



THE UNIVERSITY OF THE WEST INDIES

EXAMINATIONS OF DECEMBER 2005

CODE AND NAME OF COURSE: LA20A (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. Three weeks ago, ^{Jason} ~~Leary~~, a labourer, and a group of his co-workers from a local construction site entered the Pink Pelican nightclub for an evening of entertainment. Shortly after 10 pm, a disturbance broke out at the bar and Thommo, a bouncer employed by the club's proprietor, Hanks, was called to restore order. Thommo was a 250-pound karate 'black belt' known by Hanks to have had a previous conviction for aggravated assault.

Believing that Jason was responsible for the disturbance, Thommo forcibly ejected Jason from the club, whereupon Jason's co-workers attacked Thommo with iron bars, broken bottles and a cricket bat. Thommo, realizing that he was outnumbered and at risk of serious injury, fled from the club and took refuge in a neighbouring house. Jason, now joined by his co-workers, remained outside the club drinking rum with a group of young women.

Suddenly, Thommo was seen running towards the club with a cutlass in his hand, yelling abuse and threatening to "lick off some heads." The women rushed into the club, followed by Jason and his co-workers. In the ensuing panic, a glass partition inside the club, which had been carelessly installed by Fixit Ltd, collapsed, injuring two of the women, Raquel and Samantha.

Thommo entered the club and chopped Jason with the cutlass, causing him severe injury. Keisha, a barmaid, suffered nervous shock at the sight of the blood from Jason's wounds and had to seek psychiatric treatment. Jason was taken to the hospital but, because he suffered from a rare blood disorder, the doctors were unable to stop the bleeding and he died later that night.

Advise Raquel, Samantha, Keisha and Jason's widow as to whether they have any valid claims in tort and, if so, against whom.

2. Ali owns a farm unenclosed by any fences. On the farm, Ali keeps a herd of cows and twenty-five chickens. The following events occur:
- (i) One of Ali's cows escapes from the farm and dashes across an adjacent highway where it collides with and damages a passing car owned by Boris.
 - (ii) Six other cows from Ali's herd stampede on to Syed's neighbouring farm and damage Syed's crops.
 - (iii) Ali's 7 year old daughter, Zarina, is playing in Ali's yard when she is attacked and injured by Syed's Rottweiler dog.
 - (iv) A number of Syed's cats enter Ali's farm and consume five of Ali's chickens.

Advise the parties as to liability in tort.

3. Answer **BOTH** (a) AND (b)
- (a) Explain the principles on which damages are assessed in defamation actions in Commonwealth Caribbean jurisdictions.
 - (b) In legal proceedings brought against the San Fernando City Council, a witness giving evidence in court attacked the good faith of Dr Rambarran, an ex-mayor of San Fernando who at the time was leader of the Opposition on the Council, saying that the ex-mayor was "untrustworthy and slippery as an eel".

At the next meeting of the Council the present mayor, Dr Pierre, in reporting on the result of the legal proceedings to the Council, referred to the evidence of this witness and repeated the statement which the witness had made about Dr Rambarran.

This speech was reported in the *Daily Echo* newspaper, which also contained an editorial referring to the speech and suggesting that, so long as the Opposition had a man like Rambarran as leader, they "could not expect to receive the support of decent citizens."

Advise Rambarran.

4. "In recent years, it has become apparent that in today's conditions [the] traditional approach of the common law to [defamatory] statements of fact is not wholly satisfactory in respect of the widespread dissemination of political views and other matters of public concern" - per Lord Nicholls in *Panday v. Gordon* (Privy Council Appeal, 2005).

Discuss this dictum in the light of recently decided cases.

5. Sean, a maintenance engineer, and Will, a welder, were employed in the service area at St Monique International Airport. Will was in the habit of smoking ganja during his lunch break and the Airport management were aware of this.

Two weeks ago, when Will entered one of the aircraft hangers - a 'prohibited area' - to smoke his 'weed', he was suddenly confronted by two extremely large German Shepherd dogs. To escape from the dogs, Will ran through a side entrance, but he slipped and fell owing to the presence of an oily patch on the floor. Will struck his head on the ground and suffered concussion.

Sean saw what was happening and called for a private ambulance owned by Rapid Rescues Ltd. Being concerned for his colleague, Sean decided to ride to the hospital in the passenger seat of the ambulance despite the presence of a notice affixed to the dashboard which read, "Medical personnel only. No unauthorized passengers are permitted to travel in this vehicle."

On the way to the hospital, the ambulance driver recklessly drove through a red traffic light and collided with another vehicle driven by Usher. Will suffered no further injury, but Sean, who was not wearing a seat belt, was thrown through the windscreen and died on the spot, while Usher suffered multiple fractures to his arms and legs.

Advise Will, Usher and Sean's widow.

6. Consider, with reference to decided cases, the relevance and significance of the following in the assessment of damages for personal injuries:
- (a) Loss of amenities
 - (b) The 'multiplier/multiplicand' formula
 - (c) Inflation
 - (d) Mitigation of damages.

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