



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

MAY-AUGUST 2024

RLB 103: LAW OF TORT 1

EXAMINER: Augustus Mutemi Mbila

INSTRUCTIONS

1. This is the final examination in Law of Tort 1. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **FOUR** questions. Answer **ALL FOUR QUESTIONS**.
3. This examination has 3 pages, including this one.
4. Time allocated for this examination is **TWO** (2) hours.
5. This is a **CLOSED-BOOK** examination. This means that you are not allowed to refer to any material, whether in soft or hard copy.
6. This examination is governed by the **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the course instructor any incidences of academic dishonesty compromising the integrity of this examination.
7. Indicate your registration Number and the Title of the Exam on the cover page of the answer booklet. **DO NOT** indicate your name on the answer script.
8. You must stop writing when the time is called.
9. It is in your best interest that you write legibly.
10. Marks will be earned for close interaction with the questions, use of relevant authorities, and providing relevant solutions to the problems. Marks will be lost for irrelevance

QUESTION ONE (20 MARKS)

Chebukati's toothless upper front jaw is no longer amusing to his grandfather, who has advised him to visit a dentist for artificial teeth fixing. The grandfather thinks that Chebukati will never attract any "date" because his smiles are no longer punctuated with clean front teeth. During his younger days, having a large tooth gap on the front teeth was an added advantage, but it is no longer the case with the current generation. But he has not always been like this. He remembers what happened to him on that fateful day when a neighbour, well known to him, attacked him after they had spent the day together in a party. On their way home after the party, Wajackoyah, the neighbour and long-time friend to Chebukati, had threatened to slap Chebukati "in revenge for the disrespect he showed him at the party". Chebukati is said to have declined any further drinks because "it was getting late". Wajackoyah was still interested in a few more drinks.

After a short argument arising from this threat, and as they continued their walk towards their homes, Wajackoyah dealt a devastating blow on Chebukati. Chebukati had no time to react as it caught him unaware. Wajackoyah further kicked Chebukati as he helplessly writhed in pain on the ground. One of the kicks caught Chebukati on his upper jaw and that's how he lost three of his front teeth. Knowing that Chebukati would be rescued by passers-by and they would track him down and arrest him, Wajackoyah carried Chebukati on his back and locked him up in his hut. Chebukati spent the night in severe pain. A short time before dawn, he gathered some strength and called his brother Simple Boy to come rescue him. He did this when Wajackoyah woke up to relieve his bladder. Simple Boy rescued him just in time for the local matatu that would take Chebukati to the local Level 4 hospital.

Required:

With the help of decided cases and Kenyan statutes, discuss all the possible torts arising from this scenario, along with the criteria for computing compensation, if any, for each of the torts

(20 marks)

QUESTION TWO (20 MARKS)

Ericcah asked Vanessa if she could borrow her SUV in order to transport her used furniture to New Start, a local non-profit organisation. Vanessa hesitated to say yes, because she knew of Ericcah's propensity for speeding and her numerous prior traffic violations. Despite her reservations, however, because she believed in the mission of New Start, Vanessa agreed to let Ericcah use her SUV and gave her the keys. That night, Ericcah drove carefully and dropped off her furniture at the New Start resale store. On the return drive, and eager to get home as quickly as possible, she sped as much as 120km/h, way over the speed limit of 80km/h she had been advised to drive on. While rounding a curve along Lang'ata Road, she lost control of the SUV, which tumbled off a ramp and down a hill, crashing into a small tree. Abdifatah happened to witness the incident and ran down the hill to help, but in doing so, he stumbled in a hole and severely sprained his ankle. Ericcah emerged from the SUV dazed but without a scratch. The SUV, however, was crumpled. An ambulance took Abdifatah to the hospital, where the doctor taped up his ankle, gave him

crutches, and prescribed 12 weeks of physical therapy. The sprain prevented Abdifatah from opening his new home remodelling business for another three months.

Required:

With the help of decided cases and Kenyan statutes, determine the following:

1. Can Abdifatah recover his medical and therapy costs? From whom? Explain. **(8 marks)**
2. Can Abdifatah recover the income lost from the three-month delay in opening his business? From whom? Explain **(8 marks)**
3. Are there any possible defences? To whom are they available? **(4 marks)**

QUESTION THREE (20 MARKS)

1. “...*The defamatory matter must have been communicated to some person other than the plaintiff. The tort of defamation protects the plaintiff’s reputation in the eyes of others, not his personal feelings of insult...*” **Powell v Gelston [1916] 2 KB 615**
Discuss the validity of this statement whilst examining the various rules that courts have developed regarding publication of a defamatory statement **(10 marks)**
2. Mbugua, a Member of National Assembly while contributing to a motion in the House, made derogatory remarks about Mberia, calling him a thief, cheat and corrupt to the core. The next day he repeated these remarks at a press conference in Nairobi. Blitz, a weekly newspaper, published verbatim what was said by Mbugua at the press conference. Mberia sues Mbugua, the editor of the newspaper, publisher their publisher, printers, distributors, and hawkers of Blitz for defamation. Discuss the legal position on whether Mberia can recover damages under this tort **(10 marks)**

QUESTION FOUR (10 MARKS)

Oburu, a squatter, grabbed public land belonging to the government, constructed huts on it and fenced the land. Ogutu then entered this land that Oburu had already fenced and occupied for over 5 years and constructed his huts there. Oburu sues Ogutu in tort. Ogutu argues that Oburu’s possession of the land is wrongful and therefore he has no right to sue him. Discuss Ogutu’s liability, if any, in tort **(10 marks)**