



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

Faculty of Shariah and Law
Semester II, 2014/2015 Academic Session

Examination Question Paper

Course Code : LB 2302
Course Name : Law of Tort II
**Course Level : Bachelor of Laws (LL.B) & Bachelor of
Shariah Law (BSL)**
Time : 3 hours

References allowed

1. Fatal Accident & Personal Injuries (Cap. 160)
2. Defamation Act (Cap. 192)

Notes:

- (1) Answer **Question 1** in **Part A** compulsorily, and any **three** of the questions in **Part B**.
- (2) Illustrate your answer with statutory provisions, if any, and relevant case law.

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Part A
(Compulsory Question)

Question 1 (15 marks)

Awang, 45 years of age was employed at a quarry site in Temburong, where the nature of his job was very dangerous. One day while at work, Awang was badly injured. One of his fellow workers drove him to the nearest hospital, Temburong Specialist Centre. Due to his serious injuries, Awang's vital organs had been damaged and his life had been shortened by 5 years. Awang could never go back to work again.

Awang used to earn B\$2,000 per month with an unfix allowance for over-time which could come up to B\$100 per hour. He would spend B\$500 per month on his children's schooling and B\$300 for groceries and allocate only B\$400 for his own expenses. He also received B\$100,000 compensation from an insurance company and B\$5,000 in donations from relatives.

As he was in a very fragile condition, his elderly mother had to travel to his house everyday to look after him while his wife was at work.

Advise Awang as to the claims for damages that he would be entitled to, with reference to the Fatal Accident & Personal Injuries (Cap. 160) and decided cases.

Part B

(Answer any three (3) questions only from this Part)

Question 2 (15 marks)

(a) Decide on the following:

(i) While walking on the shores of Tutong beach, Ali found an ancient gold bracelet which was buried in the sand.

(2.5 marks)

(ii) Fatin had used a bait to catch the rabbit owned by Mr. Z as it had caused a nuisance to her garden.

(2.5 marks)

(b) Timah was 34 weeks pregnant when she accidentally fell from the staircase in her house. She was rushed to the Cemas Maternity Clinic near her home where she went into labour. A gynecologist performed a caesarean section on Timah in order to save the life of her foetus. Timah did not agree to undergo the caesarean section. Nevertheless, the operation went smoothly and a healthy baby boy was delivered.

Two weeks after the operation, Timah suffered from a bad infection of her wounds and also suffered from post-natal depression. A doctor at the clinic, Dr. Zeti, attended to Timah. In one of her visits, when Dr. Zeti was cleaning her wound, Timah became agitated and shouted at Dr. Zeti, "You are supposed to make me feel better, but I am now in pain! If I have a butcher's knife, I would cut you into pieces so that you can feel the pain too!"

Timah lifted her hands to strike Dr. Zeti but was stopped by a nurse, Siti. Dr. Zeti tried to help Timah to sit on a chair, but she missed it causing Timah to fall onto the floor.

Timah got up angrily, grabbed a book from Dr. Zeti's table and hurled it at Dr. Zeti but it hit Siti in the face. Upon hearing the commotion in the doctor's room, two clinic attendants came and carried Timah into a waiting room and locked her there for two hours.

Discuss the possible liabilities of the parties in the tort of trespass to person.

(10 marks)

Question 3 (15 marks)

- (a) Yong Group Co. Ltd. (YGC) manufactured children apparels under the trade name "Bee Beez" in China and has a good reputation for its quality and style. They have entered into an agreement with Chen Sdn. Bhd. (CSB) as a distributor of their goods in Brunei Darussalam. An extensive advertisement campaign was done by CSB in Brunei Darussalam to promote Bee Beez.

After two years, due to differential opinions in their business set up, the goods were still not sold in Brunei Darussalam as planned. YGC terminated their contract with CSB. Three years later, a representative of YGC came to Brunei Darussalam on a business trip and found that there was a shop in Gadong selling children apparels under the name "BB's", operated by CSB.

Advise Yong Group Co. Ltd (YGC).

(7 marks)

- (b) An employee is said to have acted in the course of his employment when he had committed a tort that was so closely connected with his employment that it would be fair and just to hold his employer vicariously liable in respect of that tort.

Comment on the above statement with reference to decided cases.

(8 marks)

Question 4 (15 marks)

- (a) Initially, trespassers at common law lacked protection unless the injury was caused from deliberate intentional acts of the occupier or acts which were done with reckless disregard for the trespassers' presence. But this has changed with the unanimous decision of the House of Lords in the case of *Herrington v British Railways Board* [1972] AC 877.

Elaborate on the scope of that duty at common law today.

(7 marks)

- (b) Ali owned a large chemical company in Seria and had employed a big number of employees. The working days of six days a week of the employees include shifts until midnight. As a result, a large amount of smoke and noxious fumes have been emitted everyday from the works. Mr. Gopal who managed a 24-hour restaurant suffered from a drop in his business. His customers prefer to come to his restaurant only after midnight. After several notices issued by Mr. Gopal, Ali argued that his company chemical works are valuable for the society.

Leha who lived in a house opposite Mr. Gopal's restaurant, had just delivered a baby boy. Though she could tolerate the everyday noises within her neighbourhood, she could not put up with the noises of Mr. Gopal's rowdy customers who stayed in the restaurant from midnight until the wee hours of the morning. Her baby had tantrums on most nights and she suffered from sleepless nights. Mr. Gopal argued that the customers had always been turning up at the restaurant after midnight for over 20 years and he had never received any complaints.

Advise the parties to their claims in nuisance.

(8 marks)

Question 5 (15 marks)

- (a) Mr. Rock is an eminent businessman and a well-established accountant who enjoys good living. Miss Jenab, a junior journalist, wished to write an article on him for a business magazine, 'Excellence'. An interview was conducted. When the article was published, Mr Rock was furious on the claim that his reputation as an accountant was built on "imaginative accounting skills" and that "the hideously ugly Mr. Rock likes his drinks". A photograph of Mr. Rock holding a wine bottle looking dazed at his office table was attached in the article:

Mr. Rock immediately telephoned Miss Jenab and made extremely unpleasant and untrue allegations on her professional competence and moral standards. Unknown to Mr. Rock, the telephone conversation was overheard by Mat Kepo, Miss Jenab's office colleague who was at Mr. Rock's office on a different assignment. Later in the evening, Mat Kepo saw Miss Jenab in a meeting at their office. He stood up and repeated the allegations made by Mr. Rock.

Discuss the claims by the parties in defamation and the possible defences.

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