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**FACULTY OF ARTS AND LAW  
SCHOOL OF LAW**

**COURSE NAME: THE LAW OF TORTS I**

**COURSE NO.: LA 203**

**TIME ALLOWED: 3 hours for Face-to-Face students  
3 1/2 hours for Online students**

**READING TIME: 15 minutes**

**NO. OF PAGES: Five (5) including this one & Caselist**

**QUESTIONS ON PAPER: Four (4) for Face-to-face students  
Five (5) for Online students**

**QUESTIONS TO ANSWER: 1-4 for Face-to-face  
1-5 for Online**

**MARKS PER QUESTION: Q1: 20  
Q2: 5  
Q3: 10  
Q4: 15  
Q5: 10 (Online students)**

**TOTAL MARKS: 50 Face-to-face; 60 Online**

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**THE EXAM IS CLOSED-BOOK: No materials other than  
pens & timepiece**

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Please do not turn over any page until you are told to do so.

**APPROVED** *Josephine (Hos) 21/05/07.*

**1. Laki v Will**

(value: 20 marks)

Will is a law lecturer at the University. In his *Introduction to Law* class one day he tells the following story. A friend of his, Will says, lost an important contract with the city in a sealed-bid tender, because his bid was just fifty dollars higher than the lowest. In such a tender, people wishing to contract with the city on a specific project submit their contractual offers in sealed envelopes, all at the same time. The city undertakes to hire whoever submits the lowest price.

Will tells the class this is an example of legal ignorance — for, he says, in such tenders tiny differences in price do not count. The bids would be considered substantively equivalent, and a second round of bidding would be held – if demanded by a losing bidder.

One of the students in the class repeats what Will said to her uncle, Laki, in her village. Laki recently had just the same experience with his capital town's council as the friend in Will's story. Filled with hope, and at considerable expense, Laki prepares another bid and travels to the city to submit it — but the Council refuses outright.

The regulation governing these tenders expressly requires the lowest bid to be chosen, however slight the price difference. Will, an ex-pat, had mistakenly assumed that the rules were the same as in his own country.

Is Will liable to Laki for the expenses of his effort to make a second bid?

**2.**

(value: 5 marks)

Should the defence of *volenti non fit injuria* apply to *any* suit in negligence by a soldier against the army he serves in, for accidents occurring while the soldier is serving overseas?

### 3. Joe The Non-Accountant

(value: 10 marks)

Joe studied at Mary's Commerical College, a private post-secondary school in your jurisdiction's main town. He received an A in a basic accounting course. But the lecturer had missed many classes, there were few books available and the ones that were available were out-of-date on important points, and the lecturer's teaching technique relied heavily on reading. Joe feels he learned very little in the course, but because of his grade, the College refused him permission to repeat the course.

At the end of his first year, Joe's family moved abroad, Joe with them (he could not support himself alone anyway). In attempting entrance to the nearby university, he was unable to pass the accountancy portion of the transfer exam. He had to start over, in first year, rather than transfer into second year. And the foreign university charges a high tuition.

Joe has sued his former lecturer and Mary's College in tort for negligent teaching. The suit is before you, *as the trial judge*.

On the issue of standard of care, Joe urges you to examine the facts and determine whether the defendants have met an objective reasonable-person standard, on a global scale. He cites *Edward Wong Finance v Johnson Stokes & Master* [1984] AC 296 (PC).

The defendants urge you to examine the facts *and* expert evidence as to the prevailing standards of university teaching in the country, citing *Bolam v Friern Hospital* [1957]1 WLR 582. They argue that the courts should not lightly interfere with academic practice, given its specialised nature and public funding, citing *Hill v Chief Constable of West Yorkshire* [1988]2 All ER 238.

On the evidence before you, you attribute Joe's failure of the transfer exam to the low quality of the teaching he received from the defendants. You also conclude that the tuition was low, compared to foreign schools, and that other colleges like Mary's, in the jurisdiction, are not significantly better.

*Given* those findings of fact, should you hold that the defendants were in breach of a duty to Joe?

**4. Answer any three (3) of these questions.**

(value: 5 marks each – total 15)

Suppose the following *changes in the facts* of the cases mentioned.

Based on the reasons in the cases' decisions, would the decision have been different?

- A. In *Home Office v Dorset Yacht Company*, one of the three guards was awake, but the boys overpowered him to escape.
- B. In *Kent v London Ambulance Service*, there was no car available at the house of the plaintiff.
- C. In *The Wagon Mound (No.1)* there had been the same kind of fire in Sydney Harbour the week before.
- D. In *Hedley-Byrne v Heller*, the defendant had told the plaintiff, "You may disregard the disclaimer in this letter".
- E. In *McLoughlin v O'Brian*, Mrs McLoughlin had seen her family for the first time after the accident on the next day.

**FOR ONLINE STUDENTS ONLY**

**5.**

(value: 10 marks)

Suppose a riot occurred in the capital town of your jurisdiction, in which a mob of about 200 people damaged and burned commercial and residential properties.

Pani owns a drug store on the main street which sells first-aid materials. The police chief, earlier in the day of the riot, asked him personally to keep the store open, assuring him that the police would keep it safe. In fact it was vandalised and looted, the police constables overcome by the mob.

It turns out that the police did not have any riot gear (helmets with visors, plastic shields, tear gas), nor had they any serious training in handling a violent mob. They say this is why they were unable to prevent the riot or stop it before it got to Pani's store.

Do you think the police should be liable in negligence to Pani?

## CASE LIST

Era v Paru	[1994] PNGLR 593 (NC)
Wilkinson v Downton	[1897]2 QB 57 (QB)
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	[2003] KICA 10; [2003] KIHIC 89 (Kirib. 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)
Bolton v Stone	[1951] AC 850 (HL)
Vowles v Evans & WRU	[2003] EWCA Civ 318 (Eng CA)
Niligur 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 (the Wagon Mound No.1)	[1961]1 All ER 404; AC 388 (PC)
The Wagon Mound No.2	[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)