

UNIVERSITY OF COLOMBO, SRI LANKA

FACULTY OF LAW

BACHELOR OF LAWS EXAMINATION, YEAR III – 2019

LAW OF DELICT

(Three Hours)

Total Number of Questions: 07

Answer any **FOUR (04)** questions and **no more**.

(Candidates will be penalized for illegible handwriting.)

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1. 'Unlawfulness and negligence are two separate and distinct components of the same delict, each having its own requirements and tests, thus not to be confused or conflated.'

Administrateur, Transvaal v Van der Merwe 1994 (4) SA 347 (A) at 364

Do you agree with the above statement? Discuss in the light of contemporary judicial authorities and principles pertaining to these two elements of the Aquilian action.

2. Rohan was one of the final candidates for the post of banking executive at ABC Bank Plc. On the day of the final interview, Rohan drove his WagonR VXI to the headquarters of ABC Bank Plc. He parked his car in the reserved parking area with the help of a security guard. After completing the interview, he returned immediately to the parking area. He noticed that the front end of his car was badly damaged. The staff at the parking area alleged that he had used the area which is reserved for the CEO's vehicle in which, generally, no one else is permitted to park. Further, they told Rohan that the damage occurred when the CEO's driver reversed the vehicle to park at another parking slot without causing any delays to his boss. The administrative officers of ABC Bank Plc explained to him that parking was permitted at the risk of the owners citing the notice displayed at the entrance of the parking area. They also said

that the company is not liable to repair the damage caused to his car.

Rohan wishes to sue the ABC Bank Plc for the losses he suffered. Advise him citing the relevant delictual/tort principles and case law.

3. a) Despite the legal standing upheld in *Bolitho vs City Hackney Health Authority*, Bolam test remains an insuperable barrier for plaintiffs in medical negligence litigation. Do you agree? Support your argument with relevant case law.

(12.5 marks)

- b) Examine how the 'rights based approach' has shaped the law of medical negligence in contemporary jurisdictions citing relevant statutory authorities and case law.

(12.5 marks)

4. Mihiri is a professional singer who aspires to make her name in the cinema industry. She entered the Dream TV singing contest, one of the most watched throughout the world. The programmes are broadcast live in all countries. Mihiri's name was included in the top 25 shortlisted candidates. During the 10th round of the competition in which the organizers decided to select ten participants for the next level of the competition, Mr. Sugath, who is a musician in the film industry, was invited as a judge along with two other famous female singers. After witnessing Mihiri's performance, Mr. Sugath laughed and sarcastically commented: 'you should be proud of your singing skills.' At the end of that round, Mihiri was eliminated from the competition. Following this, an internet troll went viral making fun of Mihiri's singing abilities and her ambitions to enter into films.

Mihiri strongly believes that Mr Sugath's conduct was influenced by the grudge he holds towards her. She thinks that the grudge was developed as Mihiri had been more successful than his daughter Kavya at the public examinations.

Advise Mihiri on the possibilities of bringing a defamatory action against Mr. Sugath and the management of Dream TV.

5. Daniel is a spice trader. He invested 3 billion rupees in Sumuthu Plc's shares following the advice of Wimal, who is a portfolio investment advisor with fifteen years of professional experience. Immediately after Daniel made his investment, the share prices of Sumuthu Plc started to fall. As a result, within a day, Sumudu Plc was declared bankrupt. Upon receipt of this message from his agent via a telephone call, Daniel fainted and he was immediately taken to hospital. Doctors examined him and informed him that he had suffered a stroke and as a result, the left side of his body is paralysed.

Daniel seeks your advice on the possibility of suing Wimal on pure economic loss and nervous shock. Advise him citing relevant authorities.

6. Saman is the owner of Green City supermarket which is open 24 hours of the day. He hired Master Cleaners Pvt Ltd for the purpose of cleaning the supermarket. The service agreement specifies that the cleaners should work on eight hour shifts. They are required to check the premises every 30 minutes to ensure that nothing has spilled on the floor. On 17th October 2018, Ramani went to Green City to buy cooking oil. Since she was already late to pick up her daughter from school, she rushed to the 'Kitchen Essential' section to get a bottle of cooking oil. As she approached the shelf on which the cooking oil was displayed, she slipped on some spilt oil and fell on the floor. As a result, she suffered a severe head injury and was forced to take bed rest for six months. Following this incident, Saman carried out an investigation and found that Raja

had been assigned to clean the Kitchen Essentials section on 17th October 2018. Saman examined the CCTV footage and found that the oil had been on the floor for about 45 minutes.

Ramani wishes to take legal action to claim compensation for the injuries she suffered. Advise Ramani about the potential defendants against whom she could bring action in light of principle of vicarious liability. Support your arguments with relevant case law.

7. Legal systems respond in different ways to challenge dangerous activities. While some legal systems impose strict liability, other systems adopt fault-based liability.

Discuss the different approaches to liability considering the effect of dangerous acts and objects in the modern legal systems. In your opinion, which approach could be more appropriate to deal with dangerous acts and objects? Support your argument highlighting relevant case law and statutes, comparing with at least one other jurisdiction other than Sri Lanka.
