

UNIVERSITY OF COLOMBO, SRI LANKA

FACULTY OF LAW

BACHELOR OF LAWS EXAMINATION, YEAR III – 2017

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.)

1. “In many countries, civil actions in delict or tort are pursued vigorously, both as a strategy for obtaining financial compensation, and as one that can have some deterrent impact, promoting greater accountability by public officials and institutions”

(S.W.E Goonesekera, *Fundamental Rights and the Law of Delict*, Extracted from Essays in honour of H. L. De Silva P.C., Human Rights, Human Values and the Rule of Law, Edited by A.R.B. Amarasinghe and S.S. Wijeratna, Legal Aid Foundation Colombo 2013, p.52 – 70).

Critically analyse how a rights based approach in adjudicating cases that give rise to delictual liability, of public officials or institutions, has contributed to expand the scope and application of principles of the law of delict/tort.

2. Ravi is the owner of “Techno Roofing Products Limited”, which manufactures asbestos roofing sheets and other industrial equipment. He was informed by his Manager Anil, that Saman who had worked more than 25 years as a factory supervisor in the company has died of lung cancer in a hospital in Colombo. Anil warned Ravi that it is not wise to keep ignoring the complaints received about the quality of protective clothing and safety equipment provided for their employees. Ravi in response said that the cause of Saman’s

death would have been his excessive smoking. Saman's wife Anula now wants to file civil action against Ravi.

She accuses him of failing to take necessary steps to protect his employees from cancer-causing substances used in production. She argues that Saman had stopped smoking five years ago and exposure to asbestos dust is the proximate cause of his death. Anula wants to be awarded damages for the loss of support, loss of consortium and pain and suffering caused by the death of Saman. Medical reports reveal that asbestos dust is only one of the contributing elements to Saman's death. Meanwhile, Ravi found that Saman has never been legally married to Anula.

Advise the parties.

3. Sam was transporting fuel in a tanker with his helper Ram. A drunk driver, driving a truck transporting tin sheets, negligently collided with Sam's vehicle, giving rise to a huge explosion. The drunk driver survived the accident with minor injuries. Both Sam and Ram suffered severe burn injuries caused primarily by molten metal from the accident and were immediately rushed to hospital. The vehicle carrying Ram and Sam who were unconscious, got caught up in a protest march for 45 minutes, on its way to the hospital. Immediately after admission to the hospital, the doctor declared Sam dead and stated that the delay in admitting him to the hospital and severe burn injuries caused his death. About 60 per cent of Sam's body was burnt.

Ram survived with only 35 per cent of burn injuries and pursued legal action against the drunk driver. He died two years later from cancer, while the case was still ongoing. Medical reports indicated that Ram's lips contained pre-cancerous cells, which were triggered by the injury sustained by Ram in the accident.

Discuss the issues in the light of rules and tests that can be applied to determine the extent of liability of the drunk driver.

4. 50 year old Suseela is an accountant at a reputed private firm. She chose a hair dye that was manufactured locally by well-known cosmetic producers 'Lovely Henna'. Before purchasing it, she had gone through the instructions for usage.

When she applied the product on her own at home, her scalp started to swell and she fainted thereafter. Doctors discovered that she had a severe allergy and she had to spend three weeks in hospital. Suseela wishes to sue 'Lovely Henna'. Advise her.

5. "I incline to the opinion that, as a general rule, it is more appropriate for strict liability in respect of operations of high risk to be imposed by Parliament, than by the courts."

(Lord Goff in Cambridge Water Co Ltd v Eastern Counties Leather PLC [1994] 2 AC 264 [HL])

Discuss the requirements and limitations introduced by the courts to narrow down the scope and application of *Rylands v. Fletcher*. Your discussion should focus on the position of the Sri Lankan judiciary with reference to at least one other jurisdiction.

6. Sanjay, who is a renowned fast bowler, developed a spinal injury during an international cricket match. Since the pain persisted Sanjay consulted Dr. Silva, who is an Orthopaedic Surgeon*. When consulted, Dr. Silva diagnosed that the condition could lead to disability and instructed Sanjay to go through spinal surgery without delay. Dr. Silva referred Sanjay to Dr. Elson saying that he will be unavailable for the surgery since he has to travel abroad. When Sanjay asked Dr. Silva about the risk of the surgery he said that there was a 10 percent chance that Sanjay could become permanently disabled. He then consulted Dr. Elson, who refused to answer his questions about the risk and obtained consent for the surgery, at Nirogi Hospital. Unknowingly Dr. Elson had used unsterilized surgical equipment. The surgery was unsuccessful. In addition, Sanjay developed an infection, which ultimately resulted in him being in a completely vegetative state.

Nilani, a die-hard fan of Sanjay, who often communicated with Sanjay on social media, had insisted that the hospital allow her to see the player. After witnessing his vegetative state Nilani was devastated and her parents now claim that her condition has become elevated to pathological grief.

Sanjay and Nilani's parents want to pursue legal action against all possible defendants. Advise.

* Orthopaedic Surgeons treat injuries and diseases that affect the musculoskeletal system.

7. 'Dawasa', a leading Sinhala news publication, reported two news items published side by side on the front page of the paper. One story reported Sam, a leading politician of the Labour Party, attending the convocation of his nephew who graduated from a private university. The other story reported an anti-private universities campaign organized by the Labour Party, which carried a photograph of Sam sitting at the head table, listening to another member making derogatory remarks about private educational institutions, which were quoted as the headline of that article. Although the two articles did not refer to each other, they were highlighted together on the 'daily satire' column on the front page. The stories, in the same format, were published in English language in the e-newspaper of the sister publication of 'Dawasa', 'Hawasa'.

A week later, the front page of the newspaper, in which this story was published, was used in one of the newspaper's promotional television commercials to feature the newspaper as 'fair and unafraid' journalism. The commercial featured a still shot of the page for 20 seconds with background voice. Displeased by these events that occurred subsequent to the publication, Sam intends to file a defamation case against 'Dawasa' and 'Hawasa'.

The parent company has requested you to defend them in court. Draft the arguments that could be used by 'Dawasa' and 'Hawasa' in support of their case. You are required to refer to the relevant legal principles and case law.
