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**SCHOOL OF LAW**

COURSE NAME:	<b>TORTS II</b>
COURSE NO:	<b>LA 204</b>
TIME ALLOWED:	<b>Three (3) hours</b>
READING TIME:	<b>Ten (10) minutes</b>
NO. OF PAGES:	<b>FIVE (5) including this one</b>
NO. OF QUESTIONS:	<b>Five (5) for Face-to-face students Six (6) for Online students</b>
NO. OF QUESTIONS TO ANSWER:	<b>Five (5) for Face-to-face students (Qs 1-5) Six (6) for Online students (Qs 1-6)</b>
MARK PER QUESTION:	<b>Q1: 20 marks Q2: 5 marks Q3: 10 marks Q4: 5 marks Q5: 10 marks  Q6: 10 marks</b>
TOTAL MARKS:	<b>Fifty (50) for Face-to-face Sixty (60) for Online</b>

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**MATERIALS PERMITTED IN EXAMINATION ROOM:**

Pens, timepiece

**QUESTION 2. Answer both A and B.** (value: 10 marks each; total 20 marks)

At great expense your family has prepared a large party to celebrate your graduation. Everyone is gathered in the yard, when several police officers run into the property. They shout that they know people who sell drugs are at the party, and that this will be a drugs party, and that everyone must go home.

After everyone's gone, and your father complains to the police officer, the officer says, "Shut up. Of course there are no blerry drugs here, we know that. But we want the local gang to think we made a mistake. It's part of our plan."

Your father protests that this is hardly fair, and against the law too. "I said shut up," the officer replies. "All of you crawl away to bed," he calls out, waving to your father's uncle, and you, and other family watching. Then the police leave.

**A.**

For what tort or torts would the police officer be liable to your father?

**and**

**B.**

If found liable, under what heads of damages could the officer be ordered to pay?

**QUESTION 2.**

(value: 5 marks)

What is the difference between "malice" in qualified privilege and "malice" in fair comment, in defences to defamation?

**QUESTION 3. Answer either A or B.**

*(value: 10 marks)*

**A.**

'Tequila' is a traditional Mexican liquor with a distinctive flavour and distinctive ingredients. Suppose a distiller sold a liquor labelled 'tequila' in your jurisdiction which actually did not have those ingredients.

What would a Mexican tequila-maker have to prove in an action in 'passing-off' against that distiller?

**or:**

**B.**

A former USP student, Ellen, offers to tutor students in various university courses, for a fee. She follows the syllabus and uses the textbooks of USP courses, but does not use any USP course materials. She advertises in local newspapers, and on radio, with the slogan, "USP Courses – Uni education without the hassle!"

Could USP succeed in a passing-off action against Ellen?

**QUESTION 4.**

*(value: 5 marks)*

Imagine that yesterday you were involved in a traffic accident. The car you were in rolled on the highway, leaving you with one serious injury. You lost your voice, as your throat struck an obstruction within the car. (You made it into the exam thanks to intravenous painkiller.)

Now imagine that a Mr D caused this accident and injury, entirely by his negligence.

If you sued Mr D, what would your claim for damages look like? Describe the heads of damage, and justify their inclusion – you need not specify amounts of money.

**QUESTION 5.**

(value: 10 marks)

Under traditional common law a newspaper's qualified privilege to publish defamatory material was the same as that of anyone, based on the reciprocal duty-interest test. The decision in *Reynolds v Times Newspapers* [1999] 4 All ER 609 (HL) has changed this in England.

Do you think *Reynolds* should be adopted in your jurisdiction?

**6. for ONLINE STUDENTS ONLY**

(value: 10 marks)

**Answer both A and B.**

**A.**

Why is the D's intended meaning irrelevant to whether his or her communication is 'defamatory'?

**B.**

Why should publication to a single person be considered as actionable as publication to a crowd?

## LA 204 Law of Torts II CASELIST

<i>Ratu Mosese Tuisawau v Fiji Times</i>	(1975) 21 Fiji LR 149 (CA)
<i>Ettingshausen v Australian Consol. Press</i>	(1991) 23 NSWLR 443 (SC)
<i>Tetabea v Boutokaan te Koaua</i>	[2002] KIHC 1
<i>Lalabalavu v NLTB</i>	[1999] FJHC 5
<i>Tauilili(Uili) v Malifa &amp; Lima</i>	[1980-93] WSamoalr 440 (SC)
<i>Malasa v Manakako</i>	[1997] SBHC 37
<i>Reti et al v Taulaga II</i>	[2002] WSSC 17
<i>Cheng &amp; Yuk Wah v Tse Wai</i>	[2000] HKCFA 86
<i>Horrocks v Lowe</i>	[1975] AC 135 (HL)
<i>Doucet v Marshall</i>	[1979] Kiribati LR 115 (HC)
<i>Reynolds v Times Newspapers</i>	[1999] 4 All ER 609 (HL)
<i>Bokini &amp; Kabuabola v Assoc Media</i>	[1996] FJHC 88
<i>Alesana v Samoa Observer</i>	[1998] WSSC 1
<i>Edwards v Simiki</i>	[2002] TOSC 56
<i>Tetabea v Boutokaan te Koaua</i>	[2002] KIHC 1
<i>Taittinger v Albev</i>	[1994] 4 All ER (CA)
<i>Weddel &amp; Co v Barkath</i>	[2000] FJHC 53
<i>Fiji Video Library v A-G &amp; SP Recording</i>	[2000] FJHC 98
<i>Vanuatu Mission SDA v SDA Vanuatu</i>	[1996] VUSC 19
<i>Vohor v Adang</i>	[1996] VUSC 14
<i>Sooletaua v Tualogomai</i>	SC Samoa 1997
<i>Miller et al v Jackson et al</i>	[1977] QB 966 (CA)
<i>Hunter et al v Canary Wharf Ltd</i>	[1997] 2 All ER 426 (HL)
<i>Kruse &amp; Kruse v Aiafi</i>	[2001] WSSC 11
<i>Racz v Home Office</i>	[1994] 2 AC 45 (HL)
<i>Three Rivers DC v Bank of England</i>	[2000] 3 All ER 1 (HL)
<i>Lonrho Ltd v Shell Petroleum Ltd (No2)</i>	[1981] 2 All ER 456 (HL)
<i>Longa v Solomon Taiyo Ltd</i>	[1980] SILR 239 (HC)
<i>Kennaway v Thompson</i>	[1981] QB 88 (CA)
<i>West &amp; Son v Shephard</i>	[1964] AC 326 (HL)
<i>Katopau v Samoa Breweries</i>	[2000] WSSC 36
<i>Lawanisavi &amp; Rasivisi v Raj &amp; Raj</i>	[1999] FJCA 48
<i>Hunt v Severs</i>	[1994] 2 AC 350 (HL)
<i>Rookes v Barnard</i>	[1964] 1 All ER 367 (HL)
<i>Cassell &amp; Co v Broome et al</i>	[1972] AC 1027 (HL)
<i>Dambe v Peri &amp; State</i>	[1993] PNGLR 4 (NC)
<i>Kuddus v CC Leicestershire</i>	[2001] 3 All ER 193 (HL)