

THE KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2ND YEAR TERM I EXAMINATION

KENYA SCHOOL OF LAW
TOWN CAMPUS LIBRARY

LAW OF TORT – PTP 201

15TH DECEMBER 2021

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 Marks
- (c) All other questions carry 15 Marks each

PLEASE TURN OVER

Question One

Lorna was going home 25/11/2021 after attending a class in a City College Nairobi. On her way she met 4 (four) police officers who stopped her and a female Police officer conducted searched on her. Nothing illegal was recovered from her. She was told to accompany them as they patrolled the City streets upto 10 pm. She was released unconditionally to go home. She is aggrieved and she has come to you for advice.

- (a) Advise on the nature of tort. (10 Marks)
- (b) Outline five general defences which a defendant might rely in tort. (10Marks)
- (c) Distinguish between *damnum sine injuria* and *injuria sine damnum*. (3 Marks)

Question Two

(a) Odipo is a farmer. He has 10000 acres of semi-arid land. It rains seasonally and a lot of water is wasted through runoff. He built a dam to tap water and use it for irrigation of his vast land. On 20/10/2020 it rained heavily and the dam was filled to capacity. It continued raining for four consecutive days. Odipo confessed that he had never seen such rain in his lifetime. The banks of his dam broke and water escaped downstream killing 50 people, destroying homes and property. Okeo suffered most but survived the ordeal. He lost his property worth Ksh. 10,000,000 and five family members.

Advise Okeo on the action to take against the owner of the dam. (10 Marks)

(b) Assuming you are a defence Counsel for the owner of the dam, explain the defences available to him. (5 Marks)

Question Three

(a) Tim Okello, has land next to Warung'ang'a in Tala, Machakos County. He has planted trees and branches are overhanging Warung'ang'a's land. He has refused to cut them despite the request to do so by Warung'ang'a. He has also occasionally dumped garbage in Warung'ang'a's land. Warung'ang'a does not stay on the land but the land has a live fence.

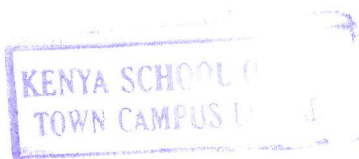
Advise Warung'ang'a on action to be taken against Tim Okello. (10 Marks)

(b) Outline the remedies available to Tim Okello in case Warung'ang'a takes him to court. (5 Marks)

Question Four

(a) With the aid of examples, explain the functions of the law of tort in a legal system. (8 Marks)

(b) Mukaru Kiambati is a tenant in the premises owned by Ciamwari Murunga. Kioni came to visit Mukaru and in the course of descending the stairs she was injured. The staircase was wet. There was water on the floor of the staircase. There was also no warning. He incurred a lot of expenses in hospital. He has engaged you as a paralegal to advise him.



Required:

Provide the necessary advise.

(7 Marks)

Question Five

- (a) Using appropriate case law, explain the main elements of negligence. **(10 Marks)**
(b) Explain the main defences that can be raised in a claim for trespass of goods. **(5 Marks)**

Question Six

In order to succeed in the tort of defamation, courts employ several tests in order to enter a judgment against the defendant.

- (a) Outline the four tests. **(5 Marks)**
(b) Explain defences to the tort of defamation. **(10 Marks)**

END

