

THE OPEN UNIVERSITY OF SRI LANKA
LL.B. DEGREE PROGRAMME – LEVEL 6
FINAL EXAMINATION 2020/2021
LAW OF DELICT – LWU4326 / LLU6814
DURATION – 3 HOURS



Date: 16th September 2021

Time: 9.30 am – 12.30 pm

Students will be penalised for illegible handwriting.

Plagiarism and getting help to write your answers is considered an examination offence.

Answer FOUR questions only. All questions carry 25 marks each.

1. Saman was a student in the Southern University. According to university rules all students must vacate the premises by 7pm.

Saman lived in one room near the university that he had rented. The landlord did not permit him to use electrical items in his room as it consumed too much electricity. One day Saman stayed on until 9pm outside the student canteen as he had to finish an assignment on his laptop. Nihal, one of the security guards was checking the premises and saw Saman. They both came from the same village and their families were not on good terms.

Nihal scolded Saman for breaking the rules and staying on late on the premises. Saman told him to mind his own business. Nihal then pushed Saman to the ground and started kicking him saying “this will teach your family a good lesson.” Hearing Saman shouting, Dinesh, the Senior Security Officer came to see what was happening. When Saman appealed to him for help, Dinesh replied “you students need to be disciplined. You always break the rules.” Dinesh did not stop Nihal from assaulting Saman. Saman was cut and bruised all over as a result of Nihal’s assault.

Dinesh is an employee of the University. Nihal is employed by a private security firm called Rakna Seva (Pvt) Ltd. that the university has contracted to help with security duties.

Saman wishes to bring an action for damages. Advise him.

2. According to Lord Wilberforce in *Anns v. Merton London Borough Council*

[1978] A.C. 728, in order to establish a duty of care there are two stages that have to be established.

“First one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage there is a sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter - in which case a prima facie duty of care arises.”

“Secondly, if the first question is answered affirmatively, it is necessary to consider whether there are any considerations which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damages to which a breach of it may give rise.”

Examine the decisions of (a) *Alcock v. Chief Constable of Yorkshire* [1991] 4 All ER 907 and (b) *Caparo Industries PLC. v. Dickman and Others* [1990] 1 All ER 568 and discuss the extent to which they are compatible with the two stage test in *Anns*.

3. Mahes owns a garment factory. Due to the Covid 19 pandemic factories are required to ensure that all workers are seated at least two metres apart and wear medical grade masks. Mahes has followed these instructions. Due to the current spread of the new Omega variant the Covid 19 Task Force has recommended that workers should be seated 4 metres apart and wear full PPE equipment. However, Mahes is unable to house all his workers if he does so. Further, the PPE equipment would add substantially to the cost of production.

Nimal, the Factory Health Inspector advised Mahes that it would be sufficient to keep the workers three metres apart and that it was not necessary to give them PPE equipment. He told Mahes that only two cases of the Omega variant cases had been found in Sri Lanka and the virus could be contained.

Mahes followed Nimal's advice. One month later 15 workers were diagnosed with the Omega variant. The outbreak was traced to Kamani a worker who was the daughter of one of the patients identified with the Omega variant. She had tested positive after observing the mandatory quarantine period.

- (a) Shanthi who has diabetes and asthma became severely ill and incurred medical expenses of Rs. 1 million for treatment in a private hospital. Shanthi had refused to be vaccinated on religious grounds.
- (b) Malini's elderly mother caught the virus from her and died. She had waited for several months to be vaccinated. Malini now has to incur expenses for child care as her mother used to take care of her two young children.

- (c) Sumana was sent to a quarantine centre and while she was there witnessed several people dying of Covid, being unable to breathe. Sumana suffered a nervous breakdown and was sent to a psychiatric ward of the hospital after she recovered.
- (d) Mahes' factory was closed for three months and he suffered economic loss.

Shanthi, Malini, Sumana and Mahes all wish to sue for damages. Discuss (a) whom they can sue, and (b) on what grounds.

- 4. "The law will not provide compensation for damage which it regards as too remote from the accident itself. This, as will be seen is a question of law rather than fact. It is the law which will place a limit on recovery "

Harpwood, *Principles of Tort Law*, 3rd edition, (1997) at page 23.

Discuss the legal principles that the courts use to decide whether the damage caused by a defendant is too remote or not. Illustrate your answer with suitable examples from case law. In your answer you should focus in particular on the underlined sentence in the quotation.

- 5. *The exercise and operation of the fundamental right declared and recognized by Article 14(1)(a) [i.e. the right to freedom of expression] shall be subject to such restrictions as may be prescribed by law in the interests of, defamation*

Constitution of Sri Lanka – Article 15(2)

Discuss how the courts attempt to ensure that the law of defamation does not unduly restrict the right to freedom of speech. Cite cases from both Sri Lanka and other jurisdictions in support of your answer.

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