

COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATION

PBR 003 LAW OF TORT

THURSDAY 27TH SEPTEMBER, 2012

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. Anthony Mwashiko works as an *aide de camp* cum driver for Hon. Kassoa Kasembele, the Member of Parliament for Kitani constituency in Milago County. Anthony usually lives in the city of Milago while his wife Hellen lives in the village in Kitani area where she works as a caretaker at Hamisi School for the deaf. On 17th April, 2012, Hellen boarded a 'boda boda' motorcycle to take her home. Near the entrance to her gate, an unknown group of people pounced on Wafula, the boda boda operator, and using stones and machetes clobbered the said Wafula to death. It later became apparent to Hellen that the group of people were a vigilante group known as 'Moja Kwisha and their mission was to uphold and promote moral and social virtues in Kitani. Wafula was said to be a notorious wife snatcher and was alleged to be sleeping around with other people's wives.

The police who investigated the murder of Wafula arrested both Hellen and Anthony. It was alleged that Anthony had masterminded the death of Wafula because all along he was suspicious that Wafula had an affair with his wife. They were arrested on 24th July 2010 and charged with to murder. There being no evidence against Hellen, the police elected to drop the charges and she was released from custody on 14th August 2012. Anthony pleaded not guilty to the charge and at the close of the prosecution case the court acquitted him on the basis that there were no *prima facie* case against him.

Both Hellen and Anthony have now approached you for advice on the remedies available to them in tort and the procedure required to obtain those remedies.

Advise them.

(25 marks)

2. James Weru is a casual labourer working as a construction worker with Shankal Halibal Contractors and Engineers Ltd, which company has been contracted to erect a twenty story building known as 'Buda Plaza' off Chipipi Road in Parklands, Nairobi.

On 3rd August 2011, while the said James was walking along Chipipi Road aforesaid a loose electrical cable fell on him from a nearby transformer, as a consequence of which he sustained serious burns on his head, hands and back. He was immediately rushed to the nearby Okleys Medical Centre where he was treated and discharged.

James has come to the firm of Afande and Ambani Advocates where you have just been recruited as a legal intern in the Civil Litigation Department. Mr. Afande the managing partner has instructed you to prepare an opinion on the cause of action available to James and the chances of success of the intended suit. Proceed.

(25 marks)

3. It is common ground that under the new constitutional dispensation, the legislative arm of the Government has been mandated to vet and approve nominees to state offices. In April 2012, nominees for the office of the Public Defender had been forwarded to the

National Assembly for vetting and subsequent approval. Senior Counsel Zokisho Majuzori had been nominated as the chief public defender. On 26th April, 2012 debate on the suitability of Zokisho was on the agenda of the House. It became apparent that he was unsuitable to hold office of Public Defender owing to the fact that while in private practice, he had been suspended twice by the Advocates Disciplinary Committee for embezzling clients' money. . It was also claimed that while serving as the chairperson of Alba's Witness protection programme he had mismanaged funds and was involved in illegal procurement of goods. These statements were attributed to Hon. Ghana Alfonzo, a nominated member of the said National Assembly. Hon. Alfonzo had prepared a lengthy written statement to that effect and had made his submissions on the floor of the house premised on the that statement.

Mr. Andrew Lloyd the chief parliamentary reporter for Flip Media Limited the publishers of Flip magazine that has wide circulation amongst members of the legal profession transcribed Hon. Alphonzo's statement verbatim and the report made the headlines on 2nd May 2012.

Zokisho is alarmed by the allegations and feels that the publication amounts to character assassination designed to frustrate his ascending to high office. He has approached you for legal advice as he strongly feels he has a case against the MP and the reporter.

Prepare a legal opinion for him.

(25 marks)

4. Ashford Nelly is a Jamaican undergraduate student pursuing a degree in media and journalism at the University of Kingston, Jamaica. Ashford's sister Nicole, who is studying business at the prestigious London School of Economics, recently got engaged to Allan Mayaya, a Kenyan pursuing the same course. There was consensus that a marriage ceremony would be celebrated at Allan's Nairobi residence. The said marriage took place on 14th May 2012 and the evening party was scheduled to take place at Sammers Lounge and Bar at Karen Plains, Nairobi. Ashford likes smoking marijuana, and as the party was going on, he headed to the washrooms and began smoking, oblivious of the fact that smoking was prohibited within the establishment. Soon word went round that someone was smoking in the establishment and the security detail were called in. Ashford soon realized that he was being carried high up by three heavily built men and once they were outside the club he was thrown in an open area near the parking lot where he was beaten thoroughly. The head of security brandished a gun and threatened to shoot him. He sustained severe personal injuries as a result of the beatings.

Ashford is convinced that his rights have been violated and seeks legal advice. Advise him on the best remedy available in tort.

(25 marks)

5. Critically discuss the Rule in *Rylands v. Fletcher* (1868), L.R. 3H.L. 330 [1861-73] All E.R giving specific examples of its application in the law of tort.

(25 marks)

6. Write brief explanatory notes on the following:

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| (i) | Conversion | (5 marks) |
| (ii) | Economic torts | (5 marks) |
| (iii) | Causation | (5 marks) |
| (iv) | Foreseeability | (5 marks) |
| (v) | Tort and Restitution | (5 marks) |
