



**FIRST YEAR EXAMINATION FOR THE AWARD OF THE  
DEGREE OF BACHELOR OF LAW  
FIRST SEMESTER, 2022/2023  
(SEPTEMBER-DECEMBER, 2022)**

**LLBK 112: THE LAW OF TORTS**

**STREAM: LLBK Y1 S1**

**TIME: 2 HOURS**

**DAY: FRIDAY, 12:00 – 2:00 P.M.**

**DATE: 02/12/2022**

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**INSTRUCTIONS**

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE [Compulsory] and any other TWO Questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable***

**QUESTION ONE**

Gideon and Geoffrey are neighbors in adjacent apartments on the fifth floor of Sponyo Apartments in Mwembe Kisii County. Gideon always invites friends over each Friday to party. During such parties, Gideon turns his stereo system up to such levels that Geoffrey cannot enjoy his much deserved rest after a long week at work. Gideon had had an operation to improve his hearing that Friday and his ear drums were overly sensitive at night. Gideon's drunk friends mistakenly, in their drunken state banged on Geoffrey's door. Whenever Geoffrey requested him to turn down the music, Gideon turned up the bass higher to spite him. Geoffrey, flummoxed at Gideon's latest Friday night debauchery decided to lock his door from the outside with a padlock to teach him a lesson for the better part of the morning.

Later, Geoffrey came to his senses and removed the padlock. Gideon was dead asleep nursing his hangover and woke up at 2 O' clock. Their neighbor Hamisa

informed him of Geoffrey's action of locking his apartment from the outside. Gideon started shouting calling him a dog and a thief, outside Geoffrey's door whilst wildly banging his door. Urging Geoffrey that if he thought he was 'man enough' to come take him on. Those words baffled Geoffrey's bible study group members who had visited him. Enraged, Geoffrey opened the door and punched Gideon in the nose.

- (a) Identify the various causes of action that arise from the above. (20 Marks)
- (b) Identify any defenses and remedies available. (10 Marks)

## **QUESTION TWO**

Drake, a senior driver of Tuitex Company limited was driving the company's car registered KCC 590B , on the wrong side of the road along Uhuru Highway since it was 07:58 and he was in a rush to get to the office on time, in utter disregard of the Company's rules. Drake hit an oncoming matatu registration number KBC 524F head-on. Drake was on the phone with his boss who was shouted at him for his tardiness. The matatu had overlapped, as is often their nature on Kenyan roads in rush hour. Shiro a fare paying passenger in the matatu saw her life flashing before her very eyes, decided to save her mortal soul and jumped out of the moving matatu. Shiro broke both of her legs and her collarbone. The matatu driver lost his life but those who sat near Shiro in the third row, who had buckled up and stayed put were unscathed. Drake walked away from the accident without a scratch.

You are the legal officer in Tuitex Company, draft a legal opinion for the legal manager. (20 Marks)

## **QUESTION THREE**

- a) Clinton, a delivery boy, was tasked by Suffericom Company Limited with the delivery of a box of sim cards to Airtel Company Limited. Along the way, Cardi B Minaj, Suffericom's local competitor intercepted Clinton and took the box from him with the intention of permanently depriving Suffericom possession of the sim cards in order to gain a competitive advantage. Cardi B Minaj was questioned and she stated "that the sim cards belonged to Suffericom Company Limited and Clinton could not take her anywhere."

Advice Clinton.

(10 Marks)

b) Tommy decided to take out his younger sister, Daisy on her eighteenth birthday. Daisy is desirous of watching two flicks namely 'The Kardashians' and 'Fast and furious 7'. Tommy being a first year LLB student is short on cash and can't afford all the four film tickets required, not wanting to disappoint his sister they have hatched a plan to ensure that they watch both films by hook or crook. Tommy and Daisy proceed to the Three Rivers Cinamax Movie Theater the following day. Tommy pays for a pair of ticket to watch 'The Kardashians' from 8 am to 10 am in theater D. Tommy and Daisy then decided to snick into theater R to watch 'Fast and furious 7 from 10:30 am- 12:15 am. The theater R officials making their rounds in the theater request them for their tickets. Upon which they are discovered not to have any.

Identify the cause of actions that would arise against Daisy and Tommy.

(10 Marks)

#### **QUESTION FOUR**

a) Adam walked into an apartment in Upper hill formerly owned by his friend Gilbert, who had not informed him of his intention to move. Adam walked right through the door without knocking, for it was Gilbert's birthday and he intended to surprise him with a fudge birthday cake. Desmond, the current owner of the apartment chased him with a gun thinking he was his wife's clandestine lover, and in the altercation, Adam fell and lost five front teeth.

Adam has approached you a prominent litigation lawyer to inform him on the possible legal action and remedies he may obtain against Desmond.

(10 Marks)

b) Rodgers fell on his bike along Uhuru Highway on 17<sup>th</sup> January 2015 and broke his right arm. He recovered seventy percent (70%) use of his right arm. On 17<sup>th</sup> February 2017 he walked into Hifathi bank when the janitor was mopping the floor. Rodgers, being in a great haste to be the first in the bank teller's line, failed to observe the wet floor sign. He slid and fell injuring his right arm further. Rodgers has commenced a lawsuit against Hifathi Bank claiming loss of future income because he has lost a further thirty percent (30%) use of his arm hence unable to continue with his employment as a mason.

You have been instructed by Hifathi Bank to formulate possible defenses against Rodger's claim in a legal opinion. (10 Marks)

**QUESTION FIVE**

Write short notes on the following:

- a) Volenti non fit injuria (4 Marks)
- b) Res ipsa loquitor (4 Marks)
- c) In jura non remota causa sed proxima spectatur (4 Marks)
- d) Ubi jus ibi remedium (4 Marks)
- e) Injuria sine damno (4 Marks)