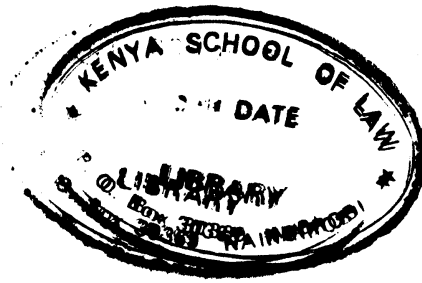


COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATION

LAW OF TORT

TUESDAY 20TH SEPTEMBER, 2011

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **any other three** Questions
- (b) ALL Questions carry **25 marks** each
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. Akili Popo has been revered and respected internationally as the chief anti graft czar in the Republic of Lumumba, a tiny third world country situated in Sub-Saharan Africa. Due to widespread corruption in the public sector of the said Republic, Akili Popo and his team have been cracking down on key parastatals and government departments accused of embezzlement of public funds. In question was the Water Ministry where the Permanent Secretary has been indicted by a report prepared by the Ethics and Anti-Corruption Commission which is headed by Akili Popo. The said Permanent Secretary who hails from the same village as Akili Popo had recently invited the anti-corruption chief to a fundraiser as a chief guest and as a show of support sent Mr. Popo cheque of 500,000 quasha (currency of the said republic). The anti corruption chief declined to receive the cheque and in a war of words with Mr. Baba Tonde (the Permanent Secretary), he convened a press conference and claimed that Baba Tonde tried to bribe him in a bid to persuade him to go slow with the on-going corruption investigations at the Ministry. Baba Tonde is naturally infuriated by the said allegations and alleges a witch-hunt by the anti-corruption chief.

Tonde now seeks legal advice from Hashkin and Lulo Advocates where you have been recently recruited as an associate. The head of litigation has instructed you to prepare a legal opinion.

Present a concise legal opinion, indicating the processes that would be involved in pursuing your client's claim(s).

(25 marks)

2. Shem Abuodho had been working as a security guard with Bibiko Enterprises, a medium sized enterprise situated in the Kariobangi area of Nairobi. On the night of 2nd October 2010, unknown thugs raided the firm and carried away assorted goods, namely, computers, DVD machines and cash all valued at Kshs. 150,000. Shem managed to raise the alarm but the local police arrived after the thugs had left. After investigations were complete, Shem was arrested and subsequently charged with the offence of stealing by servant. The prosecution led circumstantial evidence and upon close of the prosecution case, the magistrate entered a ruling of no case to answer, which in effect meant Shem was acquitted. Shem in the meantime has lost his job and used his meager savings to enlist the services of Muga Kashuka as defence lawyer who did a splendid job. Shem now wonders whether he has any rights in the circumstances and Mr. Kashuka, who specializes in criminal law, has approached you for a comprehensive legal opinion on the way forward.

Set out your opinion indicating the possible remedies available to Shem and what legal response the other side might offer.

(25 marks)

3. Sharon, Mary and Jane were fare paying passengers on board a Nissan Caravan matatu KBX 420Y enroute to Bomas of Kenya from the Central Business District where three female acquaintances were attending an annual comedy show sponsored by Read Rim a local radio station. Sharon, Mary and Jane are all these plans and they had been invited by Johnny Blass who apparently was the event organizer.

The matatu driver was one Shaka who is renown for driving matatus at a relatively high speed while chewing his favourite drug, khat. Occasionally, he sips his favourite brandy viceroy. He set off to Ongata Rongai at around 10.00 p.m. on 24th August 2011 and while approaching the Mbagathi round about he saw an oncoming vehicle which had veered off its lane and was headed towards his direction. In an attempt to avoid a head-on collision with the oncoming Nissan X-tail registration No.KBV 401C, he swerved to the opposite lane whereat to his utter dismay he realized too late that there was yet another oncoming vehicle. Shaka ran into the oncoming Toyota Probox vehicle Registration No. KBS 270X resulting in a serious accident. The driver of the Probox vehicle died on the spot. Sharon, Mary and Jane sustained personal injuries as they had not fastened their seat belts. Shaka was admitted to hospital with minor injuries as well.

- (a) You are a legal assistant in the firm of Charmly and Co. Advocates which is acting for the owner of the Nissan matatu who has been sued by the administrator of the estate of the driver of the Probox vehicle.

Prepare a comprehensive legal opinion on the chances of success of that suit.

(10 marks)

- (b) Advise the said owner as whether in the circumstances, Sharon, Mary and Jane can sue him as well.

(10 marks)

- (c) What legal arguments can the said owner raise to counter the suit by Sharon, Mary and Jane?

(5 marks)

4. Write short explanatory notes on the following:

- (i) Malicious falsehood
- (ii) Detinue
- (iii) Conversion
- (iv) Negligent misstatement

(25 marks)

5. There have been calls for clear delimitation of boundaries between a tortious action, criminal action and a breach of contract.

Citing examples, discuss the above statement.

(25 marks)

6. In order for a defendant to be found liable in the law of tort, the plaintiff must demonstrate not just some harm suffered by the plaintiff but also legal injury caused by the defendant.

Critically discuss this statement and explain any exceptions thereto.

(25 marks)
