

ශ්‍රී ලංකා විවෘත විශ්ව විද්‍යාලය
මානව ශාස්ත්‍ර හා සමාජ විද්‍යා පීඨය
නීතිවේදී උපාධි පාඨමාලාව - හයවන මට්ටම
වෂර් අවසාන පරීක්ෂණය 2022/23
දිලික්ක නීතිය - LWU4326 / LLU6814
කාලය - පැය 3



දිනය: 19-03-2024

වේලාව: පෙ.ව 9.30- ප.ව 12.30

ඔබගේ අත් අකුරු පැහැදිලි විය යුතුය.

අවසර නොලත් ලිපි ලේඛන, ජංගම දුරකථන හෝ වෙනත් විද්‍යුත් උපාංග විභාග ශාලාවට ගෙන ඒම විභාග වරදකි.

ප්‍රශ්න හතරකට පමණක් පිළිතුරු සපයන්න. එක් ප්‍රශ්නයකට ලකුණු 25 බැගින් හිමි වේ.

1. මහේස් හා නිමල් පිළිවෙලින් දොලහ හා දහ තුන හැවිරිදි සහෝදරයන් දෙපොලකි. ඔවුන්ගේ පියා වන කමල් වඩු කාමරිකයෙක් වූ අතර, මව වූ ෆාතිමා ගෘහ සේවිකාවක වූවාය. ඔවුන් උදෑසන 8 සිට හවස 6 දක්වා ගෙදර නොසිටියහ. පාසල් නිම වී නිවෙසට පැමිණෙන මහේස් හා නිමල් කාලය ගත කළේ තනිවමය.

එක් දිනෙක, ඔවුන් නිවෙසින් ඇතට වන්නට පිහිටි, කැලෑවට ගිය වත්තක තිබෙන පාලු නිවසක් තම නිවෙසට සැතපුමකට පමණ එහාසින් වන්නට ඇති බවට අනාවරණය කර ගත්හ. සුරේන්ට අයත් මෙම නිවෙස අධර් වශයෙන් කඩා වැටුණු එකකි. 'හයානක පරිශ්‍රයකි, ඇතුලු වීමෙන් වලකින්න' හා 'පුද්ගලික දේපොලකි - අනවසර ඇතුලු වන්නන්ට නඩු පවරනු ලැබේ' ලෙසට දැන්වීම් දෙකක් වත්තේ ප්‍රදර්ශනය කිරීමට සුරේන් කටයුතු කොට තිබුණි. වත්තට යම් යම් අය ඇතුලු වීම වැලැක්වීම සඳහා ගේට්ටුව අගුලු දමා තබන ලෙසට නගර සභාව සුරේන්ට උපදෙස් දී තිබුණත්, ඔහු එසේ කළේ නැත.

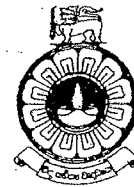
හැමදාම මෙම නිවෙසට යන්න එන්න පටන් ගත් මහේස් හා නිමල් නිවෙස තුල හා වත්තේ සෙල්ලම් කිරීම පුරුද්දක් කොට ගත්හ. එක් දවසක්, මහේස් නිවෙස තුල සිටිය දී, නිමල් කැ ගසනු ඔහුට ඇසුණි. ඔහු එලියට දුව ගෙන ආ අතර, පය තැබූ තරප්පු පෙළ මත ලිස්සා ගිය හේ බිම ඇඳ වැටුණේය. නිමල්ට සපර්යෙක් දෂ්ට කොට තිබුණි.

ඇඳ වැටීමේ ප්‍රතිඵල ලෙස මහේස් කොඳු ඇට පෙලෙහි ආබාධයකට ගොදුරු විය. නිමල්ගේ කැ ගැසීම ඇසුණු මගියෙක් උදවුවට ආ නිසා, ඔහුගේ ජීවිතය බේරුණු නමුත්, මාසයක කාලයක් රෝහල්ගතව සිටීමට සිදුවිය. මහේස් රැක බලා ගැනීම සඳහා ෆාතිමාව රැකියාවෙන් ඉවත් වීමට සිදු වූ අතර පවුලේ ආදායම මේ වනවිට දරුවන් රැකබලා ගැනීම සඳහා ප්‍රමාණවත් නොවන තැනකට පත්ව තිබේ.

මෙම පවුල සම්බන්ධව සුරේන්ගේ වගකීම සාකච්ඡා කරන්න.

2. මුල් කාලයේ දී *volenti non fit injuria* විත්තිවාචකය භාවිතා වූයේ සහයක නොසැලකිල්ල පිළිබඳ විත්තිවාචකයට ආදේශකයක් ලෙසටය. එහෙත්, තවදුරටත් සහයක නොසැලකිල්ල සම්පූර්ණ විත්තිවාචකයක් නොවන නිසා සහ වග උත්තරකරු විසින් ගෙවිය යුතු වන්දිය අඩු කිරීමට පමණක් හේතු වන්නක් වන නිසා, *volenti non fit injuria* සිද්ධාන්තය විත්තිවාචකයක් ලෙස භාවිතා කිරීම සීමා කිරීමට අධිකරණය කටයුතු කොට තිබේ.

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
LL.B. DEGREE PROGRAMME – LEVEL 6
FINAL EXAMINATION 2021/2022
LAW OF DELICT – LWU4326 / LLU6814
DURATION – 3 HOURS



Date: 19-03-2024

Time: 9.30am – 12.30 pm

Please ensure 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.

Answer **FOUR** questions only. Each question carries 25 marks

1. Mahes and Nimal were two brothers of 12 and 13 years. Their father Kamal, was a carpenter, and their mother Fathima, was a domestic worker, and were not at home from 8am until 6pm. After school Mahes and Nimal were left to themselves.

One day they discovered an abandoned house in an over grown garden about a mile away from their home. The house which belonged to Suren was half broken down. Suren had put up two signs at the entrance which said "Dangerous premises, do not enter" and "Private property - trespassers will be prosecuted." The Municipal Council had asked Suren to keep the gate locked to prevent anyone from entering the premises but he had not done so.

Mahes and Nimal started visiting the house everyday and playing inside it, and in the garden. One day Mahes had gone inside the house when he heard Nimal screaming. He rushed out but the staircase gave way under him and he was thrown to the ground. Nimal had been bitten by a cobra.

Mahes suffered spinal injuries due to the fall. Nimal was saved from the cobra bite due to the help of a passer-by who heard him screaming, but spent a month in hospital. Fathima had to give up her job to look after Mahes and the family income is now insufficient to support the children.

Discuss the liability of Suren to the family.

2. Earlier, the defence of *volenti non fit injuria* was used interchangeably with the defence of contributory negligence. However, since contributory negligence is no longer a complete defence but only serves to reduce the damages to be paid by the respondent, the courts have limited the use of *volenti non fit injuria* as a defence.

Do you agree with this statement? Discuss with reference to recent cases on *volenti non fit injuria*.

මෙම ප්‍රකාශය සමග ඔබ එකඟ වන්නේද? *volenti non fit injuria* සිද්ධාන්තය හා සබැඳි මෑතකාලීන නඩු තීන්දු ඇසුරින් සාකච්ඡා කරන්න.

- සුමති විදුලි කාමරිකයෙක් වන පාලිතව තම කායරාලයේ නව වායු සම්කරණයක් සවි කිරීම සඳහා සේවා නියුක්ත කළේය. මෙම කායරාලය පිහිටියේ සුමතියේ පෙම්වතා වූ තේනුගේ නිවසේය. රැහැන් සවි කිරීමේ දී පාලිත අතින් සිදු වූ අත් වරදක් නිසා කායරාලය තුළ ගින්නක් හට ගත්තේය. ගින්න පටන් ගත් විට, කායරාලයෙන් ඉවතට දිව ගිය නිසා සුමතිට අනතුරක් සිදුවූයේ නැත. කෙසේ වුවද, ඇයගේ සියලු ලිපිගොනු විනාශ වූ අතර මාස තුනක් වයසැති ඇයගේ බලු පැටියා ගින්නට හසු වී මිය ගියාය. මුලු නිවසම ගිනිබත් විය.

මෙම අවස්ථාව වනවිට, නිවසේ හිමිකරු වූ තේනු සිටියේ ඉන්දියාවේය. පැය කිහිපයකින් පසුව, රූපවාහිනී ප්‍රවෘත්තිවල සහ යූ ටියුබ් නාලිකාව හරහා ගින්න සම්බන්ධ දඹර්ත හේ දුටුවේය. එය තමාගේ නිවස බවට ඔහු හඳුනා ගත්තේය. ගින්නට හසු වී කාන්තාවක හා ඇයගේ බලු පැටියා මිය ගිය බවට ප්‍රවෘත්ති වැඩසටහන වාර්තා කළේය. සුමති මිය ගිය බවට සිතූ තේනු හෘදයාබාධයකට ලක්විය.

සුමති හා තේනු සම්බන්ධව පාලිතගේ වගකීම සාකච්ඡා කරන්න.

- ‘යම් ක්‍රියාවක් නිසා පීඩාවක් (nuisance) සිදුවන බව හුදු ක්‍රියාව පමණක් ආශ්‍රයෙන් තීරණය කළ නොහැක. යම් සිද්ධියක සියලුම පසුබිම් කරුණු ආශ්‍රයෙන් එය තීරණය කළ යුතු වෙයි.’

මෙම ප්‍රකාශය සමග ඔබ එකඟ වන්නේද? අදාළ නඩු තීන්දු නීතිය උපුටා දක්වමින් සාකච්ඡා කරන්න.

- පශ්චාත්-උපාධි මට්ටමේ ශිෂ්‍යාවක වන නබ්ලා ඇගලුම් කම්හල්වල සිදුවන ලිංගික බලහත්කාරකම් සම්බන්ධව සිය පයෙර්ෂණ උපාධිය සිදු කරයි. අදාළ ආයතනවල කලමණාකාරීත්වයේ අවසරය සහිතව, කමරාන්තශාලා තුනක කම්කරුවන් අතර ඇය සේවකයන්ගේ සේවා කොන්දේසි සහ ඔවුන් ලිංගික අතවරයන්ට මුහුණ දී තිබේද යන විස්තර ද ඇතුළත් ප්‍රශ්නාවලියක් බෙදා හැරියාය. මහනුවර පිහිටි එක්තරා කමරාන්තශාලාවක ලිංගික බලහත්කාරකම් ප්‍රතිශතය වැඩි බව ඇය සොයා ගත්තාය. මෙම පයෙර්ෂණ ප්‍රතිඵල තම නිබන්ධනය තුළ සාකච්ඡාවට ලක්කළ ඇය, ස්වකීය සුපරීක්ෂකවරයා තමුන්ව දූෂණය කිරීමට උත්සාහ කළ බවට එක්තරා සේවිකාවක කළ ප්‍රකාශයක් ද උපුටා දැක්වූවාය. මෙම කම්හලේ නම් නබ්ලා සඳහන් නොකළද, එය මහනුවර නගරයේ පිහිටි බවට ඇය හැඟවූවාය.

නබ්ලා සිය නිබන්ධනය සමත් වූ අතර, විශ්ව විද්‍යාල රීතිවලට අනුව, ඇයගේ නිබන්ධනය විශ්ව විද්‍යාල වෙබ් අඩවියේ උඩුගත කෙරුණි. ඇයගේ පයෙර්ෂණ ප්‍රතිඵල ඉක්මනින් ප්‍රසිද්ධියට පත්වූ අතර, පුවත්පත්වල ද ඒ පිළිබඳ වාර්තා පල විය. ‘ඇගලුම් කමරාන්තශාලාවල කාන්තාවන් අතවරයට’ යන හිසින් ඩේලි නොයිස් පුවත්පතේ මුල් පිටුවේ ලිපියක් ද පල විය.

මහනුවර පිහිටි කමරාන්තශාලාවේ අධ්‍යක්ෂක මණ්ඩලය නබ්ලාගේ නිබන්ධනය විශ්ව විද්‍යාල වෙබ් අඩවියෙන් ඉවත් කරන ලෙසට විශ්ව විද්‍යාලයෙන් ඉල්ලා සිටියේය. එසේ කිරීම අධ්‍යයන නිදහස උල්ලංඝනය කරන බවට වූ පදනම මත විශ්ව විද්‍යාලය මෙම ඉල්ලීම ප්‍රතික්ෂේප කළේය.

අපහාසය සම්බන්ධව නබ්ලා, ඩේල් නොයිස් පුවත්පත හා විශ්ව විද්‍යාලයට එරෙහිව නඩු පැවරීමට අධ්‍යක්ෂක මණ්ඩලය තීරණය කරයි.

ඔබගේ පිළිතුර තුළ, නඩු තීන්දු උපුටා දක්වමින් අදාළ නෛතික තත්වය සාකච්ඡා කරන්න.

3. Sumathy employed Palitha an electrician, to install a new air conditioner in her office. The office was in the annex of her boyfriend Thenu's house. Due to Palitha's negligence in installing the wiring, a fire started in the office. Sumathy ran out of the office when the fire started and was not in any danger. However, all her clients' files were destroyed and her three month old puppy also died in the fire. The entire house burnt down.

Thenu, the owner of the house, was in India at the time and saw the scenes of the fire a few hours later when he watched a recording of the TV news on YouTube. He recognised the house as his own. The news programme also said that a woman and her dog had died in the fire. Thenu suffered a heart attack thinking that Sumathy had died.

Discuss the liability of Palitha to Sumathy and Thenu.

4. The question whether an act constitutes a nuisance cannot be determined by considering the act only. It must be considered with reference to all the circumstance of the particular case.

Do you agree with this statement? Discuss, citing relevant case law to support your answer.

5. Nabeela is a post graduate student and is writing her thesis on sexual harassment in the workplace in garment factories. With the permission of the management she gave a questionnaire to the workers of three garment factories to conduct a survey on their working conditions including whether they are subject to sexual harassment. She found that women in a particular factory based in Kandy reported a high rate of sexual harassment. She discussed her findings in her thesis and quoted from one respondent who said that her supervisor had tried to rape her. Although Nabeela did not mention the factory by name she indicated that it was located in Kandy.

Nabeela passed her thesis and in accordance with university regulations it was uploaded to the university website. Her findings soon gained publicity, and were also reported in the newspapers. The Daily Noise carried a front page article entitled "Abuse of women workers in garment factories."

The Board of Directors of the factory located in Kandy have asked the university to take down Nabeela's thesis from the website. The university has refused on the grounds that doing so would violate academic freedom.

The Board of Directors has decided that they will sue Nabeela, the Daily Noise and the university for defamation.

Discuss the legal position, citing case law in your answer.

6. (අ) “සේවකයෙක් විසින් වේතාන්විතව සිදු කරන වරදක් කිසිදු විටෙක සේවා යෝජකයා මත ප්‍රතිපූරු වගකීම පවරන්නේ නැත”.

ඉහත ප්‍රකාශය සමග ඔබ එකඟ වන්නේද? අදාළ නඩු තීන්දු නීතිය ආශ්‍රයෙන් සාකච්ඡා කරන්න.

(ආ) ප්‍රේමා යනු සිය නිවෙස කුලියට දී සිටින 86 හැවිරිදි වැඩිහිටි වැන්දඹු ස්ත්‍රියකි. කුලී නිවැසියන් නිවසින් පිටව යාම ප්‍රතික්ෂේප කරන අතර ප්‍රේමා නීති උපදෙස් පතා සිල්වාගේ නීතිඥ කායරාලය වෙත ගියාය. එම අවස්ථාවේ සිල්වා උසාවියේ සිටි නිසා, නීතිඥවරයෙක් නොවන ඔහුගේ සහායක බණ්ඩා ඇයව සම්මුඛ සාකච්ඡාවකට බඳුන් කරයි. උසාවියේ ගොනු කිරීම සඳහා යම් ලේඛණයකට ඇයගෙන් අත්සන් ගන්නා ලෙසට සිල්වා පැවැසූ බව පසුව බණ්ඩා ඇයට දැනුම් දෙයි. ඇත්ත වශයෙන්ම මෙම ලේඛණය ප්‍රේමාගේ නිවස බණ්ඩා වෙත ත්‍යාග කරන ඔප්පුවකි. බණ්ඩා ඇයගේ නිවස විකුණා දමා ඇති බවට පසුව ප්‍රේමා දැන ගනී.

බණ්ඩා හා සිල්වාට එරෙහිව නඩු පැවැරීමට ප්‍රේමා අපේක්ෂා කරයි. ඇයට උපදෙස් දෙන්න.

7. (අ) ‘Hedley Byrne v. Heller නඩුවේ දී නොසැලකිලිමත් ප්‍රකාශ සම්බන්ධ වගකීම යම් යම් තත්ත්වයන් තුළ උපවය වන බවට සඳහන් වුවද, එම අවස්ථා කවරේදැ’යි එහි දී නිශ්චිත කෙරුණේ නැත. මෙම කායරාලය පසුකාලීන නඩුවල දී ඉටු කිරීම පිණිස ඉතිරි විය’

නොසැලකිලිමත් ප්‍රකාශ මත වගකීම උද්ගත විය හැකි අවස්ථා කවරේදැ’යි සාකච්ඡා කරන්න. ඔබගේ පිළිතුර තුළ අදාළ නඩු තීන්දු උපුටා දැක්විය යුතුය.

(ආ) විමල් වසරකට පෙර දිවුරුම් දුන් නීතිඥවරයෙකි. ඔහු ජ්‍යෙෂ්ඨ නීතිඥවරයෙක් වන, දේපොළ නීතිය පිළිබඳ විශේෂඥයෙක් ද වන මෙන්ඩිස් මහතාගේ නීතිඥ කායරාලයේ කණිෂ්ටයෙක් ලෙස කටයුතු කළේය. ඔහු තම අසල්වැසියා වූ ලලනි සමග මිතුරුකමක් ඇති කරගත්තේය.

එක් දිනෙක, තමුන්ට ඉඩමක් මිල දී ගැනීමේ අවශ්‍යතාවය පවතින නිසා, අදාළ ඉඩමේ හිමිකාරීත්වය තහවුරු කරගැනීමට මෙන්ඩිස් මහතාගෙන් චෙලාවක් වෙන් කර දිය හැකි දැ’යි ලලනි විමල්ගෙන් ඇසුවාය. ඒ සඳහා මෙන්ඩිස් මහතා රුපියල් 100,000 අය කරනු ඇතැ’යි පැවැසූ විමල් තමා එය නොමිලේ කර දීමට සූදානම් බවට කීවේය. ලලනි මෙම අපරිණය පිළිගත්තාය. වත්මන් හිමිකරුගේ හිමිකාරීත්වයේ දෝෂයක් නොමැත බවට පසුව විමල් ලලනිට උපදෙස් දුන්නේය.

ලලනි ඉඩම මිල දී ගත් අතර පසුව ඇයට දැනගැනීමට ලැබුණේ විකුණුම්කරුගේ සහෝදරයා ඉඩමේ කොටසක් සඳහා කාලාවරෝධී අයිතිවාසිකම් කියා පාන බවයි.

නොසැලකිලිමත් උපදෙස් ලබාදීම සම්බන්ධව විමල්ට එරෙහිව නඩු පැවැරීමට ලලනි අපේක්ෂා කරයි. විමල්ට උපදෙස් දෙන්න.

හිමිකම් ඇවිරිණි

6. (a) "The wilful wrong of an employee can never make the employer vicariously liable."

Do you agree with this statement? Discuss citing relevant case law.

- (b) Prema is an elderly widow of 86 years who has rented out her house. The tenants refuse to leave and Prema goes to the law offices of Silva to seek legal advice. Since Silva is in court at the time his assistant Banda who is not a lawyer interviews Prema. Banda later tells Prema that Silva has asked her to sign a document to be filed in court. In fact the document is a deed of gift of Prema's house to Banda. Prema later finds that Banda has sold her house.

Prema wishes to sue Banda and Silva. Advise her.

7. (a) "Although the case of Hedley Byrne v. Heller stated that liability for negligent statements could be imposed in certain circumstances, it did not indicate what those circumstances were. It was left to later cases to do so."

Discuss the circumstances in which liability for negligent statements can be imposed. Cite case law in your answer.

- (b) Wimal was a lawyer who had taken oaths one year earlier. He was a junior in the chambers of a senior lawyer Ms. Mendis who specialised in property law. He became friendly with Lalani, his neighbour.

One day, Lalani asked Wimal to obtain an appointment with Ms. Mendis as she wanted to buy some land and wished to have the title checked. Wimal told Lalani that Ms. Mendis would charge Rs. 100,000 for doing so and offered to do it himself free of charge. Lalani accepted the offer. Wimal later advised Lalani that the present owner had clear title.

Lalani bought the land and subsequently discovered that the seller's brother was claiming a part of the land on prescription.

Lalani wishes to sue Wimal for giving her negligent advice. Advise Wimal.

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இலங்கை திறந்த பல்கலைக்கழகம்

மானுடவியல் மற்றும் சமூகவிஞ்ஞானங்கள் பீடம்

சட்டக்கற்கைகள் திணைக்களம்

சட்டமாணி பட்டப்படிப்பு நிகழ்ச்சித் திட்டம் -2022/2023

மட்டம் - 06 LLU6814/LLU4326- தீங்கியல் சட்டம்

இறுதிப் பரீட்சை 2022 / 2023

காலம் : மூன்று (03) மணித்தியாலங்கள்

திகதி : 19 மார்ச் 2024

நேரம்: மு.ப.9.30 - பி.ப.12.30



114

உமது கையெழுத்து தெளிவானது என்பதை உறுதிப்படுத்துக

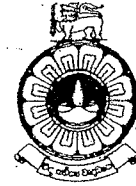
பரீட்சை மண்டபத்தினுள் அதிகாரமளிக்கப்படாத ஆவணங்கள், கையடக்கத் தொலைபேசிகள் அல்லது வேறு ஏதேனும் இலத்திரணியல் சாதனங்களை உடமையில் வைத்திருத்தல் பரீட்சைக் குற்றம் ஒன்றாகும்.

நான்கு (04) வினாக்களுக்கு மாத்திரம் விடையளிக்குக. ஒவ்வொரு வினாவிற்குரிய புள்ளிகள் 25 ஆகும்.

1) மகேஸ் மற்றும் நிமல் ஆகிய இருவரும் முறையே 12 மற்றும் 13 வருடங்கள் பூர்த்தியான இரு சகோதரர்கள் ஆவர். அவர்களுடைய தந்தையான கமல் ஒரு தச்சுத் தொழிலாளி ஆவார். அவர்களது தாயாரான பாத்திமா வீட்டுப் பணிப்பெண் ஆவார். தாய் மற்றும் தந்தை ஆகிய இருவரும் காலை 8.00 மணி தொடக்கம் மாலை 6.00 மணி வரை வீட்டில் இருப்பது இல்லை. பாடசாலை நேரத்தின் பின்பு மகேஸ் மற்றும் நிமல் ஆகிய இருவரும் தனிமையில் வீட்டில் இருப்பர்.

ஒரு நாள் அவர்கள் இருவரும் தமது வீட்டில் இருந்து ஏறக்குறைய ஒரு மைல் தொலைவில் மிதமிஞ்சி வளர்ந்த தோட்டத்துடன் கூடிய கைவிடப்பட்ட வீடு ஒன்று இருந்தமையை கண்டறிந்தனர். சுரேனிற்கு சொந்தமான இந்த வீடு அரைவாசி உடைந்த நிலையில் இருந்தது. சுரேன் தனது வீட்டு நுழைவாயிலில் இரண்டு குறியீட்டு பலகைகளை வைத்து இருந்தான். அவை பின்வரும் வாசகங்களை உள்ளடக்கி இருந்தது. “அபாயகரமான வளவு, உள்ளே நுழைய வேண்டாம்” மற்றும் “தனிப்பட்ட ஆதனம் - அத்துமீறி நுழைபவர்களுக்கு எதிராக வழக்கு தொடரப்படும்.” மாநகர சபை, வீட்டு நுழைவாயிலை மூடிவைக்குமாறும் எந்த ஒரு நபரும் வளவுக்குள் நுழைவதை தடுக்குமாறும் சுரேனிடம் வேண்டி இருந்தது. எனினும் சுரேன் அந்நடவடிக்கையை எடுக்கத் தவறினான்.

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
LL.B. DEGREE PROGRAMME – LEVEL 6
FINAL EXAMINATION 2021/2022
LAW OF DELICT – LWU4326 / LLU6814
DURATION – 3 HOURS



Date: 19-03-2024

Time: 9.30am – 12.30 pm

Please ensure 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.

Answer **FOUR** questions only. Each question carries 25 marks

1. Mahes and Nimal were two brothers of 12 and 13 years. Their father Kamal, was a carpenter, and their mother Fathima, was a domestic worker, and were not at home from 8am until 6pm. After school Mahes and Nimal were left to themselves.

One day they discovered an abandoned house in an over grown garden about a mile away from their home. The house which belonged to Suren was half broken down. Suren had put up two signs at the entrance which said "Dangerous premises, do not enter" and "Private property - trespassers will be prosecuted." The Municipal Council had asked Suren to keep the gate locked to prevent anyone from entering the premises but he had not done so.

Mahes and Nimal started visiting the house everyday and playing inside it, and in the garden. One day Mahes had gone inside the house when he heard Nimal screaming. He rushed out but the staircase gave way under him and he was thrown to the ground. Nimal had been bitten by a cobra.

Mahes suffered spinal injuries due to the fall. Nimal was saved from the cobra bite due to the help of a passer-by who heard him screaming, but spent a month in hospital. Fathima had to give up her job to look after Mahes and the family income is now insufficient to support the children.

Discuss the liability of Suren to the family.

2. Earlier, the defence of *volenti non fit injuria* was used interchangeably with the defence of contributory negligence. However, since contributory negligence is no longer a complete defence but only serves to reduce the damages to be paid by the respondent, the courts have limited the use of *volenti non fit injuria* as a defence.

Do you agree with this statement? Discuss with reference to recent cases on *volenti non fit injuria*.

மகேஸ் மற்றும் நிமல் ஆகிய இருவரும் ஒவ்வொரு நாளும் அந்த வீட்டிற்குள் செல்வதுடன் வீட்டிற்கு உள்ளேயும் தோட்டத்திற்குள்ளும் விளையாடினர். ஒரு நாள் நிமல் கூச்சலிடுவதை கேட்டு மகேஸ் வீட்டிற்குள் சென்றான். அவன் விரைவாக சென்ற போது படிக்கட்டில் மோதி நிலத்தில் தூக்கி எறியப்பட்டான். நிமலை பாம்பு ஒன்று தீண்டியது.

நிலத்தில் விழுந்ததன் காரணமாக மகேஸ் முதுகு எலும்பு காயங்களுக்கு உள்ளானான். நிமல் கூச்சலிடும் போது அவ்விடத்தை கடந்து சென்ற ஒருவருடைய உதவியினால் பாம்பு தீண்டலில் இருந்து நிமல் காப்பாற்றப்பட்டான். எனினும் அவன் ஒரு மாதம் வைத்தியசாலையில் இருந்தான். மகேஸை தொடர்ந்து கவனிப்பதற்காக பாத்திமா தனது வேலையை கைவிட்டாள். தற்போதுள்ள குடும்ப வருமானம் பிள்ளைகளை பராமரிப்பதற்கு போதுமானதாக இல்லை.

இக்குடும்பம் மீது சுரேனிற்கு இருக்கக்கூடிய பொறுப்பினை ஆராய்க.

02. ஆரம்பத்தில், “இசைந்தது தீங்காகாது” என்ற எதிர்வாதம் பங்கு கவனயீனம் என்ற எதிர்வாதத்துடன் ஒன்றுக்கொன்று நிகராக பயன்படுத்தப்பட்டது. எனினும் பங்கு கவனயீனம் ஒரு முழுமையான எதிர்காப்பாக அல்லாமல் எதிர்வாதியினால் செலுத்தப்படவேண்டிய நட்ட ஈட்டின் அளவை குறைப்பதனால் நீதிமன்றங்கள் இசைந்தது தீங்காகாது என்ற வாதத்தை மட்டுப்பாடான அளவில் பயன்படுத்துகிறது.

இக்கூற்றுடன் நீர் உடன்படுகின்றீரா?

“இசைந்தது தீங்காகாது” என்ற வாதத்துடன் தொடர்புபட்ட அண்மைக்கால வழக்குகளுடன் தொடர்புறுத்தி ஆராய்க.

03. சுமதி, பாலித என்ற மின் இணைப்பாளரை தனது அலுவலகத்திற்கு புதிய குளிருட்டி ஒன்றை பொருத்துவதற்கு பணிக்கு அமர்த்தினாள். இந்த அலுவலகம் அவளுடைய ஆண் நண்பனாக தேனுவின் வீட்டில் இணைந்த ஒரு அறைப்பகுதியில் இருந்தது. மின்சுருள்களை பொருத்துவதில் ஏற்பட்ட பாலிதவின் கவனயீனம் காரணமாக அலுவலகத்தில் தீ ஏற்பட்டது. தீப்பிடிக்க ஆரம்பித்த போது சுமதி அலுவலகத்தை விட்டு ஓடினாள். அவளுக்கு எந்த ஆபத்தும் ஏற்படவில்லை. எனினும், அவளுடைய வாடிக்கையாளர்களின் அனைத்து கோப்புகளும் சேதமுற்றதுடன் அவளுடைய மூன்று மாதம் நிரம்பிய நாய்க்குட்டியும் தீயினால் இறந்தது. மேலும் முழு வீடும் தீக்கிரையானது.

அவ்வீட்டின் உரிமையாளரான தேனு அச்சமயத்தில் இந்தியாவில் இருந்தார் தீ ஏற்பட்டு சில மணிநேரங்களின் பின்பு You Tube இல் பதிவு செய்யப்பட்ட தொலைக்காட்சி செய்தி ஒன்றில் தீப்பிடித்த சம்பவங்களை கண்டார். அவ்விடம் தன்னுடைய வீடு என்பதை இனங்கண்டார். குறிப்பிட்ட செய்தி நிகழ்ச்சியில் ஒரு பெண்ணும் அவளுடைய நாயும் தீயினால் இறந்துவிட்டனர் என குறிப்பிடப்பட்டது. சுமதி இறந்துவிட்டாள் என எண்ணி தேனு மாராடைப்பினால் பாதிப்புற்றான்.

3. Sumathy employed Palitha an electrician, to install a new air conditioner in her office. The office was in the annex of her boyfriend Thenu's house. Due to Palitha's negligence in installing the wiring, a fire started in the office. Sumathy ran out of the office when the fire started and was not in any danger. However, all her clients' files were destroyed and her three month old puppy also died in the fire. The entire house burnt down.

Thenu, the owner of the house, was in India at the time and saw the scenes of the fire a few hours later when he watched a recording of the TV news on YouTube. He recognised the house as his own. The news programme also said that a woman and her dog had died in the fire. Thenu suffered a heart attack thinking that Sumathy had died.

Discuss the liability of Palitha to Sumathy and Thenu.

4. The question whether an act constitutes a nuisance cannot be determined by considering the act only. It must be considered with reference to all the circumstance of the particular case.

Do you agree with this statement? Discuss, citing relevant case law to support your answer.

5. Nabeela is a post graduate student and is writing her thesis on sexual harassment in the workplace in garment factories. With the permission of the management she gave a questionnaire to the workers of three garment factories to conduct a survey on their working conditions including whether they are subject to sexual harassment. She found that women in a particular factory based in Kandy reported a high rate of sexual harassment. She discussed her findings in her thesis and quoted from one respondent who said that her supervisor had tried to rape her. Although Nabeela did not mention the factory by name she indicated that it was located in Kandy.

Nabeela passed her thesis and in accordance with university regulations it was uploaded to the university website. Her findings soon gained publicity, and were also reported in the newspapers. The Daily Noise carried a front page article entitled "Abuse of women workers in garment factories."

The Board of Directors of the factory located in Kandy have asked the university to take down Nabeela's thesis from the website. The university has refused on the grounds that doing so would violate academic freedom.

The Board of Directors has decided that they will sue Nabeela, the Daily Noise and the university for defamation.

Discuss the legal position, citing case law in your answer.

சுமதி மற்றும் தேனு ஆகியோர் தொடர்பில் பாலிதவிற்கு இருக்கக்கூடிய பொறுப்பினை ஆராய்க.

04. ஒரு செயலை மாத்திரம் கொண்டு அச்செயல் தொல்லையை ஏற்படுத்தியுள்ளதா என்பதை தீர்மானிக்க முடியுமா என்ற கேள்வி எழுகின்றது. குறிப்பிட்ட சம்பவத்துடன் தொடர்புபட்ட அனைத்து சூழ்நிலைகளையும் கருத்தில் எடுப்பது அவசியமாகும்.

நீர் இக்கூற்றுடன் இணங்குகிறீரா? உமது விடையை ஆதாரப்படுத்த பொருத்தமான தீர்ப்புச்சட்டத்தை குறிப்பிட்டு ஆராய்க.

05. நபீலா ஒரு பட்டப்பின் கற்கை மாணவி ஆவார். அவள் ஆடைத்தொழிற்சாலைகளில் நடைபெறும் பாலியல் தொந்தரவு தொடர்பாக ஆய்வறிக்கை ஒன்றை எழுதுகின்றாள். மூன்று ஆடைத்தொழிற்சாலைகளின் முகாமைத்துவத்தின் அனுமதியுடன் அவள் அங்கிருக்கும் பணியாளர்களுக்கு வினாக்கொத்து ஒன்றை வழங்கினாள். இவ்வினாக்கொத்து பணியாட்கள் பாலியல் தொந்தரவுக்கு உட்படுத்தப்படுகின்றார்களா என்ற விடயம் உள்ளடங்கலாக அவர்களுடைய தொழில் நிபந்தனைகளை பற்றிய ஒரு ஆய்வு ஆகும். கண்டியில் இருக்கின்ற ஒரு குறிப்பிட்ட தொழிற்சாலையில் பெண்கள் மீதான பாலியல் தொந்தரவு தொடர்பான சம்பவங்கள் உயர் அளவில் தெரிவித்திருந்தமையை அவள் கண்டறிந்தாள். அவளுடைய ஆய்வறிக்கையில் இந்த கண்டறிதல் பற்றி கலந்துரையாடியதுடன் மேற்பார்வையாளர் ஒருவர் தன்னை பாலியல் வல்லுறவிற்கு உட்படுத்த முயற்சித்ததாக பதிலளித்த ஒருவரின் கூற்றையும் குறிப்பிட்டாள். நபீலா குறிப்பிட்ட தொழிற்சாலையின் பெயரை குறிப்பிடாவிட்டாலும் அத்தொழிற்சாலை கண்டியில் அமைந்திருந்தது என குறிப்பிட்டிருந்தாள்.

நபீலா ஆய்வறிக்கையில் சித்தி அடைந்ததுடன் பல்கலைக்கழக ஒழுங்கு விதிகளுக்கு அமைய ஆய்வறிக்கை பல்கலைக்கழக இணையத்தளத்தில் பதிவேற்றம் செய்யப்பட்டது. அவளுடைய கண்டறிதல்கள் துரிதமாக பகிரங்கமடைந்ததுடன் செய்தித்தாள்களிலும் அறிக்கையிடப்பட்டது. Daily Noice என்ற பத்திரிகையின் முன் பக்கத்தில் “ஆடைத்தொழிற்சாலைகளில் பெண் பணியாளர்கள் மீதான துஷ்பிரயோகம்” என்ற தலைப்பிட்டு ஒரு கட்டுரை பிரசுரிக்கப்பட்டது.

கண்டியில் அமைந்துள்ள தொழிற்சாலையின் பணிப்பாளர் சபை நபீலாவுடைய ஆய்வறிக்கையை இணையத்தளத்தில் இருந்து நீக்குமாறு பல்கலைக்கழகத்தை கோரியது. அவ்வாறு நீக்குவது கல்விசார் சுதந்திரத்தை மீறுவது என கூறி பல்கலைக்கழகம் ஆய்வறிக்கையை நீக்க மறுத்தது.

நபீலாவிற்கு எதிராகவும், Daily Noice மற்றும் பல்கலைக்கழகம் என்பவற்றுக்கு எதிராகவும் அவதூறு வழக்கை தாக்கல் செய்ய பணிப்பாளர் சபை தீர்மானித்தது.

6. (a) "The wilful wrong of an employee can never make the employer vicariously liable."

Do you agree with this statement? Discuss citing relevant case law.

- (b) Prema is an elderly widow of 86 years who has rented out her house. The tenants refuse to leave and Prema goes to the law offices of Silva to seek legal advice. Since Silva is in court at the time his assistant Banda who is not a lawyer interviews Prema. Banda later tells Prema that Silva has asked her to sign a document to be filed in court. In fact the document is a deed of gift of Prema's house to Banda. Prema later finds that Banda has sold her house.

Prema wishes to sue Banda and Silva. Advise her.

7. (a) "Although the case of Hedley Byrne v. Heller stated that liability for negligent statements could be imposed in certain circumstances, it did not indicate what those circumstances were. It was left to later cases to do so."

Discuss the circumstances in which liability for negligent statements can be imposed. Cite case law in your answer.

- (b) Wimal was a lawyer who had taken oaths one year earlier. He was a junior in the chambers of a senior lawyer Ms. Mendis who specialised in property law. He became friendly with Lalani, his neighbour.

One day, Lalani asked Wimal to obtain an appointment with Ms. Mendis as she wanted to buy some land and wished to have the title checked. Wimal told Lalani that Ms. Mendis would charge Rs. 100,000 for doing so and offered to do it himself free of charge. Lalani accepted the offer. Wimal later advised Lalani that the present owner had clear title.

Lalani bought the land and subsequently discovered that the seller's brother was claiming a part of the land on prescription.

Lalani wishes to sue Wimal for giving her negligent advice. Advise Wimal.

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உமது விடையில் தீர்ப்புச்சட்டங்களை குறிப்பிட்டு சட்ட நிலைமையை ஆராய்க.

06. அ) “ தொழிலாளி ஒருவரினால் வேண்டுமென்றே மேற்கொள்ளப்படும் பிழையான செயல் தொழில் தருணரை பகிரப்பொறுப்புக்கு உள்ளாக்காது.”

இக்கூற்றுடன் நீர் இணங்குகிறீரா? பொருத்தமான தீர்ப்புச்சட்டத்தை குறிப்பிட்டு ஆராய்க.

ஆ) பிறேமா 86 வயது நிரம்பிய விதவை ஆவாள், அவள் தனது வீட்டை வாடகைக்கு வழங்கியுள்ளாள். வாடகை குடியிருப்பாளர்கள் வீட்டை விட்டு வெளியேற மறுத்தனர். இது தொடர்பாக சட்ட ஆலோசனையை பெற பிறேமா சில்வாவுடைய சட்ட அலுவலகத்திற்கு சென்றாள். பிறேமா அங்கு சென்ற போது சில்வா நீதிமன்றத்தில் இருந்தார். சில்வாவின்னுடைய உதவியாளரான பண்டா பிறேமாவிடம் உரையாடினார். பண்டா ஒரு சட்டத்தரணி அல்ல. அதன் பின்பு பண்டா நீதிமன்றத்தில் கோப்பிடுவதற்காக ஆவணமொன்றில் கையெழுத்திடுமாறு சில்வா கூறியதாக பிறேமாவிடம் தெரிவித்தார். உண்மையில் அந்த ஆவணம் பிறேமாவின்னுடைய வீட்டை பண்டாவிற்கு வழங்கியதற்கான நன்கொடை உறுதியாகும். பண்டா தனது வீட்டை விற்றுவிட்டதாக பிறேமா பின்பு கண்டறிந்தாள்.

பண்டா மற்றும் சில்வா ஆகிய இருவருக்கும் எதிராக பிறேமா வழக்கிட விரும்புகிறாள். அவளிற்கு ஆலோசனை வழங்குக.

07. அ) “ Hedley Byrne V.Heller என்ற வழக்கு சில சூழ்நிலைகளில் கவனயீனமான பிறழ் கூற்றுக்களுக்கு பொறுப்பு விதிக்கப்படலாம் என குறிப்பிட்ட போதிலும் அத்தகைய சூழ்நிலைகள் எவை என குறிப்பிடவில்லை. அத்தகைய சூழ்நிலைகளை குறிப்பிடுவதற்கான பொறுப்பு பின்னர் வந்த வழக்குகளுக்கு வழங்கப்பட்டது.”

கவனயீனமான பிறழ்கூற்றுக்களுக்கு பொறுப்பு சுமத்தக்கூடிய சூழ்நிலைகளை ஆராய்க. உமது விடையில் தீர்ப்புச்சட்டத்தைக் குறிப்பிடுக.

ஆ) விமல் என்ற சட்டத்தரணி ஒரு வருடத்திற்கு முன்பு சத்தியப்பிரமாணம் எடுத்தார். ஆதனச்சட்டத்தில் சிறப்புத் தேர்ச்சி பெற்ற செல்வி, மெண்டிஸ் என்ற சிரேஸ்ட் சட்டத்தரணியின்னுடைய சட்ட அலுவலகத்தில் கனிஸ்ட் சட்டத்தரணியாக விமல் பணிபுரிந்தான். விமல் தனது அயலவரான லலணியுடன் நட்புறவை ஏற்படுத்திக்கொண்டான்.

ஒரு நாள் லலணி தான் சில காணிகளை கொள்வனவு செய்ய விரும்புவதாகவும் அவற்றினை உரித்தை பரிட்சிப்பதற்கு ஆலோசனை பெற செல்வி, மெண்டிஸ் இடம் அனுமதி பெற்றுத்தருமாறும் விமலைக் கேட்டுக்கொண்டாள். அந்த பணியை பூர்த்தி செய்வதற்கு செல்வி மெண்டிஸ் ரூபா 100,000/= இனை கட்டணமாக அறவீடுவார் என விமல் குறிப்பிட்டு தான் கட்டணமின்றி இலவசமாக அப்பணியை பூர்த்திசெய்வதாக லலணியிடம் தெரிவித்தான். லலணி அதற்கு சம்மதம் அளித்தாள். தற்போதைய உரிமையாளருக்கு தெளிவான உரித்து இருப்பதாக விமல் லலணிக்கு அறிவுரை வழங்கினாள்.

லலணி காணியை கொள்வனவு செய்ததை உடனடுத்து விற்பனையாளருடைய சகோதரன்
காணியின் ஒரு பகுதிக்கு ஆட்சியுரிமை மூலம் கோரிக்கை விடுப்பதை லலணி
கண்டுபிடித்தாள்

கவனயீனமான அறிவுரையை வழங்கியதற்காக விமலுக்கு எதிராக வழக்கு தொடர லலணி
விரும்புகிறாள். லலணிக்கு அறிவுரை வழங்குக.

-முழுப்பதிப்புரிமையடையது -