



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

MAY-AUGUST 2024

RLB 108: LAW OF TORT II

EXAMINER: Augustus Mutemi Mbila

INSTRUCTIONS

1. This is the final examination in Law of Tort II. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **THREE** questions. Answer **ALL THREE QUESTIONS**.
3. This examination has 4 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 (25 MARKS)

Sayari Manufacturers Ltd (“Sayari”) own a land that is adjacent to Josephat’s land. Sayari operate a chemical industrial plant that they constructed ten (10) years ago for manufacture of soaps, detergents and related products. Since the construction of this plant, Sayari have permitted escape of untreated sewage and/or contaminated water through unlined sewage or drainage system into Josephat’s land. Sayari have also allowed stagnation of wastewater next to Josephat’s property which is the source of offensive odours and provides a breeding ground for mosquitoes and other vectors. Sayari are unmoved by Josephat’s demands that they stop allowing this kind of effluent to drain into his land. They have told him to sell his land to them and move to a different location if he cannot withstand the effluent. Josephat has stated that his premises were defiled and rendered unhealthy and unfit for occupation by or sue for agricultural purposes. As a result he has been unable to enjoy the use of his premises and suffered the loss and damage in the nature of death of his poultry, inability to grow crops on his land as he used to, and incessant odour coming from the effluent. A soil test carried out by experts has found that the following elements are present in the soil as a result of the effluent: bromine, sodium, zinc, vanadium, potassium, lead calcium, chromium, lead, iron titanium and zirconium. The possible residues after production include bromides, carbonated sulphates, hydroxides, phosphates, benzene, silicates, oils, alloy chlorides and cellulose. These elements, the experts say, are dangerous to plant, livestock and human life. Sayari have argued that they have authorisation from the Director of Medical Services and the National Environmental Management Authority to operate their manufacturing plant.

Josephat has sought legal advice from you on whether he has any cause of action against Sayari, who are adamant that they are authorised to act as they are.

Required:

Advise Josephat on all the torts that are available to him against Sayari. Does Sayari have any defence under each of the torts? (25 marks)

QUESTION TWO (20 MARKS)

Buster, the known practical joker, has just got his first job working as a Leisure Assistant at the Albatross Pool & Leisure Centre. During slow periods at work, he livens things up by playing pranks on his co-workers: hiding the lifeguard’s whistle, making fake announcements over the loudspeaker, and engaging in general horseplay. Buster’s co-worker, Tim, is getting annoyed with Buster’s pranks. Tim makes a complaint about Buster’s behaviour to their manager, Jules, explaining that Buster’s actions could hurt someone. Jules assures Tim that she will look into it and will warn Buster to stop playing practical jokes at work. After two weeks, Buster’s behaviour has not improved. Tim sends another email to Jules. The next day, Buster and Tim are working a shift together. As a joke, Buster decides to trip Tim, who is carrying a stack of foam pool noodles. Tim drops the pool noodles and hits his head on the reception desk. Buster, afraid of getting in trouble, runs out of the Leisure Centre and down the street. He runs into Trixie, an elderly fitness enthusiast on her way to an aerobics class. Trixie falls and breaks her hip.

Required:

Advise Albatross Pool & Leisure Centre on its potential liabilities as an employer under the following circumstances:

- a) Whether Albatross are vicariously liable for Buster's conduct against Tim **(10 marks)**
- b) Whether they are liable for Buster's conduct once he left the pool building and collided with Trixie whilst she was on her way to aerobics **(10 marks)**

QUESTION THREE (25 MARKS)

On February 22nd, 2022, Geoffrey purchased eight beds, eight mattresses and eight blankets from one Mansoor Mohammed. He paid by three post-dated cheques, one payable on the following day, the second at the end of February, and the third (for Kshs. 2000/-) on March 15th, 2022. The first two cheques were duly presented and paid. On March 15th 2022, Mansoor Mohammed put the third cheque into his bank account. Shortly afterwards (on the same day) Geoffrey came to see him. He asked him to postpone presentation for a few days as he was in financial difficulty. Mansoor Mohammed refused; so, to avoid embarrassment because he had insufficient funds in the bank to meet the cheque, Geoffrey instructed the bank to stop payment. Mansoor Mohammed says that he went later to Geoffrey's house and demanded payment but Geoffrey "chased him away".

On the following day, March 16th, Mansoor Mohammed went and reported the matter to an inspector of police. The inspector admits to you that he there and then sent a police constable to arrest Geoffrey and bring him to his office. Geoffrey was duly brought to the inspector's office and there followed between them a sharp argument. Geoffrey says that he was simply explaining to the inspector that this was a civil matter and had nothing to do with the police. The inspector says that Geoffrey was "rude and aggressive" and that is why he had to order for his arrest. The inspector decided that Geoffrey should be charged with obtaining goods by false pretences. On March 21st, Geoffrey was released upon executing a bond to appear before the Resident Magistrate in Bungoma, on March 22nd. On March 22nd, the following charge was read to Geoffrey:

"...On February 22nd 2022 at Bungoma township in Bungoma County with intent to defraud obtained from Mansoor Mohammed eight beds, eight mattresses and eight blankets by falsely pretending that a certain cheque (No 314934) which he the said Geoffrey Masinde Murunga then produced and delivered to the said Mansoor Mohammed was a good and valid order for the payment of Kshs 2000 upon the Standard Bank, Bungoma branch..."

At the end of the prosecution case the magistrate found that Geoffrey had no case to answer and acquitted him under section 210 of the Criminal Procedure Code.

Geoffrey considers this to be a very clear case of malicious prosecution and has sought your advice as to whether he can sustain a tort case against the Attorney General on behalf of the State.

Required:

Whilst alluding to the criteria that courts have developed over time to guide in determination of cases of malicious prosecution, advise Geoffrey on whether he can succeed in a claim for compensation for malicious prosecution. Make use of decided cases and Kenyan statutes.

(25 marks)

