



جامعة السلطان الشريف علي الإسلامية
UNIVERSITI ISLAM SULTAN SHARIF ALI
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**Faculty of Shariah and Law
Semester I, 2016/2017 Academic Session**

Examination Question Paper

Course Code : LB 2301

Course Name : Law of Tort I

**Course Level : Bachelor of Laws (LL.B) & Bachelor of
Shariah Law (BSL)**

Time : 3 hours

Notes:

1. Answer any **four (4)** of the following questions.
2. All answers, wherever relevant, must be supported by statutory provisions, if any, and case law authorities.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

QUESTION 1 (15 Marks)

- (a) Tort is that breach of law-imposed duty which is generally redressible by a claim for unliquidated damages.

In the light of the above statement, explain with case law illustrations the main elements of tort.

(9 marks)

- (b) How far is it true that a combination of “*injuria*” and “*damnum*” must be found in every tort?

Briefly discuss with decided cases.

(6 marks)

QUESTION 2 (15 Marks)

- (a) The maxim *volenti non fit injuria*, or commonly referred to as *volenti*, is frequently resorted to by the defendant to show that the plaintiff has consented to the risk of damage or injury.

Illustrate with the help of case law how the maxim has been successfully applied in court as a defence.

(6 marks)

- (b) Abid was driving fast from Bandar towards Stadium Berakas, as he was late for a swimming competition. When his car approached a traffic light junction, he simply drove through it when the red light was showing. Zaman, who was driving along the road on Abid’s right side, where the traffic light on his side was showing green, was forced to swerve to the right to avoid hitting Abid’s car. As a result, Zaman’s car skidded and the near-side front tyre blew out

before the car hit a tree. Zaman was thrown forward against the wind screen as he did not put on the seat belt.

Zaman was badly injured in the accident. He is now suing Abid for damages in negligence.

Advise Abid on any possible defences.

(9 marks)

QUESTION 3 (15 Marks)

(a) Critically examine the concept of “assumption of responsibility” as the basis of liability for economic loss claims in negligence.

(9 marks)

(b) “Consent need not necessarily be expressed before it is operative as a defence; it may be implied.”

Explain the elements of defence of “consent” with the help of decided cases.

(6 marks)

QUESTION 4 (15 Marks)

(a) At present, the question of duty of care is not simply decided on the basis of neighbourhood principle but it has to be just, fair and reasonable to impose duty on the defendant.

Do you agree with this statement? Illustrate your answer with the help of decided cases.

(6 marks)

- (b) Ten young boys went for a picnic at Tutong Beach. While they were having fun on the beach, Azmi, one of them, who was then swimming, called for help as he was drowning, but no one heard his cries. Ten minutes later, Azmi's close friend, Bakar, realized that he was missing. A search for Azmi was conducted. Azmi was later found face down on the beach some distance away, but he was unconscious. He was rushed to a nearby hospital in an ambulance. The ambulance met with an accident resulting in delay in Azmi's treatment. When Azmi finally reached the hospital, he was in a serious condition. Dr. Dani administered penicillin injection to Amir without testing whether he was allergic to it or not. Consequently, Azmi died.

Advise Dr. Dani, on the issue of breach of duty.

(9 marks)

QUESTION 5 (15 Marks)

The *Bolam* principle, in which a doctor is not guilty of negligence if he has acted in a way which a responsible body of other doctors would consider to be correct, is still the correct test for the court to apply in medical negligence cases. The development of the law in later cases, however, has seen a trend that *Bolam* test has no relevance to the duty and standard of care of a medical practitioner in providing advice to a patient on the inherent and material risks of the proposed treatment.

In light of the above proposition, and with the help of case law authorities, discuss the duty and standard of care of a medical practitioner in the sphere of diagnosis and treatment, and the giving of advice and information on the inherent and material risks of the proposed treatment to patients.

QUESTION 6 (15 Marks)

- (a) *Res Ipsa Loquitur* is mainly dependent on absence of explanation.

Do you agree with this statement? Illustrate your answer with decided cases.

(6 marks)

- (b) “In the crowded conditions of modern life, even the most careful person cannot avoid creating some risks and accepting others. What a man must not do ... is to create a risk which is substantial.”

(*Per* Lord Reid in *Bolton v. Stone* [1951] 1 All ER 1078.)

State and illustrate with case law examples the factors to be considered in determining the standard of care required of a person who owes a duty on the other.

(9 marks)

بالتوفيق والنجاح