



RIARA LAW SCHOOL
UNIVERSITY OF EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE
APRIL 2024
LAW OF TORT II
UNIT CODE: RLB 108
INSTRUCTOR: MR. WASHINGTON ODONGO OMBIS
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 **FOUR** questions. Please answer all questions.
3. The examination has **SEVEN PAGES**, including this one.
4. Time allocated for this examination is **TWO HRS** (2) hours. You must stop writing when time is called.
5. Please sign the roll sheet when you turn in your answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
6. This is a **CLOSED BOOK** examination. This means you are not permitted to bring ANY hard or soft materials to the examination room. You are also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
7. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

Question One (30 Marks)

On the 1st day of February 2024, the Riara University Students Association released communication to the effect that elections were to be held on the 15th March 2024.

Upon this communique being released various students indicated their intention of vying for the presidential position post, amongst the students who expressed their intention were:

- Nuseiba.
- Zeinab Yussuf.
- Darshni.
- Ivy Wanyokie.
- Farah Mohammed.
- Ruth Akatsa.

The campaign period started off well however during the campaign period, Darshni was alerted by some of her colleagues that there was a whatsapp group which was opened by one of her opponents Ivy Wanyokie.

In the Whatsapp group various statements were made of a vilification character, the statements were published in the whatsapp group and she was shown some of these statements.

Darshni went ahead and engaged her advocate on this issue and filed a case before the Riara University Elections Tribunal, (*Darshni v Ivy Case No E 1 of 2024*)

Considering you are the advocate on record for Darshni under these circumstances:

- a) Explain, using relevant authorities the ingredients you will need to establish for this purported Act to have taken place. (10 Marks)
- b) Assuming you were the advocate on record for Ivy, explain some of the possible defences you would use to protect Ivy under these circumstances so that no liability is imposed upon her. (20 Marks)

Question Two (15 Marks)

On the 20th day of February 2024, Claire was appointed as the legal officer Riara University. One of her first tasks at hand was to come up with a legal opinion on the relevance of the Occupational Safety and Health Act (OSHA) 2007 whilst also making reference to the

Occupiers Liability Act of Kenya in order to carry out legal audit on the extent to which the University has complied with these Acts.¹

Considering the above and assuming you are Claire, prepare legal opinion on the same.

Question Three (15 Marks)

On the 5th day of March 2024, Sang was served with a statement of claim in the case of Laura Njeri v Sang, which read as follows:

REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT
AT NANYUKI
CLAIM NO EOF 2024
BETWEEN

LAURA NJERI.....CLAIMANT
AND
SANG.....RESPONDENT

STATEMENT OF CLAIM

1. Claimant's Personal Details:

Name: LAURA NJERI

Physical Address: P.O BOX 12478-00400, NAIROBI

Telephone Contact: 0718981278

Email Address: Laura@gmail.com

Nature of Business of Claimant: BUSINESS WOMAN

Location/Sub- Location/Village: N//A

Claiming as an individual

2. 1st Respondents' Personal Details:

Name: SANG

Postal Address: N/A

Physical Address: NAIROBI

Telephone Contact: N/A

Email Address:

Nature of Business: N/A

Location/Sub/Village: N/A

Legal Status of the Respondent (Please tick where appropriate)

¹ CAP 34 Laws of Kenya and OSHA 2007

Individual

3. NATURE OF CLAIM

Compensation for loss or damage to the motor vehicle which occurred on or about the valued at Ksh. 380,581/=

4. Briefly explain the circumstances under which the claim arose, and attach documents (if any) in support of your claim.

A. At all material times relevant to this suit, the Respondent was the registered, beneficial, actual, insured, and/or legal owner of motor vehicle registration number **KCX 145P**.

B. On or about the 12TH FEBRUARY 2022, the Claimant was legally and lawfully driving Motor Vehicle Registration Number **KCQ 075Z** at the Nanyuki, Mugumo Oldaiga Road when the Respondent so carelessly or negligently drove, managed and controlled motor vehicle registration number **KCX 145P** that he caused it to violently crash onto the Claimant's motor vehicle reg no **KCQ 075Z** and as a result causing extensive damage to the Claimant's Motor vehicle.

PARTICULARS OF NEGLIGENCE OF THE RESPONDENT'S DRIVER AGENT AND/OR EMPLOYEE

- a.) Driving too fast in the circumstances;
- b.) Driving recklessly and without due care and attention to other road users, particularly motor vehicle KCX 145P;
- c.) Causing and/or permitting his vehicle to ram into the Claimant's vehicle;
- d.) Failure to keep a proper lookout while driving.
- e.) Failure to apply the brakes in time or at all.
- f.) Failure to stop, slow down, swerve, or in any way steer, manage, or control the said motor vehicle so as to avoid the accident;
- g.) Failure to exercise or to maintain any sufficient or adequate control of the motor vehicle.
- h.) Being generally negligent;
- i.) Causing the accident;
- j.) Disregarding the Highway code and traffic rules.
- k.) Res Ipsa Loquitor

C. As a result of the said accident, the Claimant's motor vehicle was extensively damaged occasioning the Claimant's loss.

PARTICULARS OF SPECIAL DAMAGES

- a. Garage Repair of Ksh. 371,301/=
- b. Assessment Report of Ksh. 6,380/=
- c. Re-inspection fee of Ksh. 2,900/=

TOTAL = Ksh. 380,581/=

D. The Respondent is liable for his negligent Acts.

E. The Claimant has filed this suit against the Respondent claiming the sum for and on behalf of M/s CIC GROUP his insurer, under the doctrine of subrogation having been fully compensated in respect of the damage and loss to his motor vehicle.

F. That despite service of demand and notice of intention to sue, the Respondents have failed to respond rendering this suit necessary.

G. There is no other pending suit and there have been no proceedings in any Court between the Claimant and the Respondent over the same subject matter and the cause of action relates to the Claimant herein

H. The cause of action arose within the jurisdiction of this Honourable Court.

5. REMEDY/RELIEF SOUGHT.

The Claimant herein prays for: -

- a. Special damages of **Ksh. 380,581/=**
- b. Costs and interest of the claim from the date of filing this suit.

Name of Claimant: **LAURA NJERI**

Signature of Claimant:

6. DECLARATION

I declare that the information given above is true.

Name of Claimant: LAURA NJERI

Signature of Claimant:

7. ACKNOWLEDGEMENT OF SERVICE

I acknowledge the service of this Statement of Claim delivered to me, with evidential documents attached, on.....

NAME OF RESPONDENT AND SIGNATURE OF RESPONDENT

1. SANG.....

FOR OFFICIAL USE ONLY

This Claim was filed on the day of..... 2024.

Signed

(Registrar)

DATED at NAIROBI this day of**2024.**

.....
MUSYOKI & CO. ADVOCATES
ADVOCATES FOR THE CLAIMANT

DRAWN AND FILED BY:

MUSYOKI & CO. ADVOCATES

5TH FLOOR ROOM 511

NGONG HILLS HOTEL

NAIROBI, KENYA

P 105/10000/15

LSK/2024/20

Email: musyokiadvocates@outlook.com

Tel: 0703862892

TO BE SERVED UPON:

SANG

Considering this, calculate

- a) Total special damages. (1 Mark)
- b) Special damages in the event the assessment report was not produced. (2 Marks)
- c) Special damages in the event re – inspection fee was not produced. (2 Marks)
- d) Distinguish between special and general damages. (5 Marks)

e) Explain using examples what is *res – ipsa loquitor* in tort law.

(5 Marks)

Question Four (10 Marks)

“We think that the true rule of law is, that the person who for his own purpose brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and , if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape.” –

Considering the above except, discuss the requirements of the rule using supporting authorities.