



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

FIRST YEAR EXAMINATION FOR THE AWARD OF
THE DIPLOMA IN LAWS
FIRST SEMESTER, 2023/2024
(AUGUST-DECEMBER, 2023)

LAW 0114: LAW OF TORT

STREAM: Y1 S1

TIME: 2 HOURS

DAY: THURSDAY, 9:00 – 11:00 AM

DATE: 07/12/2023

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

Manoj, Nina and Omar are all members of the Shabana football league. The league is run by Bangbets, a Chinese company. Last month, during a league match, Manoj slide tackled Nina, injuring her. It was a strict rule of the 5-aside league that slide tackles were not permitted at any time.

After the match was over, Manoj returned to the changing rooms. He had left his sports bag, containing his belongings, including a valuable gold watch, on a peg in the changing room. Manoj was upset to find that his watch was missing. Perfect Bangbets' usual policy is to lock the changing room while it is unoccupied during matches, but on this occasion their employee forgot to lock the door. However, Bangbets have pointed out a large sign in the changing room which stated:

'WARNING THIEVES MAY OPERATE IN THIS AREA.

Please use the lockers provided to secure valuables.

Bangbets will not be liable for any loss or damage caused if items are left unattended.'

The following week, during a match, Omar took a powerful shot at goal. The ball went high over the goal. Bangbets had provided netting above the goal to a height of two meters but the ball went over this netting and hit Quita who was walking her dog on the public footpath that ran alongside the football pitches. This was the fifth time this year that someone had been struck by a football while walking on the public footpath. Quita fell awkwardly when she was struck by the ball and broke her ankle. As a result, she missed three weeks of work and has needed extensive physiotherapy. She is no longer able to take her dog on long walks.

A. Explain:

I. the defense of volenti non fit injuria **(3 marks)**

II. whether Manoj could rely on the volenti defence in relation to Nina's injury. **(5 marks)**

B. Manoj sues Bangbets in negligence for the loss of his gold watch. Explain whether Bangbets were negligent and whether they can rely on the defense of contributory negligence. **(10 marks)**

C. Explain which factors the court will consider in deciding whether Bangbets were in breach of their duty of care to Quita. **(7 marks)**

D. Explain what damages Quita may claim from Bangbets in respect of her injury. **(5 marks)**

QUESTION TWO

Eddie, Frank and Greta own terraced cottages in Kisumu. Their houses have gardens. Eddy is particularly keen on gardening and is especially proud of his flowers and shrubs for which he wins prizes. Frank has a three-year old son, Junior. Greta is working abroad and has allowed her sister, Irene and her family to use the cottage for a week's holiday.

Jack, a local farmer who owns all the surrounding fields, sprays the crops with insecticide over a three-day period. It is a particularly windy time and the insecticide is blown horizontally by the wind into Eddy and Greta's gardens. Junior is playing in the garden for a large part of the time when the spraying takes place for the three days (almost half of their week's holiday). They are annoyed about this as they had planned to spend all of their holiday enjoying the garden.

On leaving the garden, Jack's tractor scrapes a boulder adjacent to the field gate, thus piercing the container of insecticides. Consequently, when Jack returns to his farm and parks up the tractor, the container leaks the insecticide. The drips collect on the concrete standing below, forming small pools which seep through the concrete and penetrate the land from which

water drains, and runs into a small burn which passes through a garden center run by Kelvin. Jack is not aware of this leakage.

The day after the spraying finishes Eddie's plant droop and die. Junior is taken to hospital with breathing difficulties. It transpires that he had absorbed some of the insecticide. He is intubated and detained in hospital for two weeks.

Six months later, Kevin discovers that his plants are failing to thrive. He discovers that the insecticide is the cause and is forced to destroy much of his stocks and close the center for three weeks while it is cleansed off the chemical. During that period he loses anticipated profit from sales of plants and from café.

Critically analyze the above and advise the parties on their rights and/ or liability in tort. **(20 Marks)**

QUESTION THREE

Ale was driving 40 kilometers per hour (kph) in a 40 kph zone down the right-hand lane of a four lane street where children were playing. Nine-year-old Patrick ran into the street chasing a soccer ball. Dale, without glancing over his left shoulder or looking in his rear-view mirror as prescribed by traffic regulations, swerved into the other lane to avoid Patrick. In so doing, he hit a car driven by Danika and going in the same direction as Dale in the left-hand lane at 50 kph. Danika lost control of the car, hit a utility pole, and was seriously injured. The pole, owned by Powerco, snapped in two and the wires were about to fall on Patrick, still in the street.

Paula, standing nearby, saw this and ran to push Patrick out of harm's way. She succeeded, but in saving Patrick was hit by the wires herself. Paula died of electrocution and burns from the wires. Patrick survived with some bruises and scraped knees.

1. Explain whether a duty of care is owed and to whom which parties. **(5 marks)**
2. Assuming the duty of care was owed, explain to what extent the duty was breached. **(8 marks)**
3. Explain to the parties the relevant remedies available to them. **(7 marks)**

QUESTION FOUR

'Life in an organized society and especially in populous communities involves unavoidable clash of individual interests. Practically all human activities, unless carried on in a wilderness, interfere to some extent with others or involve some risk of interference, and these interference ranges from trifle annoyance to serious harm. It is an obvious truth that each individual in a

community must put up with a certain amount of risk in order that all may get on together.'

Explain how the tort of nuisance and its remedies are used to balance these competing interests. **(20 marks)**

QUESTION FIVE

Peter is the owner and chief executive of a company called Washindi Ltd. Peter has three employees, Andrew, James and John, and decides that he should recruit someone else to help in the office. He appoints Matthew, who is given the desk in the middle of the office.

Andrew and James take a dislike to Matthew and start to tease him. One of the ways in which they do this is by playing a game in which they throw a ball to each other, passing it as close as possible to Matthew's head without actually hitting him. They never intend to hit Matthew with the ball and tell him not to worry. While playing this game one day, Andrew throws the ball to James, but throws it too high and it goes over James' head and strikes John's right eye as he walked into the room. John has a rare, undiagnosed, genetic condition that makes his eye vulnerable to injury, and he loses the sight in his right eye.

Andrew and James blame Matthew for John's injury, and decide to punish him. James asks Matthew to go down the basement, where the company records are kept, in order to find some information for him. Matthew does so, and Andrew then wedges a chair against the door so that Matthew will not be able to get out. While in the basement, Matthew gets a phone call from a friend and does not try to leave. After an hour, Andrew feels guilty and removes the chair. Matthew finishes his conversation, looks up the information and returns to the office, apologizing for taking such a long time.

One day, over morning coffee, Matthew mentions that he hates popular music. To annoy him, Andrew and James spend the rest of the week singing the chorus of the pop song "umbrella" by the singer Rihanna whenever Matthew enters the room. On Friday afternoon, when they sing the song again, Matthew storms out of the office. Peter receives a letter from Matthew's doctor saying that he is clinically depressed as a result of the bullying, and will not be returning to work.

You have been approached by the parties above to amicably solve the dispute. Advise the parties on their rights and liabilities in tort. **(20 marks)**