



THE UNIVERSITY OF THE WEST INDIES

EXAMINATIONS OF _____ DECEMBER _____ 2006

CODE AND NAME OF COURSE: LAW2010 - LAW OF TORTS II

DATE AND TIME:

DURATION: 2 HOURS

INSTRUCTIONS TO CANDIDATES: This paper has 3 pages and 6 questions.

ANSWER ANY THREE (3) QUESTIONS. Answers may be confined to the law of any jurisdiction in the Commonwealth Caribbean unless the context indicates otherwise.

1. Cariboil Inc. owns and operates an oil refinery in Bartica. Frank, George and Hilda are employed by Cariboil as general workers. One morning, while standing on a scaffold in the warehouse to repair a malfunctioning air-conditioning unit, Frank is startled by a noise below. This causes him to lose his balance and he falls to the ground, suffering a permanent back injury. According to the Bartica Scaffolding Act, "all scaffolds erected in Bartica for use in the construction, repair, alteration or removal of buildings shall be of sufficient width and properly secured so as to ensure the safety of persons working on them ...".

Later that day, George, anxious to leave work as soon as possible at the end of the day, refuses to wait until his co-worker, Ivan, returns from a bathroom break and attempts to lift the end of a 400 lb steel beam by himself. He also suffers a serious back injury. It is noted that George was not wearing a lifting belt. Such belts had been provided by Cariboil, but the men did not wear them and so they had been loaned to Carib Construction, a sister company, the day before.

Hilda is shot and seriously injured by Jane, a psychotic ex-employee of Cariboil, who had recently been dismissed. Jane had vowed, after she was dismissed, that she would be coming back to avenge the insult to her. In spite of this warning, Cariboil did not take any extra precautions.

Advise Frank, George and Hilda as to their rights against Cariboil.

2. To what extent does current defamation law strike an appropriate balance between protection of reputation and free speech?

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3. James, a writer, is seriously injured in a car accident caused wholly by Karen's negligence. He learns that he will be confined to a wheelchair for the rest of his reduced life, after coming out of the coma he has been in since the collision. He can no longer play squash as he used to on three evenings a week. Nor can he go fishing and hunting in the mountains with his friends every weekend. He has become rather crotchety of late, and has dismissed three secretaries in as many weeks because of this changed temperament. He needs a secretary to type his work since he has not yet regained the full use of his hands.

James has received a large cheque from the National Insurance Scheme as well as one from his insurance company, but he feels that with the galloping inflation rate, these sums will not last for long, especially since his wife has had to take unpaid leave from her job to care for him.

Advise James. How would your answer differ if James dies before an action for damages is commenced?

4. Roger and Sam are contesting the presidency of the local Bar Association. Roger, a criminal defence lawyer, who did not attend a "brand-name" secondary school, is the underdog against Sam, the corporate lawyer, who was born in the "heights", and attended the leading secondary school in the region. Roger's campaign brochure states that an arrogant snob like Sam would never understand the plight of the ordinary lawyer and that the members of the Bar should not vote for a man who would not even consider them or their like for membership in his country club.

In response, Sam sends out an e-mail to Bar members on the morning of the election which commends Roger for his distinguished record: distinguished by the fact that he only got into the Law Faculty because his late father bribed the Vice Chancellor, by the fact that he had been sued for malpractice scores of times; and by the fact that he had sex with his 15 year old baby sitter while his wife was giving birth to their child.

Sam wins the election by a landslide. Roger consults you for legal advice. He instructs you that his father died while he was in primary school; he has been sued for malpractice only twice and won both cases; and the only baby-sitter he has ever had was his 60 year old mother-in-law. He denies having had sex with her.

Advise Roger.

5. "[Your jurisdiction] should consider enacting a statute which affords a remedy for the infringement of personality rights. The current common law protection is both inelegant and ineffective."

Discuss.

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6. "The doctrine of vicarious liability has not grown from any very clear, logical or legal principle, but from social convenience and rough justice."

Critically analyse this proposition as it relates to the vicarious liability of employers for the deliberate tortious acts of their employees.

END OF PAPER

