

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
 LL.B. DEGREE PROGRAMME – LEVEL 6
 FINAL EXAMINATION 2017/2018
LAW OF DELICT – LWU 4326 / LLU6814
 DURATION – 3 HOURS



Date: 5th March 2020

Time: 1.30 – 4.30pm

Please make sure that your handwriting is legible.

It is an examination offence to have unauthorized documents, mobile phones or any other electronic device with you in the examination hall.

All questions carry equal marks.

Answer FOUR questions only.

1. *The maxim is founded on good sense and justice. One who has invited or assented to an act being done towards him cannot, when he suffers from it, complain of it as a wrong.*

Lord Herschell in *Smith v. Baker* [1891] A.C. 325 at page 360.

What is the maxim that is referred to in this quotation? Explain the elements of this maxim and the interpretations given to it in decided cases.

2. Janaka and Nalini held a birthday party for their six year old son Navin, and several children from his class came for the party. Navin and his best friend Rizwi found the box of matches that Nalini had kept on the table to light the candles on the birthday cake in a little while. They took the box of matches and the candles to Navin's bedroom and started lighting them. A lighted candle fell on Navin's bed and the sheet caught fire. The two children ran out of the room but did not tell anyone about the fire.

Janaka saw the flames coming out of the bedroom window and called the fire service. Nalini ran round the house calling all the children to get them into the garden. By the time the fire engine and crew arrived, the fire had spread all over the house. Nalini realised that Suren, a four year old child who lived down the road, was missing. Perera the head of the fire crew rushed into the burning house to look for Suren while the crew tried to put out the fire. Perera was seriously injured when a part of the ceiling fell on him. A neighbour called Suren's mother Nirmala who was visiting a friend in Kandy, and told her that Janaka's house was on fire and Suren could not be found. Nirmala who was pregnant suffered a miscarriage and had to be

immediately hospitalised. Later it was discovered that Suren had been hiding behind a tree and was safe, but he was severely traumatised.

Discuss the liability of Janaka and Nalini to Perera, Nirmala and Suren.

3. *One of the most important distinctions always to be observed lies in the law's essentially different approach to the different kinds of damage which one party may have suffered in consequence of the acts or omissions of another. It is one thing to owe a duty of care to avoid causing injury to the person or property of others. It is quite another to avoid causing others to suffer purely economic loss.*

Lord Bridge in *Caparo Industries Plc v Dickman & Others* [1990] 1 All ER 568.

In the light of this statement discuss how the rules relating to negligent statements have evolved as a distinct category of liability for negligence. You should discuss Sri Lankan, South African and English law.

4. Banda was a lorry driver and went to the Motor Vehicle Department to renew his license. As a result of medication that he had started taking for a particular condition, Banda suffered from constant drowsiness even during the day. When he went for the medical test he informed Dr. Kusal who handled his file about the medication. Dr. Kusal who had passed out as a doctor the previous year was unaware that this medication caused drowsiness. He passed Banda on his medical test.

Banda was later employed by Amal to drive his lorry, which Amal hired to transport goods. Amal examined all Banda's documents including references and his past record as a safe driver. A few months after Banda started working for Amal, Shanthi who was moving house hired the lorry to transport her furniture. Banda who was driving fell asleep while taking the furniture to Shanthi's new house. The lorry went off the road and crashed into Sirisena's vegetable stall on the side of the road. Sirisena was badly injured. The furniture in the lorry was badly damaged including an antique table which was 300 years old and worth over Rs. 1 million.

Shanthi and Sirisena wish to recover damages for their loss and injuries. Advise them as to whom they should sue and on what basis.

5. *There are now too many principles by which to determine legal causation, resulting in contradictory and inconsistent decisions. This issue should be left to the common sense of the judge.*

Do you agree with this statement? Substantiate your answer with reference to the rules on legal causation and examples from case law.

6. *The law of defamation protects the reputation of individuals at the expense of freedom of expression and the right to information.*

Do you agree with this statement? Critically discuss the law of defamation citing cases to illustrate your answer. You should discuss the law as it has been applied in Sri Lanka, South Africa and the UK.

7. Mala lives in a house in a semi-rural area. Her neighbours are Banda, Rama and Tikiri who own land around her house.
- (a) Banda has a chicken farm. When the wind blows from the direction of the farm, the smells from the chicken waste is unbearable and the sound of the chickens during the day disturb the occupants of Mala's house. Her maid Ramya has refused to work there anymore. In addition, Mala's elderly father, Perera who has now come to live with her is a strict vegetarian and the thought of the chickens being killed everyday in the farm is making him depressed.
 - (b) Rama has recently bought his land and is in the process of building a tea factory to process the tea grown in the surrounding area. As he wants to start his business as soon as possible the workmen work during the night with heavy machinery. Perera is unable to sleep in the night. Mala has also noticed cracks in her kitchen wall which face Rama's land.
 - (c) Mala's most recent neighbor is Tikiri who bought his land about 6 months ago. Tikiri has started a scrap metal business by which he buys abandoned vehicles and retrieves the parts. Throughout the day the sound of vehicles being broken up can be heard for several kilometres. Tikiri stops work at 5pm so as not to disturb the neighbours.

Advise Mala as to whether she can file a private nuisance action against Banda, Rama and Tikiri.