



# THE UNIVERSITY OF THE WEST INDIES

EXAMINATIONS OF     JULY/AUGUST         2002    

CODE AND NAME OF COURSE: LA20A - LAW OF TORTS II

DATE AND TIME:

DURATION: 2 HOURS

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

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Answer **THREE (3)** questions, at least **ONE (1)** of which must be selected from **PART B**. Answers may be confined to the law of any jurisdiction in the Commonwealth Caribbean unless the context indicates otherwise.

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## PART A

1. "There can be no valid cause of action for passing off if there is no invasion of the goodwill of a trader's business by a false representation made by another trader in the course of trade" - per Clarke J in Robert Marley Foundation v. Dino Michelle (1994).

Discuss the scope of the tort of passing off in the light of this dictum and with reference to decided cases.

2. You have been consulted by the Caribbean General Insurance Company Ltd., which is concerned at the large number of claims it has received recently in connection with
- (a) dog bites; and
  - (b) damage caused by trespassing cattle.

Write a memorandum to the Financial Controller of the Company explaining the nature and scope of liability in tort for both of the above types of harm in Commonwealth Caribbean jurisdictions.

3. Examine the methods by which a court will calculate damages under the Fatal Accidents legislation of any ONE Commonwealth Caribbean jurisdiction.

P.T.O

PART B

4. Antillean Ltd. is in serious financial difficulties and, at a board meeting, the financial director, Jackman, announces to the other members that if it were not for gross incompetence and mismanagement on the part of the company's chairman, Oswald Hinds, the company would be on a sound financial footing. Jackman, who harbours a grudge because he was not appointed chairman several years ago in preference to Hinds, sends a letter to the *Daily Echo* newspaper repeating these allegations. The letter is published in the newspaper a few days later.

Shortly afterwards, Carib Television Company, a privately owned organization, broadcasts a documentary film highlighting the financial problems of Antillean Ltd. and referring to "the rum-soaked cavorting of Oswald Hinds aboard his yacht, 'Serendipity'." The report is true of another Oswald Hinds, who is not the chairman of the Antillean Ltd., but is untrue of the chairman, who is a deacon of the Adventist Church and a life-long abstainer from alcohol.

Advise chairman Hinds as to whether he may have a good cause of action in defamation and, if so, against whom.

5. Sharp is employed by the University of Barbago as a cleaner in the Arts Faculty. One day, he is asked to clean the venetian blinds in the office of Miss Fastidious, a lecturer. It is well known in the Faculty that Sharp is in the habit of avoiding certain tasks, and he refuses to clean the blinds, maintaining that this task is not 'man-work'. Prunella, the maid, wishes to make Miss Fastidious comfortable and she volunteers to clean the blinds, but she is too short to reach them and, in the absence of any ladder in the Faculty, she stands on a chair. Prunella is overweight and the chair is fragile. It topples over, and Prunella falls to the ground, fracturing her arm.

Sharp hears the noise of the fall and rushes to Prunella's aid but, in attempting to lift Prunella, he exacerbates an earlier back injury and becomes permanently paralysed.

Advise Prunella and Sharp.

6. Mandy, the proprietor of a popular restaurant, owns a van, used for the purposes of her business, and a car, for her private use.

Earlier this year, Mandy went away on holiday leaving the van with her employee, Ian, who had agreed to run the business in her absence. She expressly instructed him that no persons other than her employees should be given lifts in the van.

Mandy left her car with a neighbour, Derrick, who agreed to drive it periodically in order to keep the battery charged.

One day, whilst on his way to purchase supplies for the restaurant, Ian gave a lift in the van to a customer, Dawn. Owing to Ian's careless driving, an accident occurred in which Dawn was seriously injured.

On the same day, Derrick decided to drive the car to the city centre to do his weekly shopping. On his way back home, during a heavy rainstorm, he lost control of the car, which veered off the road and crashed into Jasper's front garden, destroying the garden fence and a number of valuable garden ornaments. Tony, one of the ambulance men from St. Jude's Hospital who had arrived on the scene and entered the garden to attend to Derrick, was badly bitten and mauled by Jasper's unchained Doberman dog.

Advise Dawn, Jasper and Tony.

**END OF QUESTION PAPER**