

THE OPEN UNIVERSITY OF SRI LANKA
LL.B. DEGREE PROGRAMME - LEVEL 6
FINAL EXAMINATION - 2008
LAW OF DELICT - LWU 3326/4326
DURATION : THREE (03) HOURS



DATE : 18th April 2008

TIME : 9.30 a.m. - 12.30 p.m.

Answer FIVE questions only.

Illegible handwriting will be penalized.

01. 'The question of whether the defendant has been in breach of a duty of care is one of law, not of fact: the standard required by the defendant is that of the reasonable person, a legal construct'

Analyse the above statement with particular reference to the law on negligence in the context of English law and the Roman Dutch law.

02. Rupa, a mother of three children had undergone a sterilization procedure, which was conducted by a gynecologist, Dr. Silva in the Golden Max Pvt. Hospital. After the operation, she was advised not to take any preventive steps to control pregnancy since the procedure had been carried out successfully. Six months later she became pregnant. However, Rupa and her husband were happy about the birth of their fourth child, who was a healthy baby boy.

- (a) Rupa wants to know whether it is possible to claim the cost of bringing up the fourth child from Dr. Silva in addition to the medical expenses incurred for the birth of the child.

Advise Rupa.

- (b) Do you think the decision not to abort the embryo would amount to a *novus actus interveniens* in this case? Support your answer with relevant case law.

03. Nuwan organized a family trip to see elephants in 'U' Park in the central province. He booked a bungalow that was inside the park. The bungalow was surrounded by an electric fence in order to avoid elephants encroaching. There was a notice stating 'Dangerous! Do not cross the electric fence'. Nuwan's six year old son Seenu, tried to cross the fence to see a flock of peacocks there. He received an electric shock, fell unconscious and was rushed to hospital. Seenu's mother seeing her unconscious son suffered a post traumatic disorder.

Discuss the delictual liability of the authorities of the Park with regard to Seenu and his mother.

04. Siri is employed as the warden of 'Kithya' which is the hostel for male students of the University of Kandurata. Kapila one of the new entrants complained to Siri several times that he had been ragged badly by some senior students. Siri was unable to take steps to prevent this situation. One day Kapila was badly ragged and taken to hospital. It was found that Kapila was in a critical condition due to internal injuries and he was unable to continue his studies. He was the eldest son of his family. Kapila's parents wish to sue the University Authorities. Advice them and consider whether they can successfully bring a delictual action against the University.

05. Pinky is a former beauty queen, who is going to contest the forthcoming Provincial Council election. She is a well known social worker. Also, she had appeared in a few advertisements which promoted Vision Television Sets. A day before the election, Rupa received an e-mail which included several distorted photographs of a lady under the heading of 'Real Life of a Social worker'. She forwarded that e-mail to her boy friend Saman, as she wanted to know who the lady in the photographs was. Saman knowing that the person was Pinky forwarded that e-mail to all the addresses in his address book. Subsequently Pinky lost the election. Pinky feels that she lost the election because of this e-mail.

Pinky wishes to know whether she has any delictual remedy in relation to these facts indicated above. Discuss with reference to the case law.

06. Write a comprehensive analytical note on **ONE** of the following:

- (a) But for test (*Sine Qua Non*)
- (b) *Volenti non fit injuria*
- (c) The concept of unlawfulness in the *Aquilian* Action.

07. (a) '....the basis of liability for nuisance is grossly over-simplified... the factors taken into account by the courts in assessing both the magnitude and reasonableness of an interference to the person or property is manifold, interrelated and at times notionally complex'.

Do you think that this statement appropriately explains the scope of nuisance as a delict. Support your answer with relevant case law.

(b) 'The requirement of 'non-natural use of land' may limit the application of the *Rylands v Fletcher* rule, in the present circumstances'.

Analyse the above statement with reference to present day use of land under the English law and the law of delict in Sri Lanka.

08. 'In a product's liability case, negligence is found as a matter of inference from the existence of the defects taken in connection with all the known circumstances'

Critically evaluate the above statement, in the light of decided cases in the English law and the Roman Dutch law.