

UNIVERSITY OF COLOMBO, SRI LANKA  
FACULTY OF LAW  
MASTER OF LAWS DEGREE PROGRAMME 2024/26  
2<sup>nd</sup> Semester End Examination – 2025

LAW OF DELICT – (LLM12409)

(Three Hours)

Total number of questions: 04

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

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**Question 01**

- a) The *boni mores* test is an objective test based on the criterion of reasonableness. The basic question is whether, according to the legal convictions of the community and in light of all the circumstances of the case, the defendant infringed the interests of the plaintiff in an unreasonable manner. Critically evaluate the legal significance of the *boni mores* test in the determination of unlawfulness in delictual claims. Substantiate your answer with relevant legal authorities.

(10 Marks)

- b) Amali was a medical student suffering from painful endometriosis. She sought medical treatment from Dr. Kamal, a specialist gynecologist at Mapa Hospital (Pvt) Ltd. He recommended that she undergo laparoscopic surgery to diagnose the condition. Amali consented to the procedure. However, during the surgery, Dr. Kamal accidentally pierced her aorta, placing her in a life-threatening condition. As a result, she required 26 units of blood and surgery lasting over four hours. Unfortunately, she passed away several days later.

Amali's parents now wish to sue Dr. Kamal for the mental suffering caused by the loss of their eldest daughter, as well as for loss of maintenance.

Advise Amali's parents.

(10 Marks)

### Question 02

If the act complained of is not that of an employee, then the employer is not liable: an action can be maintained only if the employer has, in the circumstances, committed a tort, or if the employer, in the particular circumstances of the case, is under what is known as a 'non-delegable duty.'

Do you agree with the above statement in light of the applicability of vicarious liability in modern jurisdictions? Critically comment on the statement with reference to decided cases in Sri Lanka and a jurisdiction of your choice.

(20 Marks)

### Question 03

- a) The inadequacy of delictual protection for non-informational aspects of privacy is keenly felt in Sri Lanka. In your opinion, is this an accurate observation with regard to the operation of the common law of delict in Sri Lanka today? Comment.

(10 Marks)

- b) Anil, a clerk of the Delft Dress Point told Bimali in English that she had stolen a handkerchief from the box. Bimali speaks Tamil, so a Tamil clerk in the shop told Bimali the same thing in Tamil. No evidence showed that any third person heard the charge. Bimali is hurt and disturbed by this conversation and wishes to bring a delictual action against Anil for maliciously accusing her of larceny by words spoken.

Advise Bimali on the possibility of suing Anil for her hurt feelings under the *actio injuriarum*. Also, consider whether any justifications are available to Anil in this case.

(10 Marks)

### Question 04

"There is a great deal of diversity between legal systems with regard to the distribution of strict liability rules relative to fault – based rules and the scope of strict liability rules and how these are perceived by various legal actors."

Critically analyse the above statement with reference to any two strict liability rules you have studied, providing examples from case law and relevant statutory provisions.

(20 Marks)