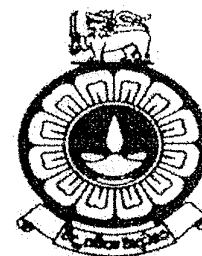


THE OPEN UNIVERSITY OF SRI LANKA
 FACULTY OF HUMANITIES AND SOCIAL SCIENCES
 DEPARTMENT OF LEGAL STUDIES
 LLB DEGREE PROGRAMME-2023/2024
 LEVEL 06
 LLU 6814 LAW OF DELICT
 FINAL EXAMINATION
 DURATION: THREE (03) HOURS



DATE: 09.05.2025

TIME: 1.30 PM-4.30 PM

Total number of questions-07

Answer four (04) questions only.

Illegible handwriting will be penalized.

1. In the Roman law the wrong of defamation was regarded as simply a species of *injuria* for which the remedy was the *actio injuriarum*. Liability for defamation, as for other forms of *injuria*, was therefore dependent upon proof of *animus injuriandi*; that is to say, in this context - since *animus injuriandi*, as we have seen, is merely a species of *dolus* (wrongful intent) - upon proof of an intention to defame the plaintiff. The position was the same in the Roman-Dutch law, save that where the words were in their ordinary meaning of defamatory *animus injuriandi* was presumed”.

R. G. McKerron, *The Law of Delict* (7th ed) 1971 at 170.

In light of the above statement discuss the following aspects pertaining to *animus injurandi* in establishing liability for defamation.

- | | |
|---|------------|
| a) The meaning and elements of <i>animus injurandi</i> ; | (10 marks) |
| b) The party who should prove the <i>animus injurandi</i> ; | (05 marks) |
| c) The tests to be used in the determination of <i>animus injurandi</i> ; | (05 marks) |
| d) The defenses available in an action for defamation; | (05 marks) |

Support your answer with decided cases.

2. “ It is the duty of persons who keep barrels in their warehouse to take care that they do not roll out, and I think that such a case would, beyond all doubt, afford *prima facie* evidence of negligence.”

Byrne v Boadle (1863) 2 H. & C. 722.

With reference to the above statement discuss the doctrine of *Res ipsa loquitur* and its essential elements.

Illustrate your answer with the relevant case law, including *Byrne v Boadle*, (1863) 2 H. & C. 722 and evaluate its role in establishing negligence in delict law.

3. Ruwan and Ishara moved to a quiet cottage in the rural town of Welihena. They relocated due to Ishara’s chronic sinus condition, which was being aggravated by the heavy dust and vehicle emissions in Kandy. Their new home sits on a hill with a panoramic view of the valley and includes a large backyard where Ishara runs a small organic herb garden and keeps a few rabbits.

The adjacent property is owned by Suren. A few weeks after their arrival, he set up a motorcycle repair workshop on his land. The noise from grinding, welding, and engine testing start from early morning and last until late evening. The used oil and grease are regularly dumped into a nearby stream that flows through both properties. Ruwan used to collect water from this stream for irrigating the herb garden but now he finds that the water is heavily contaminated.

On the other side, Kumari lives with her family on a small poultry and goat farm that she inherited from her parents. She has kept animals for over a decade, but the strong stench of goat dung and the dust from the chicken coops has started affecting Ishara’s health again. The early morning bleating and clucking also disturbs their sleep and disrupts the peace they sought in moving to Welihena.

Ruwan has spoken with both neighbours multiple times, requesting some compromise, but Suren has reacted with hostility. In retaliation, he now deliberately makes more noises at odd hours. One evening, a small explosion occurred when a fuel container in Suren's workshop caught fire accidentally. The fire spread rapidly and damaged Ruwan and Ishara's tool-shed and part of the herb garden.

Ruwan and Ishara seeks your advice as to whether any delictual action is available against Suren and Kumari? Advice them.

Support your answer with the decided case laws.

(25 marks)

4. "... It may be laid down that a person who has control of dangerous premises owes a duty to persons coming upon the premises to take reasonable care for their safety."

R. G. McKerron, *The Law of Delict*, (7th ed) 1971, at 240.

Discuss the concept of occupiers' liability on dangerous premises with reference to the relevant case laws and statutory provisions.

(25 Marks)

5. Saman is the proprietor of Green City Supermarket; a store that operates twenty four hours a week. To maintain cleanliness, he contracted the services of Master Cleaners Pvt Ltd; a cleaning company whose employees work in eight-hour shifts. According to the service agreement, the cleaners are advertised to inspect the supermarket premises in every 30 minutes and promptly attend to any spills pertaining to their lapses.

On one morning of October 2018, Ramani, a regular customer visited the supermarket to purchase cooking oil. As she hurried to the 'Kitchen Essentials' aisle due to being late to pick up her daughter from school, she slipped on a pool of oil that had been spilled on the floor. The fall caused her to suffer a serious head injury, which subsequently required her to remain on bed for six months.

Following the incident, Saman conducted an internal inquiry and discovered that Nimal, a cleaner employed by Master Cleaners Pvt Ltd, had been tasked with maintaining that section of the store on the day of the incident. CCTV footage revealed that the oil had remained uncleaned on the floor for approximately 45 minutes before the accident occurred.

Ramani now wishes to take legal action claiming compensation for her injuries.

Advise Ramani on the **vicarious liability** on the parties in the above factual situation.

In your answer, identify the potential defendants and describe their respective liabilities. Support your reasoning with the relevant case law and legal principles.

(25 marks)

6. Nimal was walking on the pavement when he witnessed a horrific road accident in which his wife, who was crossing the road at the time, was hit by a speeding car and killed instantly. Nimal saw the entire incident unfolding in front of his eyes. He ran to her but she had already died on injury. Following the incident, Nimal developed severe depression and post-traumatic stress disorder (PTSD), requiring continuous psychological treatment and medication. He was unable to return to work due to his condition.

Nimal now wishes to claim damages from the negligent driver for the mental injuries that he suffered as a result of witnessing the accident. Can Nimal successfully claim compensation for nervous shock under the law of delict?

Discuss.

Support your answers with the decided case laws.

(25 marks)

7."Seduction, in both its ordinary and legal sense implies a leading astray" and "a man who has seduced a girl is liable to compensate her in damages for the loss of her virginity and the consequent impairment of her marriage prospects."

R. G. McKerron, *The Law of Delict*, (7th ed) 1971, at 240.

In light of the above statement discuss the following aspects pertaining to **seduction**.

- a. The meaning and elements of seduction; (05 marks)
- b. The party who should prove seduction; (05 marks)
- c. The defense available in an action for seduction; (15 marks)

Support your answer with decided cases.

(25 Marks)

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