



The University of the South Pacific

Serving the Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, and Vanuatu.

SCHOOL OF LAW

LA 203: LAW OF TORTS I

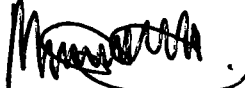
FINAL EXAMINATION – SEMESTER 1, 2006

time allowed – 3 hours + 10 minutes reading

50% final grade

INSTRUCTIONS

1. This exam has four (4) questions, on six (6) pages including this one & caselist.
2. Q-3 involves a choice, between A and B.
3. The questions' values are:
 1. – 10 points
 2. – 10 points
 3. – 20 points (10 for each sub-question)
 4. – 10 points
4. This exam is *closed-book*. Nothing is allowed except pens and timepiece.

Approved.

5/5/06

1. Ben Hears A Noise

value: 10 marks

Ben is a 40-year-old man who lives with his wife and small children, as well as two of his cousins, in a settlement on the edge of the capital town of your jurisdiction. Recently there have been several break-ins in the neighbourhood, although in each case the burglars came when no-one was home.

On this night Ben is coming home, very late, from a party at a friend's place when he hears rustling noises from the bushes at the edge of his property. It is quite dark. He hisses, then says, not very loudly, "Who's that?" There is no answer. Ben picks up a large rock.

Something scrapes the wall at the side of the house he cannot see, then there are sounds like someone running toward him. Ben throws the rock at the sounds.

The rock strikes Abel, a 15-year-old boy who lives on the same road. He had been sneaking home because it was so late and he was afraid his father would see him. At no time did he mean to hurt Ben. Abel suffers a fractured skull.

Should Ben be liable to Abel for battery?

2. Eleni

value: 10 marks

Eleni was a fifteen-year-old student in residence at a school for girls in Fiji. She arrived at the school a year ago, and since then acquired a reputation for great animation, being full of fun and energy, in between other times, when for a month or so she would be very quiet and subdued, and uninterested in anything very much. A few weeks ago she entered one of these phases, only this time when she did talk, all she would talk about was hate. The elections, the schoolteachers, her family, even herself, any subject with her turned to how much hatred there was in the world and in herself.

She had been excited about a boy, her friends said, but apparently he had abruptly left the country without telling her. She skipped classes, and was disciplined. She failed to turn in schoolwork. Her teachers had conferred with the principal about whether they should suspend or expel her, for she was becoming a bad example to the other students.

Last week she was found hanging from a tree behind some school buildings by one of her friends. The friend cut her down, and Eleni's life was saved; but now she is paralysed in both legs, due to the break in her neck caused by her attempt at suicide.

Eleni has sued the school in negligence, for failing to take steps to prevent her suicide attempt.

Should the school succeed in raising, as a defence –

A. *Volenti non fit injuria*; or

B. *Ex turpi non causa?*

3. Answer either A or B (B is on the next page)

value: 20 marks

A. The Race

Once a year a consortium of local companies puts on a road-race in Vanuatu called the Round-Island Relay (RIR). It is just that: a race run around the island of Efate, along the round-island highway (the only road around the island), by teams who run the distance in relay. Each of the ten members of a team runs one leg of the race, then passes on a baton to the next runner, until the tenth runner finishes in Port Vila. The legs are defined by RIR. Each is about 10 kilometres long.

The Race begins just before dawn, teams starting at one-minute intervals, and the teams are all in by noon. The road surface is sealed, although many stretches are uneven. Each team is permitted one escort vehicle, usually a truck carrying other team members and water and sandwiches. For almost all of the way there is only bush on both sides; the road runs by a village in most 'legs'.

The event is fairly important to Vanuatu tourism. Originally run for a few years in the 1980s, it was revived in 2001, at first with only a dozen teams, all local, but lately with some 30 teams including many foreign ones.

The Race also advertises local businesses who sponsor it. Some of the businesses participate in the consortium organising the Race; this is not incorporated and does not make a profit.

Teams are still charged a fee to participate, of about Vt50,000 (700 FJD), which money goes to the rule-compliance monitors who accompany each team escort, Race promotion, the doctors who stand by at the finish line, and a general manager hired for a month with overall responsibility for the event. Each runner signs a form consenting to run the risk him- or herself. Runners are anything from 14 to 60 years old, male and female, generally amateur, although lately, with the Race's growing regional profile, professional and quasi-professional runners participate too. There are prizes, Vt100,000 for first overall and about Vt20,000 for first in a set of classes (women, under-18, over-40).

Suing the manager for their injuries, would the following runners have a good case in negligence?

a) Timoci, an amateur, came from Fiji. He had been hit by a car which swerved too far toward him while avoiding a large pothole, during the first leg when it was still rather dark. Knocked to the ground, he suffered a head injury, for which he is suing. The car was driven by a local person returning home from a party.

b) Alf, an Australian, often ran for the prize money, and was good enough to gain entry into professional races. At the relay station the timer's stop-watch was not working, so the timer used the watch of a friend of his. Alf's team lost the overall competition by less than a minute, and now he believes that really they were first; it was an error in the timing of his leg that led to the result. He claims further that because he didn't win the Race he failed to qualify for a race in Queensland where the prize was 10,000 AUD, and this is the amount he wishes to sue for.

OR

B. The Boat

Semi, a villager, got a lift on the boat of a friend, Mark, to get from one island to his home island, in your jurisdiction. Mark never charged his relatives, but friends like Semi would pay something toward the cost of fuel. Part-way across the boat sank in some choppy water. Semi was rescued with the other five people on the boat by a passing fisherman, but he lost a bundle of mats he was carrying. They were a present for the wedding he was to attend that afternoon. He had had to let go of it in order to tread water.

Now Semi wants Mark to pay him the value of the mats (which is considerable for both of them). He claims that Mark should have provided flotation devices to his passengers, which he didn't. He has demonstrated that empty plastic drinks-containers can be tied together with ordinary rope to make a device sufficiently buoyant to keep anyone afloat, including Semi with his bundle. With such a thing to hold onto, Semi would not have had to let his bundle go. Given local supplies of plastics, Mark could have made these at almost no expense.

a) Should Semi succeed if he sues Mark in negligence for the value of the lost mats?

b) A friend of Semi from the city, Finau, was on the boat too. He had come with his young son for the wedding. The son came very close to drowning, and indeed had stopped breathing when rescued. The son has recovered fully but Finau, due to this experience, including the thought that he failed to keep his son safe, has fallen into a state of mind that a USP psychology professor has diagnosed as 'depression'. He is otherwise uninjured. He too wants compensation, for this mental illness.

IF Mark is held to owe a duty of care to his passengers for their physical safety, should this duty also cover Finau's claim?

4. Essay question

value: 10 marks

Assume you are the highest court of your jurisdiction, free to decide as you wish. For claims of negligence duties not covered by local precedent, should the basic approach you adopt be to follow the English *Caparo v Dickman* [1990]1 All ER 568 (HL)?

LA 203 Torts I 2006: CASELIST

Era v Paru	[1994] PNGLR 593 (NC)
Wilkinson v Downton	[1897]2 QB 57 (QB)
Fowler v Lanning	[1951]1 QB 426 (QB)
Letang v Cooper	[1965]1 QB 232 (CA)
Wainwright v Home Office	[2003]3 WLR 1137 (HL)
Kaufusi v Lasa	[1990] Tonga LR 39 (SC)
'Uhila v Tatola	[1992] Tonga LR 9 (SC)
Murray v Min Defence	[1988]2 All ER 521 (HL)
R v Gov Brockhill Prison (Evans)	[2000]4 All ER 15 (HL)
Donoghue v Stevenson	[1932] AC 562 (HL)
Bourhill v Young	[1943] AC 92 (HL)
Home Office v Dorset Yacht Co.	[1970] AC 1004 (HL)
Anns v Merton LBC	[1978] AC 728 (HL)
Hill v CC W Yorkshire	[1989] AC 53 (HL)
AG v Tio & Tio v Beengo et al	[2003] KICA 10 & [2003] KIHC 89 (Kiribati HC & CA)
Hedley Byrne v Heller	[1964] AC 465 (HL)
Caparo Industries v Dickman	[1990]1 All ER 568; 2 AC 605 (HL)
Henderson v Merrett Syndicates	[1994]3 All ER 506 (HL)
McLoughlin v O'Brian	[1983]1 AC 410 (HL)
Alcock v CC S Yorkshire Police	[1992]1 AC 310 (HL)
Ika v Tuli	[2000] TOSC 35 (Tonga SC)
Tame v NSW	(2002)191 ALR 447 (Aus HC)
Stovin v Wise	[1996] AC 923 (HL)
Eastern Express v Tuitoga et al	[2001] FJHC 125 (Fiji HC)
Fiji NPF v Prasad	[2001] FJHC 115 (Fiji HC)
SP Manufacturing v NZ Security	[1992]2 NZLR 282 (CA)
Bolton v Stone	[1951] AC 850 (HL)
Vowles v Evans & WRU	[2003] EWCA Civ 318 (Eng CA)
Niligir v State	[1997] PNGNC 41 (PNG NC)
Banyan v Ali	(1971)17 Fiji LR 30 (CA)
Tomlinson v Congleton BC	[2003]3 WLR 705 (HL)
Shakoor v Situ (Eternal Health)	[2000]4 All ER 181 (QB)
Qualao v Vanuatu & Peach	[1999] VUSC 45 (Vanuatu SC)
Edward Wong v J S & M	[1984]1 AC 296 (PC)
Overseas Tankship (UK) v Morts Dock (<i>the Wagon Mound No.1</i>)	[1961]1 All ER 404; AC 388 (PC)
Overseas Tankship (UK) v Miller Steamship (<i>the Wagon Mound No.2</i>)	[1967]1 AC 617 (PC)

McGhee v Nat. Coal Board	[1972]3 All ER 1008 (HL)
Ward v Tesco Stores	[1976]1 All ER 219 (CA)
Kirkham v CC Greater Manchester	[1990]3 All ER 246 (CA)
Kapiel v Jenkinson	[2002] VUSC 20 (Vanuatu SC)
Katopau v Samoa Breweries	[2000] WSSC 36 (Samoa SC)
Morris v Murray	[1990]3 All ER 801 (CA)
Blake v Galloway	[2004]3 All ER 315 (CA)
Rigby v CC Northamptonshire	[1985]2 All ER 984 (QB)