



جامعة السلطان الشريف علي الإسلامية  
UNIVERSITI ISLAM SULTAN SHARIF ALI  
SULTAN SHARIF ALI ISLAMIC UNIVERSITY

**Faculty of Shariah and Law**  
**Semester I, 2015/2016 Academic Session**

**Final Examination Question Paper**

**Course Code : LB 2301**

**Course Name : Law of Tort 1**

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

**Time : 3 Hours**

**Notes:**

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

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**QUESTION 1 (15 Marks)**

- (a) “The damage that the victim suffers does not give him a claim in tort. He has a claim in tort only if there is a violation of his legal right”.

Explain the above statement.

(5 marks)

- (b) Awang has hired a truck from Kereta Padu Sdn. Bhd. for the delivery of his goods to Kuala Belait. The truck was to be driven by Razak, an employee of Kereta Padu Sdn. Bhd. Awang was informed by Muthu, the owner of the truck and managing director of Kereta Padu Sdn. Bhd., that Awang would not be insured under the policy of the company against any liability which may be incurred for death or bodily injury, if he were to travel as a passenger in the truck.

On the day of delivery, Awang sat in as a passenger in the truck. Razak drove the truck at an inconsistent speed because he knew that the truck has faulty brakes. He was also constantly distracted with his mobile phone. Chong who was driving behind in a stolen car became impatient. He overtook Razak at a blind bend and crashed into Dayang who was driving from the opposite direction. Dayang suffered from serious head injuries. She was not wearing the car seatbelt. Razak put on an emergency brake and swerved to avoid a head-on collision causing the truck to topple onto its side. Awang was badly injured. Awang and Dayang brought a claim of negligence against Muthu, Razak and Chong.

Advise the defendants on any possible defences.

(10 marks)

**QUESTION 2 (15 Marks)**

GustiPro Association had organized a wrestling match and was responsible to regulate rules of safety and medical facilities. Abu suffered from a brain hemorrhage in the semi-finals when his opponent, Kassim, repeatedly hit him in the head before hurling him to the floor and thumped on him. Abu was rushed to the emergency unit at XYZ Hospital and had to undergo a surgery to alleviate swelling and to prevent bleeding.

On the way to the hospital, the ambulance driver, Salim, drove too fast that it passed through the red traffic lights and caused a collision between a car and a motorcycle.

After surgery, Suzy, a newly qualified nurse and working on her first night shift, had injected the wrong medication into the blood vessels of Abu. Abu suffered from a seizure and resulted in brain damage.

Discuss on the issues of duty of care and breach of duty in negligence.

(15 marks)

**QUESTION 3 (15 Marks)**

- (a) Though it was reasonably foreseeable that one would develop a psychiatric illness as a result of the defendant's negligence, but that would not be sufficient to establish a duty of care to find liability in nervous shock claims. Foreseeability in the *Atkinian* sense has no effect in this area.

Discuss what are the requirements for a successful claim in nervous shock.

(10 marks)

- (b) James informed the police that he has been receiving death threats from his neighbour, Atan, a former convict through text messages and phone calls. The police noted it down in their report but did not take any action. The next two days, James was attacked with a machete as he was getting into his car to go to work. His injuries were life threatening. James brought a claim against the police for negligence.

Do the police owe James a duty of care in negligence?

(5 marks)

#### **QUESTION 4 (15 Marks)**

Peter who has been living in a coalmining village had just received news of a good job offer in town. He took his truck to personally inform his father, Alan, who was working at Safety First's Coal Mine. He drove too fast and did not notice the presence of Don and Luke who were both crossing the road. Peter's truck hit Don and his young son, Luke. Don suffered from serious head injuries and his right leg was so badly damaged that it had to be amputated. He developed depression due to the events following the accident. Three years later, Don committed suicide.

Luke's tiny body was flung a few feet away to the ground. He suffered from massive internal bleeding. Since he was a hemophiliac he died due to blood loss which lasted for days.

Alan who has been working in the coal mine for over 30 years developed silicosis of the lungs. A diagnosis done by Dr. Fu, a doctor in the village, could not show whether the disease was caused by dust from the mine or dust in the air in the village. During the checkup, Dr. Fu also noticed a small mole on Alan's skin but found it to be harmless. Five months later, Alan discovered that the mole was cancerous and was told that he has two more years to live. If Alan was correctly diagnosed, he would have had 50% chance of making full recovery.

Advise Alan, Don and Luke on issues of causation in their claims in negligence.

(15 marks)

**QUESTION 5 (15 Marks)**

- (a) “The test of foreseeability in strict liability is that at the time the thing was brought onto the land the defendant had to foresee that, if it escaped, it would cause the particular type of damage which was suffered”.

Illustrate the above statement.

(7 marks)

- (b) Mr. Poole was digging out earth on his land to replace a damaged pipe. His spade hit something hard in the ground, but he ignored the obstruction and continued to dig in deeper. Soon he realized that he had cut an underground cable which supplies electricity to a neighbouring factory. Rahman, the owner of the factory, claimed for the loss of profits incurred when the electricity was cut off, and for the cost of the damaged products and the damaged machineries.

Advise Rahman.

(8 marks)

**QUESTION 6 (15 Marks)**

The general rule in tort is that one cannot claim in tort for negligent statement unless one could prove fraud. Nevertheless the House of Lords has developed special rules dealing with negligent statements in the case of *Hedley Byrne v Heller* [1964] AC 456.

Illustrate the expansion and limitation of the Principles of *Hedley Byrne* in later case law decisions.

(15 marks)