

THE OPEN UNIVERSITY OF SRI LANKA  
LL.B. DEGREE PROGRAMME - LEVEL 6  
FINAL EXAMINATION - 2006/2007  
LAW OF DELICT – LWU 3326/4326  
DURATION : THREE (03) HOURS



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DATE : 29<sup>th</sup> March 2007  
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TIME : 1.30 a.m. – 4.30 p.m.  
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Answer FIVE questions only.

**Illegible handwriting will be penalized.**

01. “..It should now be regarded as settled that if some one possessed of a special skill undertakes, quite irrespective of contract, to apply that skill for the assistance of another person who relies upon such skill, a duty of care will arise..”

Lord Morris, in *Woods vs Martins Bank Ltd.* (1955) 1 QB 55

Does the above statement reflect the present position with regard to the law relating to negligent misstatements? Support your answer with relevant case law.

02. Jayani who was a famous ballet dancer was traveling home with Mahen on his motor bicycle carrying a valuable statue, which they had purchased from an auction. Nalin was driving negligently collided with the motor bicycle. As a result of the accident both Jayani and Mahen fell on the road. Jayani was lying on the road helplessly when a lorry ran over her right leg as the lorry driver was unable to stop the vehicle on time. Sid who was passing by took them to hospital.

Mahen who was a heart patient aggravated his condition when he was given an injection at the hospital. He died after three days. Jayani was unable to use her right leg and couldn't perform in some concerts she was scheduled to perform in. The valuable statue was stolen by a passer by at the time of the accident.

Discuss the liability of Nalin to Jayani and Mahen. Support your answer with case law.

03. "As long as either contributory negligence or *volenti non fit injuria* defeated the plaintiff entirely, precise demarcation served only academic interest, but the introduction of apartment for contributory negligence has passed a serious problem concerning the future role of voluntary assumption of risk as a complete defence. It seems rather odd that a plaintiff who is himself negligent might now fare better than one who is not. The judicial response to this dilemma has been to impose ever stricter requirements for the defence of *volenti non fit injuria* to the point where it is now but rarely successful"

John G. Fleming. The Law of Torts, pg 264.

Discuss the development of *volenti non fit injuria* in the light of this statement, citing case law in your answer.

04. Amal , Kamal and Ramal were expert scuba divers who were being trained by the 'Professional Diving Club.' When they enrolled at the diving club the following conditions were included in the application form.
- i. Warning – Scuba diving is dangerous. Applicants enroll in the club at their own risk.
  - ii. A condition of enrollment in the club is that neither the instructor nor the club will be liable for personal injury or death of the trainees during practice sessions.
  - iii. All equipment will be provided by the club.

One day during a practice session with instructor Mohan when the sea was very rough the following incidents occurred.

- a) Amal died of suffocation as his oxygen tank was not properly fixed.
- b) Due to a current in the sea, Kamal was carried away in a different direction. He dashed into a huge rock and his hip bone was fractured.
- c) Ramal who was under the influence of drugs, dived without a helmet. He suffered head injuries when he dived into a rock.

Discuss the liability of the diving club for these incidents.

05. "The doctrine of vicarious liability has not grown from any very clear, logical or legal principle but from social convenience and rough justice. The master having employed the servant, and being better able to make good any damage which may occasionally result from the arrangement, is answerable to the world at large for all the torts committed by his servant within the scope of it."

Do you agree with this statement? Discuss how the law on vicarious liability has developed to give effect to this objective.

06. The Private bus Act allowed private bus owners to have their central bus stand and workshop within 20 k.m. from Colombo. Davis Silva Bus Company stationed their central bus stand and workshop in Ratmalana, adjoining Senaka's house. As a result Senaka encountered hardships due to the noise and because large numbers of people used to gather in the area.

Later Senaka discovered that the laundry service that he was running was greatly affected as a result of the bus stand and workshop. He later found out that the clothes he hung out to dry were always covered with black dust as a result of fumes emanating from the buses. One afternoon Senaka's son vomited blood and was rushed to hospital. The cause of vomiting was diagnosed as inhalation of carbon monoxide fumes.

Senaka wishes to sue Divid Silva Bus Company for damages and the closeness of the bus stand and workshop. Discuss.

07. A magazine that was published by Rawana Publishers contained an article written by Nisal. The article contained the following with regard to the agreement awarded to R & R Construction Company for the re-construction of the highways in the Matara district.

".. It is a well known fact that before the agreement was awarded a party was given to the directors of the Company and the top officials attached to the Roads Development Authority at a holiday resort down South.

It is sufficient to drive two or three miles along the area to understand the expertise of the so-called specialists and the unnecessary expenditure involved in the re-construction of the highways."

This magazine was sold at Pathum's bookshop. R & R Construction Company now wishes to sue Nisal and Pathum for defamation.

- a) Advise the company.
  - b) What defence if any would be available to Nisal and Pathum.
08. Write short notes on two of the following.
- a) The difference between law of torts and insurance.
  - b) The action for false imprisonment.
  - c) The action for seduction.
  - d) *Priyani Soysa vs Rienzie Arsecularatne* C.A. 173/94 (F) (unreported).