

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW
MASTER OF LAWS DEGREE EXAMINATION – TRIMESTER II -
2022/24

(Law of Delict – LLM1144)
(Three Hours)

Total number of questions: 04

Answer any **Three** questions.
(Candidates will be penalized for illegible handwriting)

Question 01

Daisy is a single mother of a four-year old child. She is an award-winning weight- lifter in all island and regional international competitions. She suddenly discovered a lump in her neck and decided to seek the doctor's opinion. She consulted Dr. Ramen, a surgeon in the Lanka Hospital Pvt Ltd. Daisy was referred for an ultrasound scan by Dr. Ramen. The Cytology report suggested a possibility of lymphoma and Dr. Ramen recommended a full biopsy. She was offered a biopsy at an early date by the hospital; however, she postponed it to a later date until she had returned from a holiday she had booked. Finally, she had to undergo a total extraction of a superficial lymph node in the left side of her neck by Dr. Ramen. Unfortunately, her spinal accessory nerve was damaged in the procedure resulting in permanent weakness in her dominant left shoulder and she developed a severe pain around the neck. The risk involved in the procedure was not revealed by the doctor before the surgery. She was neither able to handle household tasks and nor routine sports practices after the injury.

- a) Daisy seeks your opinion on whether she could sue the doctor and the Lanka Hospital Pvt. Ltd for the recovery of damages. Advise Daisy.
- b) Discuss whether any defenses are available to Dr. Ramen to exclude his liability for negligence. Support your answer with relevant case law.

(100 Marks)

Question 02

“The actual causation requirement is just one more doctrinal concept that is manipulated by judges to further the relevant socially preferred policy in each case.”

Critically comment the above statement considering the use of the element of causation in the law of delict and English law. Support your answer with relevant case law authorities.

(100 Marks)

Question 03

- a) The Rylands v Fletcher rule was laid in the 19th century when development in science and technology was limited when compared with economic development and social structures prevalent today.

Do you think that the strict liability introduced by the court in the Rylands v Fletcher rule is not suitable for modern life? Support your answer with relevant case law authorities and statutory provisions drawing examples from **any two** jurisdictions.

- b) David is the lessee and the operator of the Sara Stadium for car racing for which permission has been granted by the Local Authority in 2010 thereafter renewed in 2020. Generally, three car racings are organized for a year on this track. Silva bought a cottage near the stadium and track in 2015 and recently claimed that the noise was causing a nuisance. David argued that the activity has been permitted, and Silva had come into prevailing and ongoing nuisance.

Discuss.

(Marks 100)

Question 04

- a) It is a trite law that the right to personality must be protected. Critically examine how the right to personality is recognized in the South African law of delict, using relevant case law and statutory provisions.

In your opinion, what lessons can be learnt from them to develop Sri Lankan law of delict on *injuria*?

- b) Mr. Kadiradeva is a reputed principal at Mihidu College, Kandy and had served from 2016 to 2020. He has been called for a fact-finding inquiry by the provincial education authority for soliciting one million rupees to admit a student into grade six, Mihidu College in 2019. He completely denied the contention stating that it is not true. Naveen, a witness, stated at the inquiry that Mr. Kadiradeva has 'a bribing habit' and he had been expelled from the headship of a school previously. Mr. Kadiradeva argues that this statement is defamatory and affects his dignity.

Advise Mr. Kadiradeva.

(100 Marks)