



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

Faculty of Shariah and Law
Semester II, 2020/2021 Academic Session

Final Examination Question Paper

Course Code : LB2302
Course Name : Law of Tort II
**Course Level : Bachelor of Laws (LL.B) & Bachelor of
Shariah Law (BSL)**
Time : 3 hours

Notes:-

1. Answer any **Four (4)** out of the following questions.
2. All answers must be supported by statutory provisions (if any) and case law.

QUESTION 1 (15 Marks)

Terus Berjaya is a successful private limited company based in Kuala Belait. Pursuant to an agreement, Terus Berjaya was authorized to manufacture and develop an anti-theft car safety device, called Stopcard. Terus Berjaya launched Stopcard on 1 November 2020. Four days later, on 5 November 2020, Brilliant Idea, also a private limited company based in Kuala Belait, launched a similar device called Stopcar. As a result of Brilliant Idea launching a similar device, Terus Berjaya's business witnessed a tremendous decline in terms of sale. According to Terus Berjaya, since the launching of Stopcar by Brilliant Idea, business has never been the same.

Advise Terus Berjaya on the tort of passing off.

QUESTION 2 (15 Marks)

(a) Explain the differences between "contemptuous damages" and "aggravated damages".

(5 Marks)

(b) The objective of damages is to place the plaintiff in the position as if the tort had not been committed, serving a compensatory function: "compensation should nearly as possible put the party who has suffered in the same position as he would have been in if he had not sustained the wrong" – Lord Scarman in *Lim Poh Choo v Camden and Islington Area Health Authority* [1980].

Discuss in relation to the types of damages a claimant is entitled to in personal injury cases.

(10 Marks)

QUESTION 3 (15 Marks)

Ben and Jerry are rival competitors in the National Darts Championship. In order to put psychological pressure upon Ben, Jerry delivered a message to Ben's wife, informing her that Ben was desperately ill in hospital. She was terribly upset by the message and was injured as she fainted.

On the day before the finals of the Championship, Ben waited until all Jerry's staff had left the office where Jerry worked and then he locked the office door. As it turned out, Jerry was concentrating on some work he had to finish, and did not try to leave the office

for another two hours. When he discovered that the door had been locked, he thought that the cleaner must have locked it and he climbed down a drain pipe.

As Jerry passed the pub next door to his office, he saw Ben. Jerry went into the pub, took hold of Ben by the arm and spoke to him calmly and politely about the incidents. Ben knocked Jerry to the ground. Jerry retaliated by punching and kicking Ben until Ben was unconscious.

At the hospital, Ben was still unconscious and Dr Ravi decided that emergency surgery was necessary, entailing a blood transfusion, to which Ben would have objected on religious grounds had he been conscious.

Consider the legal principles relating to trespass to the person relevant to this scenario.

QUESTION 4 (15 Marks)

“In the action for trespass to goods, it affords a remedy where there has been an intentional or careless direct interference with goods in the claimant’s possession at the time of the trespass, whereas the tort of conversion is concerned with intentional dealings with goods that constitute a denial of the claimant’s rights”.

Compare and examine the elements of torts of trespass to goods and conversion.

QUESTION 5 (15 Marks)

The Times published an article about Vincent Tan, a famous businessman in Brunei Darussalam describing him as a cheat when it comes to doing business. The words established by The Times read: “Doing business with Vincent Tan is like committing suicide. He milks his business partners and suffocate them to death.” Syed Mokhtar and Mr. Kumar who had business dealings with Vincent Tan in Tutong District after reading the article cut all their business ties. According to Syed Mokhtar and Mr. Kumar, it would be unethical to continue doing business with Vincent Tan. Vincent Tan’s business suffered as most of his business partners decided to follow the drastic step taken by Syed Mokhtar and Mr. Kumar. Realising the heavy loss to his business establishments throughout Brunei Darussalam, Vincent Tan decided to file an action for defamation against The Times.

Advise Vincent Tan.

QUESTION 6 (15 Marks)

a) Explain the differences between private nuisance and public nuisance, and with the support of case law, describe how the defence of prescription operate in the context of private nuisance.

(8 Marks)

(b) Initially, the duty owed to trespassers was that as laid down in *Robert Addie & Sons Ltd v Dumbreck* [1929] where the court stated that in general an occupier does not owe a duty of care to a trespasser. But this has changed with the unanimous decision of the House of Lords in the case of *British Railways Board v Herrington* [1972].

Discuss.

(7 Marks)

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