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**SCHOOL OF LAW**

<b>COURSE NAME:</b>	<b>Torts 11</b>
<b>COURSE NO:</b>	<b>LA 204</b>
<b>TIME ALLOWED:</b>	<b>Three (3) hours</b>
<b>READING TIME:</b>	<b>Ten (10) minutes</b>
<b>NUMBER OF PAGES:</b>	<b>Five (5) excluding this page</b>
<b>NUMBER OF QUESTIONS ON PAPER:</b>	<b>Four (4)</b>
<b>NUMBER OF QUESTIONS TO BE ANSWERED:</b>	<b>Four (4)</b>
<b>MARK ALLOCATED FOR EACH QUESTION:</b>	<b>Question 1: five (5) marks Question 2: ten (10) marks Question 3: fifteen (15) marks Question 4: twenty (20) marks</b>
<b>TOTAL MARKS:</b>	<b>Fifty percent (50%) of result.</b>

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**MATERIALS PERMITTED IN EXAMINATION ROOM:**

None

**SPECIAL INSTRUCTIONS**

1. You must complete ALL questions on the paper.
  2. You must complete four (4) topics from Question Four (4).
  3. You must NOT complete more than four (4) topics from Question Four (4).
  4. The examination is worth fifty (50) marks.
  5. You need to obtain at least twenty (20) marks in the examination to pass the course.
  6. Read the questions and the instructions for each question CAREFULLY.
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**LA 204 TORTS II**  
**SEMESTER TWO 2005**  
**FINAL EXAMINATION**

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YOU MUST ANSWER ALL QUESTIONS ON THIS PAPER.

YOU MUST ANSWER ONLY FOUR (4) TOPICS FROM QUESTION FOUR.

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**Question One**

**[5 marks]**

Jumping Jo Jones, a local hooligan, was recently arrested and sent to gaol for manufacturing and trafficking jungle joes, a potent and illegal substance on Fantasy Island. Sergeant Sandshoo, a member of the Fantasy Island Police Force was the arresting officer. Unbeknown to Sandshoo, Jumping Jo is the brother of the Police Commissioner, Harry Hothead.

When Commissioner Hothead heard of Jumping Jo's arrest, he ordered a raid on Sandshoo's home on the outskirts of Fantasyland. He did not obtain a warrant and told the officers who accompanied him on the raid that Sandshoo was hiding evidence in his home relating to his Jumping Jo's arrest. Hothead knew this was completely untrue but wanted to teach Sandshoo a lesson. The officers totally trashed the Sergeant's home and beat his pet pig with a truncheon in the presence of Sandshoo, his wife and two young children. Commissioner Hothead then removed the Sergeant's badge, handcuffs and truncheon from him before leaving his house and told Sandshoo he was suspended from duty until further notice.

Ignoring any criminal or statutory charges that may be relevant, outline any cause of action in tort that might be available to Sergeant Sandshoo. Describe the elements of the tort, citing any leading authority that may be applicable to the facts. What remedies do you think would be most appropriate in this case and why?

## Question Two

[10 marks]

Lenny Lovelace recently graduated from Fantasy Island Law School and obtained a job during the summer holidays working as a law clerk for a local solicitor, Perry Mason. He is employed on a short-term contract three days a week for three months. However, during this time he is paid weekly and is entitled to pro rata sick leave during the contract and pro rata holiday leave on completion of the contract. He takes all his instructions from Perry but has undergone no job training and receives minimal supervision as Perry spends most of his time at the Fantasia Golf Club.

Part of Lenny's job is to deliver documents to the local court and other law firms. Perry has told him explicitly, on more than one occasion, that Lenny is only to drive the office car, Perry's Porsche, during office hours and on office related business. Late one afternoon, on the way back from filing documents at the Fantasyland Magistrates' Court, Lenny decides to take a short detour and takes the Porsche for a spin along Beach Road. On the way back, while swerving to avoid a large truck, he hits a pig that suddenly appears in the middle of the road and crashes the Porsche into a roadside market stall.

Lenny is devastated and too afraid to go back to the office. Desperate, he drives the damaged Porsche to the Fantastic Hotel and starts drinking heavily. When the Billy the barman finally refuses to serve him any more beer, Lenny throws a glass in his face and leaves. As it is almost midnight, Lenny decides to return the Porsche to the office car park hoping Perry won't be there. As he is attempting to reverse out of the hotel car park, Lenny runs down a local resident, Mad Max, who is taken to hospital with severe head injuries. The hotel manager calls the police and Lenny is arrested.

Several weeks later, Lenny receives writs claiming damages from the owner of the dead pig; the owner of the roadside stall; Billy the barman and Mad Max. Perry is understandably furious and also wants Lenny to pay for the damage to his Porsche.

Lenny comes to you for legal advice and tells you Perry couldn't afford to insure the Porsche. Advise Lenny which, if any, of the above plaintiffs would be able to seek damages directly from him. Also advise Lenny if Perry could be vicariously liable for any of the damage and why. Will Lenny have to pay Perry for the damage to the Porsche?

### Question Three

[15 marks]

Jingle Moneybags, the Minister for Finance, under the democratically elected government of Fantasy Island, makes a defamatory comment concerning the administrator of Fantasyland Public Hospital, Dr Spock. The statement is made in a parliamentary budget committee meeting while discussing a submission for additional funding by the hospital. Moneybags states that Spock is an incompetent administrator and has misappropriated large amounts of funding allocated to hospital in previous years. There is no apparent evidence to support the Minister's allegations.

After the committee meeting, Moneybags runs into a journalist from the Daily Rag, Sally Topshot, in the MP's cafeteria and repeats his comments about Spock but warns her to be careful what she publishes as they are outside parliament. Topshot, still only a junior reporter, is confused by the Minister's warning and, as she believes that any comments made inside the parliament building attract parliamentary privilege, prints Moneybag's allegations in relation to Spock in the next edition of the Daily Rag.

The following day, the article in the Daily Rag is the subject of discussion on the floor of parliament and the Minister is reprimanded by the Speaker for his comments in the cafeteria. In response, and in his defence, the Minister further alleges that Spock had been investigated for fraud in a previous position that he held in the Starstruck Community Health Centre and that he bribed the investigating police officers to suspend the inquiry. Topshot is in the public gallery during the discussion and publishes a report the next day fairly and accurately reflecting the parliamentary proceedings.

Topshot, who is still working on her promotion to the international news desk, and has never forgiven Spock for unceremoniously 'dumping' her after a brief but steamy affair, decides to lodge her own investigation into Spock's alleged murky past, in the hope of exacting revenge. She discovers that the police investigation into the allegations of fraud at the Starstruck Health Centre, referred to in parliament, found no basis of truth and was discontinued. Nonetheless, some weeks later, she publishes an article in the Daily Rag repeating the allegations of fraud and bribery and stating the investigation was discontinued but without any reference to the reasons. She simply suggests that the outcome was unsatisfactory and that a new investigation should be opened into the circumstances surrounding Spock's departure from the health centre.

Spock has sued the Minister, Topshot and the Daily Rag for defamation for the various statements and publications made. Assuming every statement or innuendo in relation to Spock to be defamatory, identify each separate defamatory incident and indicate what, if any, defences might be available to the respective defendants in relation to each incident.

#### Question Four

[20 marks]

You must select and complete four (4) topics from this list.

Do not answer any more than four (4) topics.

Each answer should be no more than one (1) page in length.

Each topic is worth five (5) marks.

- A. Define the terms slander, slander of goods and slander of title and list at least four (4) features that distinguish slander from slander of goods and slander of title.
- B. List five (5) examples of reports or documents that are afforded either absolute privilege or qualified privilege, either by statute in your country or at common law.
- C. At common law, and in some legislation in the Pacific, there are four (4) exceptions to the requirement that the plaintiff, in an action for slander, is required to prove special damage. What are they? Give one (1) example of a slanderous statement that might NOT fit into any of these categories.
- D. The English decisions in the cases of *Bognor Regis Urban District Council v Campion* and *Derbyshire County Council v Times Newspapers Ltd* reached very different conclusions in terms of the ability of a statutory authority to sue in defamation to protect its governing reputation. What were they? Which decision do you think is preferable and why?
- E. Detail the elements necessary to sustain an action of breach of confidence and the defences that may be available to such an action.
- F. The English Court of Appeal and the House of Lords arrived at different verdicts in the cases of *Hunter v Canary Wharf* in terms of the standing to sue, in an action for nuisance, of a plaintiff without an exclusive possessory title to land. What were they? Which do you think is the better decision and why?
- G. Describe the rule in *Rylands v Fletcher* and give two (2) examples of situations in which the rule might apply.
- H. The rule in *Rylands v Fletcher* is said to impose strict liability on the defendant. What does this mean? How does it compare with the liability that attaches in negligence? Explain the differences in meaning between absolute and vicarious liability.

**PLEASE TURN OVER PAGE FOR MORE TOPICS IN QUESTION 4**

- I. What are the essential elements that distinguish the torts of public and private nuisance?
  
- J. Outline the differences between punitive (or exemplary) and aggravated damages, citing any relevant authority and give one (1) example of a situation where each type of damages might be applied.
  
- K. It is said that the philosophy behind awards of damages for injury in torts is 'fair and reasonable' not 'real or actual' compensation. What does this mean? Is this an appropriate rationale for the Pacific region? Describe at least two (2) reasons why the law has developed in this way.
  
- L. The rationale for compensating parent plaintiffs for the cost of raising a child [who is the result of an unplanned pregnancy following negligent medical treatment], has been approached quite differently in at least two common law jurisdictions. Outline the distinction between the 1999 decision of the House of Lords in *McFarlane v Tayside Health Board* and that of the High Court of Australia in 2003 in *Melchior v Cattnach* and the justification for their divergence. Which do you think would make better law in your country?