

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW

BACHELOR OF LAWS EXAMINATION, YEAR III – 2022

LAW OF DELICT

(Three Hours)

Total Number of Questions: **06**

Answer **THREE (03)** questions and no more.
(Candidates will be penalized for illegible handwriting.)

1. Kumara was employed at TM Tech Company as a Medical Laboratory Technician (MLT). After a few years of working for this Company, he started complaining of continuous breathing difficulties and was admitted to the hospital as his condition aggravated. At the medical consultation, Kumara informed the doctors that the medical laboratory which he was working at did not supply safety equipment including a chemical protective suit and all the MLTs and assistants worked in a hazardous environment. It was further learnt that they were not supplied with safety masks, and they breathed polluted air mixed with chemicals in the vicinity. However, in their diagnosis the doctors found that Kumara has a history of long-term tobacco smoking and because of a genetic condition of his lungs, the polluted air had further aggravated pre-cancerous cells in his lungs. A couple of months after the diagnosis Kumara died of lung cancer at the age of 37.

Dilani, Kumara's 29-year-old widow, intends to sue TM Tech Company for compensation, in connection with the incident.

Nilani, Kumara's 67-year-old mother who heard about the demise of her sole surviving son, suffered from nervous shock as a result, and is currently receiving treatment in a private hospital. She intends to sue TM Tech Company for the injury caused.

Advise Dilani and Nilani citing the relevant delictual/tort principles and case law.

2. 'The legal test of remoteness focuses on the foreseeability of the harm which eventuated or on whether the harm was of a kind that might have resulted from an accident of a foreseeable nature. Relevant also to the analysis of effective cause is *novus actus interveniens*...'

– Per Lord Hodge and Lord Sales in *Khan v. Meadows* [2021] UKSC 21, at para 56.

In light of the above statement, critically assess whether the rules relating to legal causation or remoteness of damage restrict a plaintiff from obtaining compensation for injuries which he/she has suffered. Your answer should be supported by a comparative analysis of one jurisdiction of your choice.

3. Sunimal was the neighbouring landowner of Company B which was in the business of breeding and training pitbulls. Company B put the dogs through very tough training to make sure the pitbulls are the perfect guard dogs where they would be ferocious to everyone except for their master. Their most ferocious dog, Staff, escaped his enclosure one day and jumped into Sunimal's property and bit his son, Nimal. Since Staff was vaccinated and the bite was superficial, Nimal's injuries were minimal. However, Staff escaped its enclosure and entered Sunimal's property two more times until Sunimal decided that he could not tolerate it anymore and decided to initiate a case in the District Court of his area.

Sunimal is confused as to whether he should institute proceedings in the District Court against Company B under the *Rylands v. Fletcher* rule or nuisance or both and seeks your assistance in pursuing the matter further.

Advise Sunimal.

4. Mr. Sandun and Mrs. Lavini were once a married couple with a son named Henry. Both Mr. Sandun and Mrs. Lavini were famous actors, known all over in Sri Lanka, especially Mr. Sandun who had a much greater reputation than his wife. After twenty-two years of marriage, Mrs. Lavini filed divorce proceedings against Mr. Sandun claiming him to be a domestic abuser. However, apart from what was said during the court proceedings, Mrs. Lavini also wrote to the newspaper 'Srideepa' that "Mr. Sandun was a filthy drunkard who habitually abused her, both mentally and physically". During court proceedings, Mr. Sandun vehemently denied all allegations made against him. He

also went further and stated that Mrs. Lavini had been unfaithful to him on various occasions.

Two cases of defamation have been brought in the District Court of Colombo. Mr. Sandun has brought a defamation case against Mrs. Lavini regarding the comments made by her about Mr. Sandun in court and in the newspaper. A second case has been instituted by Henry against Mr. Sandun for stating that his mother had been unfaithful.

Analyse whether these cases constitute successful actions for defamation under the *actio injuriarum*.

5. Mr. Pinum, a senior naval officer, went to a local pub with a group of his friends while he was on leave for the weekend. After having a couple of alcoholic drinks, Mr. Pinum and his friends decided to go for a swim. They walked to a nearby beach restaurant called Seagull Breeze but found it closed for the night. Mr. Pinum insisted that they could still go to the pier owned by the restaurant since he knew the manager. The group hopped over the low fence and walked down to the pier and reached the sea. It was quite dark and one member of the group, Mr Gulla, expressed his concern about diving into the sea in the dark. However, Mr. Pinum reassured him that this was a place he had frequently visited to have a swim after having lunch at the restaurant. In order to prove his point, Mr. Pinum ran down the pier and dived into the water. Unfortunately, the tide was out, and Mr. Pinum struck his head on a part of the seawall constructed by Seagull Breeze which led to a spinal fracture and permanent paralysis.

Mr. Pinum wishes to take legal action against Seagull Breeze for the injury caused to him. The management denies culpability and argues that it was safe to dive from this pier during daytime when the tide is high and that they usually have a security guard stationed at the pier when the restaurant is open.

Analyse the given scenario and determine the liability of the parties. Support your answer with relevant legal authorities.

6. Nandimithra and Suranimala are employed to load and unload goods in the warehouse of Badu-Muttu (Pvt) Ltd, a large wholesale store. One morning, they met with Dudley, a village shopkeeper, who wished to purchase a large quantity of rice. The sack of rice was on a high shelf and, usually, the warehouse staff used a forklift to retrieve it. Since the forklift was already in use, Nandimithra and Suranimala decided to retrieve the rice on their own by climbing up the shelves. This is something they had done previously but their employer had forbidden them from doing so. Suranimala climbed up the shelves to reach the sack of rice while Nandimithra waited at the bottom to catch it. Unfortunately, the sack slipped out of Suranimala's hand and fell off the other end of the shelf onto Mr. Athapaththu, another customer, who fell to the floor and broke his arm.

The rice from the sack spilled all over the floor, so Nandimithra called Pavithra, a cleaner, who works at Badu-Muttu three days a week. Badu-Muttu has made it mandatory for her to wear the company uniform and has also instructed her to be polite to customers while she is working. Pavithra also works at several other stores when she is not at Badu-Muttu. She has a large cleaning cart full of supplies that she has been given by Badu-Muttu to do her job. When she got the call from Nandimithra, she hurriedly wheeled the cart towards the site of the accident. She was pushing the cart at great speed, and she negligently ran over Ms. Padmini's foot fracturing it.

As in-house counsel for Badu-Muttu (Pvt) Ltd., advise the management regarding the liability of Badu-Muttu (Pvt) Ltd. towards Mr. Athapaththu and Ms. Padmini citing relevant legal authorities.

(Each question will be marked out of 100)
