

CHUKA



UNIVERSITY

FACULTY OF LAW

UNIVERSITY EXAMINATION 2022/2023

SECOND YEAR EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

BLAW 126: LAW OF TORTS

DATE: AUGUST

INSTRUCTIONS:

ANSWER THREE QUESTIONS

QUESTION 1 IS MANDATORY

Question One

- a. Mr. Wera was appointed Minister for Water Services in August 2022 by the President. On or about January 2023 a post was published on grapevine, an online blog with the heading, 'Wera tests HIV positive alongside ten of his High School lovers.' The post included a photo of Mr. Wera prominently displayed on the left. A search of Wera's name on google provides links to the offensive article on grapevine blog. Wera has written several letters to Google's offices in Kenya seeking to have the search results removed but his plight has not been addressed. He approaches you for advice on whether the publication amounts to defamation and whether he has a valid claim against grapevine blog; further, he wonders whether he can sustain a claim in defamation against Google.

Advise him.

(30 Marks)

Question Two

- a. Explain with relevant support how liability is determined in an action for the intentional tort of false imprisonment. (10 Marks)
- b. The but-for-test for causation in any negligence action is valuable towards determination of liability. Explain the legal principle, including the exceptions and modification. (10 Marks)

Question Three

Mwangi has recently put-up a steel making plant in Utopia. The plant operates between 8am and 5pm. Adjacent to the plant is a hospital and school. Members of the public are concerned that the noise coming from the plant is not good for patients at the hospital and pupils at Utopia Primary School. The area chief has tried engaging Mwangi on the possibility of relocating his plant but he has remained adamant.

- a) Advise the area chief on a cause of action he can pursue against Mwangi. (14 Marks)
- b) Identify and discuss the three defences that Mwangi may raise (6 Marks)

Question Four

- a. Is it justifiable to impose liability on an employer for the tortious act of his employee? How have the courts limited the scope of how this liability can be imposed? (10 marks)
- b. Discuss the principle laid down in *Ashby v White* and *Bradford corporation v Pickles*. (10 marks)

Question Five

Write short explanatory notes on the following:

- a) Remoteness of damage; (5 marks)
- b) Contributory negligence; (5 marks)
- c) *Res ipsa loquitor*; and (5 marks)
- d) Standard of care. (5 marks)