Florida Express drivers had been instructed not to give lifts to unauthorized passengers, he picked up Charlie and offered to drive him home. Just before reaching Charlie's home, which had necessitated a 3-mile detour from Ivan's authorized route, Ivan collided with a cow which had strayed onto the road from Karl's adjacent, unfenced field. The cow, which belonged to Rasta, had been grazing on the field with Karl's consent. At the moment of impact, Ivan's speed was approximately 80 mph. The cow was killed and Charlie was seriously injured.

Moments later, Jeanne, who had borrowed her father's (Matthew's) car to go to a theatrical show, crashed into the van, injuring Ivan who had hitherto been unhurt. Jeanne had been talking on her cellular phone as she drove, and had failed to notice the obstruction in time. When Jeanne got out of the car, a dog belonging to Lisa, a local resident, savagely attacked her and caused severe injury.

Discuss.

PLEASE TURN OVER

6. Adrian was the pillion passenger on Brian's motorcycle. A collision occurred between the motorcycle and a bus, for which both Brian and the bus driver admit equal responsibility. Adrian was not wearing a crash helmet and, as a result, he suffered concussion and a scalp wound requiring fifteen stitches. Also, his leg was crushed and, despite two operations, it finally had to be amputated.

Adrian is twenty six years old. He had been employed as a scaffolder earning a basic \$600 (US) a week, but for the six months prior to the accident his employer had secured a major contract to build an office block, and every scaffolder had been able to earn an average of \$200 per week on overtime. The building was to be completed in nine months' time. Adrian was also a talented footballer and had been the leading goal-scorer for a local team.

Adrian was hospitalized for eight months during which time his employer made a gratuitous payment of 50 % of his basic salary. At the end of the period, all payments ceased, but his employer offered Adrian a desk job at a salary of \$300 a week. After six months' convalescence, Adrian took up this offer. During his convalescence, Adrian's mother gave up her job as a nursery teacher, earning \$250 a week, in order to care for him. Adrian also received \$5000 from his disability insurance policy, payable for the loss of a leg.

Advise Adrian as to his legal rights to compensation, and explain how the court will approach the issue of assessing damages.

END OF PAPER

