

THE KENYA SCHOOL OF LAW



PRE-BAR EXAMINATION

THE LAW OF TORTS – PRB 003

9<sup>TH</sup> FEBRUARY, 2021

DURATION: 3 HOURS

9.00 AM – 12.00 NOON

**Instructions to Candidates**

- (a) Answer Question **ONE** and any other **THREE** Questions
- (b) Each Question carries **25** marks.
- (c) Marks shall be lost for illegible handwriting

PLEASE TURN OVER

Question One:

- (a) Mulosi is a driver of a motor vehicle KBA 0042 belonging to a state corporation (Mazingira Corporation). He was authorized on 23/12/2020 to drive the CEO to Kakamega. He arrived at Kakamega safely. Mulosi's home is in Kericho County. His authorized route is Nairobi-Kapsabet-Kakamega. He drove the said motor vehicle to Kericho and parked it at the police station. He was to drive back to Nairobi on 31<sup>st</sup> December, 2020 using the said route. On his way to Kakamega at Awasi, he hit a pedestrian who was seriously injured.

The pedestrian has sued Mazingira Corporation for damages.

Advise him and the corporation.

**(15Marks)**

- (b) Outline four elements which the plaintiff must prove in order to succeed in an action for malicious prosecution. **(10 marks)**

### **Question Two**

Explain the following terms

- a) Damnum Sine Injuria **(5 Marks)**
- b) Volenti non-fit injuria **(5 Marks)**
- c) Floric **(5 Marks)**
- d) Resipsa loquitur **(5 Marks)**
- e) Tortfeasor **(5 Marks)**

### **Question Three:**

- a) Discuss any four circumstances when slander is actionable without proof of damage. **(15 Marks)**
- b) Distinguish between Private and Public nuisance **(10 Marks)**

### **Question Four:**

- a) Distinguish between the following terms and tort
  - (i) Crime **(10 marks)**
  - (ii) Contract **(10 marks)**
- b) With aid of Case law, distinguish between **vicarious liability** and **strict liability**. **(5 marks)**

### **Question Five:**

- (a) Explain the exceptions to the Rule in Ryland V. Fletcher (1866). **(15 Marks)**
- (b) Outline the three types of trespass **(10 marks)**

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**END**