

Question 1:

1. During the latter part of the second semester, Brain School of Law held its annual students versus faculty soccer game and picnic. The game was hotly contested and, as a result of poor sportsmanship on both sides, tempers flared. Following the game, the students' team was presented with the winner's trophy, which Jeffrey Bonsu, the captain of the students' team held aloft. Thinking it would be funny, Professor Ignatius Mensah, a member of the faculty team and Dean of Faculty of Social Sciences, threw a ball at the trophy, striking it and knocking it off from Jeffrey's hand. Angrily, Jeffrey picked up the trophy, approached Professor Ignatius and said, "If you weren't a professor here, I would take that trophy and stick it in your ear". Prof Ignatius, who was physically much bigger than Jeffrey and a former professional boxer, did not feel threatened by Jeffrey's reaction. Dr. Kwame Dapaah, another senior lecture of the School of Agriculture and member of the faculty team, believing that Jeffrey was about to attack Prof Ignatius, struck Jeffrey with his soccer boots, resulting in a large bruise to Jeffrey's arm. Advise the parties as to the cause of action and defences available to them.

Solution

Areas of law: Assault and battery

Issue:

1. Whether or not Professor Ignatius could bring an against Jeffrey for assaulting him
2. Whether or not Jeff could bring an action of battery against Dapaah

Rules

- **Battery** is a deliberate intentional or negligent act of a person resulting in a physical or violent contact with another without his consent. That is, it is an intentional or negligent conduct on the part of the defendant which interferes with the physical person of the plaintiff without justification.
- **Main elements of battery** are as follow:
 1. direct act of the defendant
 2. the act must be voluntary
 3. state of mind of defendant

4. there must be physical contact
5. lack of consent
6. Positive act or omission to act

- **Cases**

Scott v Shepherd, the defendant threw a squib, into a market place with lots of people and stalls. In order to protect themselves and avoid damage, the squib was thrown on by two other people. When it landed near to the complainant, it exploded and caused injury to his face. It was held that the injury to the complainant was the direct and unlawful act of the defendant who originally threw the squib.

Gibbons v Pepper, the defendant whipped a horse so that it bolted and ran down the claimant. The court held that the injury sustained by the complainant was a result of the action of the defendant and therefore he was liable for battery.

- Assault is an apprehension of imminent physical contact. Assault is issuing threats of violence, exhibiting an intention to carry the threat coupled with the ability to carry the threat into execution. Assault seeks to protect the plaintiff's interest in freedom from being subjected to mental anxiety. It is an incomplete battery. The tort of assault has all the ingredients of a battery except physical contact. It assesses two things: (a) an act manifesting an intention or threat of the defendant to commit battery; and (b) the defendant ability to execute this intention.

- **Cases**

Stephens v Myers, in this case, the defendant made a violent gesture at the plaintiff by waiving a clenched fist, but was prevented from reaching him by the intervention of third parties. The defendant was liable for assault.

Tuberville v Salvage, the defendant put his hand on his sword and stated, "if it were not assize-time, I would not take such language from you". Assize-time is when the judges were in the town for court sessions. It was held that this did not amount to an assault as the words indicated that no violence would ensue. The court further stated held that a conditional threatening statement without an imminent threat of harm, does not constitute assault.

Question 2:

Ebusuapanyin Kojo Annan was acting as chairman at the Council of Elders meeting of Nyakrom Traditional Council and sat at the head table at which Nana Kwao Yamoah also sat. There were about three or four elders including Obaatan Aba Odumah, Opanyin Kofi Antobam, Opanyin Kwame Kyere were between Ebusuapanyin Kojo Annan and

Nana Kwao Yamoah. In the course of some angry discussion, Nana Kwao Yamoah made himself totally intolerable and interrupted the proceedings and a motion was moved and passed to eject him from the meeting. Nana Kwao Yamoah said he would rather pull the chairman, Ebusuapanyin Kojo Annan, out of the chair than allow himself to be turned out. He advanced threateningly towards Ebusuapanyin Kojo Annan with his fists clenched but he was stopped by the security man on duty before he got near enough to do any harm. Ebusuapanyin Kojo Annan wants to sue Nana Kwao Yamoah. As his counsel, advise him on the appropriate action to take.

Solution

Area of law: Assault

Issue: Whether or not Ebusuapanyin Kojo Annan could bring an against Nana Kwao Yamoah for assaulting him

Rules

- Assault is an apprehension of imminent physical contact. Assault is issuing threats of violence, exhibiting an intention to carry the threat coupled with the ability to carry the threat into execution. Assault seeks to protect the plaintiff's interest in freedom from being subjected to mental anxiety. It is an incomplete battery. The tort of assault has all the ingredients of a battery except physical contact. It assesses two things: (a) an act manifesting an intention or threat of the defendant to commit battery; and (b) the defendant ability to execute this intention.

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Question 3

Aunt Adwoa Fosuwa lodged a complaint at Apam Police Station that she had been assaulted by Chief Fisherman Supi Kwame Apaa. An escort police constable Kofi Sah was detailed to go with her to invite Supi Kwame Apaa to the police station. He saw

Supi at Aunt Marie drinking spot and showed him his identity card and invited him to the police station. Supi Kwame refused to go. The police constable did not tell him why he was wanted at the station. Upon Supi's refusal, the police constable locked him in one of the rooms there and called his colleagues for re-enforcement. In order to get his way out, Supi knocked the police constable down and caused damage to his trousers. The police are pressing two charges of assault on the police constable in the execution of his duty and of causing damage to the property of the police constable against Supi Kwame Akaa. Supi also thinks that his fundamental human right was violated by the police constable, and wants to initiate civil action against Ghana Police Service. He has consulted you for professional legal advice. Which civil action(s) will be appropriate in this circumstance? Support your answer with statutory provisions and decided cases.

Solution

Area of law: Unlawful arrest and false imprisonment

Issue:

1. Whether or not Supi Kwame Akaa was unlawfully arrested by the police constable
2. Whether or not the detention of Supi Kwame Akaa in one of the stores was lawful

Rules:

- **Arrest** is defined as a situation whereby some powers have been given some people to bring a person before a body because of an offence or crime
- **Section 3 of Act 30** states that to arrest a person you must actually touch or confine the body of the arrestee, unless he submits to custody by word or deed
- **Article 14(2) of the 1992 Constitution** states that a person who is arrested, restricted or detained shall be informed immediately in a language that he understands, of the reasons for his arrest, restriction or detention and of his right to a lawyer of his choice
- **Section 10 of Act 30** empowers a police officer to arrest, without a warrant, any person whom he reasonably suspects of having committed a felony or misdemeanour.

Cases

- **Christie v Leachinsky**, it was held that ordinary circumstances, the police should tell a person the reason for his arrest. If the police fail to inform him, the arrest will be held to be unlawful.

- **Asante v The Republic**, it was held that Section 10 (a) of the Criminal Procedure Code, 1960 (Act 30), empowers a police officer to arrest, without a warrant, any person whom he reasonably suspects of having committed a felony or misdemeanour, but the person to be arrested must first have been put under lawful arrest. In the instant case, the police officer failed to put the appellant under lawful arrest by informing him of the cause of the arrest, and was not therefore legally acting in execution of his duty as a police officer.
- False imprisonment is the intentional or negligent detention of a person to a particular place without justification. In order for the restraint to amount to false imprisonment, it must be total. If it is only partial, leaving a reasonable means of escape, then, no false imprisonment has occurred.
- The main elements of false imprisonment are:
 1. Must be a direct act of the defendant
 2. Must confine the plaintiff to an area demarcated by the defendant
 3. Must be unjustified
- Article 21(1)(g) provides that all persons shall have the right to freedom of movement which means the right to move freely in Ghana, the right to leave and to enter Ghana and immunity from expulsion from Ghana
- **Cases**

Bird v. Jones, the defendant blocked one side of the bridge to a grandstand for a boat race, thus preventing the plaintiff's passage. The plaintiff refused to cross by the opposite path. It was held that there was no false imprisonment because he had reasonable means of leaving. The plaintiff was not restrained in every direction, therefore the restraint was not total.

Warner v Riddiford, the defendant terminated the employment of the plaintiff, his resident manager and locked his room upstairs so that the plaintiff could not collect his belongings and leave the premises. It was held that there was false imprisonment, since locking up his personal effect placed an effective restraint on his mobility.

Question 4:

Nana Amakye Dede, who owns one of the biggest restaurant and bar at Nungua, employed Desmond Agyapong as bar manager on 14th May, 2021. For the past weeks, Desmond couldn't properly account for the daily sales. When the daily sales book was

audited, it came up that Desmond has incurred loss of GHS20,000.00. Nana Amakye gave Desmond one week to make up the difference, which unfortunately, he could not fulfil. To compel Desmond to pay the loss, Nana Amakye brought in two police officers. They locked Desmond in the store room for five hours and warned him that he could only come out when he had fully paid the difference to Nana Amakye. When he persisted in refusing to make the difference, he was taken into custody and charged with embezzlement, but was later released. Desmond thinks that his fundamental human right has been violated by the Nana Amakye, and wants to initiate civil action against him. He has consulted you for professional legal advice. Which civil action will be appropriate in the circumstances above?

Solution

Area of law: False imprisonment and unlawful arrest

Issue:

1. Whether or not Desmond would succeed in bringing against Nana Amakye Dede for false imprisonment

Rules:

- False imprisonment is the intentional or negligent detention of a person to a particular place without justification. In order for the restraint to amount to false imprisonment, it must be total. If it is only partial, leaving a reasonable means of escape, then, no false imprisonment has occurred.
- The main elements of false imprisonment are:
 1. Must be a direct act of the defendant
 2. Must confine the plaintiff to an area demarcated by the defendant
 3. Must be unjustified
- Article 21(1)(g) provides that all persons shall have the right to freedom of movement which means the right to move freely in Ghana, the right to leave and to enter Ghana and immunity from expulsion from Ghana

Cases

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collect his belongings and leave the premises. It was held that there was false imprisonment, since locking up his personal effect placed an effective restraint on his mobility.

Question 5

Mr Appiah had, in a letter to the police, complained that Benson and Stephen had broken into his room in Kasoa and stolen his properties while he was away from home. He, in writing the letter, supported by affidavit, had relied on information given him by his son Junior. He called for immediate investigation and police action. The police conducted their investigation. The investigation officer advised against prosecution, but his superior, ASP Anto, thought otherwise and ordered a prosecution. The prosecution of Benson and Stephen on stealing from Mr Appiah's home ended in their acquittal and discharged. They have decided to also teach Mr Appiah a great lesson and have consulted you for legal advice. Advise them.

Solution

Area of law: Malicious Prosecution

Issue: Whether or not Benson and Stephen could institute an action against Mr Appiah for maliciously prosecuting them

Rules:

- According to the decision in **Musa v Limo Wulana**, to succeed for malicious prosecution, the plaintiff must prove the following elements:
 1. That the defendant initiated a prosecution against the plaintiff
 2. That the criminal proceedings terminated in the plaintiff's favour
 3. That the defendant undertook or instigated or procured the prosecution; with no reasonable or probable cause
 4. That the defendant acted maliciously and
 5. That the plaintiff suffered damage as a result of the prosecution

The plaintiff must prove that he has been prosecuted by the defendant. This means that either the defendant himself conducted the prosecution; or procured, instigated, directed, ordered or was actively instrumental in the prosecution set in motion. The plaintiff must establish that the defendant actively instigated the prosecution or was instrumental in getting the proceedings going. If the defendant merely reported the matter to the police who do their own investigations before charging the plaintiff, the defendant will be not liable.

- **Cases**

In **Soadwah v Obeng**, it was held to succeed in an action for malicious prosecution, the plaintiff must allege and establish that: (i) the defendant initiated the prosecution against him; (ii) the defendant acted without reasonable and probable cause; (iii) the defendant acted maliciously; (iv) the proceedings terminated in his (the plaintiff's) favour; and (v) he (the plaintiff) suffered damage as a result of the prosecution. Failure to prove any one of these essential ingredients would be fatal to the plaintiff's case.

Nana Akuamoah Boateng v Obeng, it was held to succeed in an action for malicious prosecution, the plaintiff must allege and establish that: (i) the defendant initiated the prosecution against him; (ii) the defendant acted without reasonable and probable cause; (iii) the defendant acted maliciously; (iv) the proceedings terminated in his (the plaintiff's) favour; and (v) he (the plaintiff) suffered damage as a result of the prosecution. Failure to prove any one of these essential ingredients would be fatal to the plaintiff's case.

Nkrumah v Foli, it was held that to go with the police to point a person out is not to prosecute him.

Question 6:

Mr Raymond Acquah is the owner of OneCorner Club House, [public house](#), opposite the West Hill Mall. Mr Acquah is also a patron of Ghana Boxing Authority. He went to the Bukom Boxing Arena with his three children to watch the bout between Bukom Banku and Ayitey Powers. He left his wife to manage the house. A regular customer of OneCorner Club House, Kwame Baiden, decided to play a practical joke on Mr Acquah's wife. Kwame Baiden approached Mrs. Acquah and told her, falsely, that her husband and three children had been seriously injured when supporters of Bukom Banku and Ayitney Powers engaged in a scuffle. Kwame Baiden said that some of the supporters have been rushed to Korle Bu and 37 Military Hospital. He told Mrs. Acquah that her husband only suffered two broken legs and that he was lying at Korle Teaching Hospital and unless miracle, there was no hope of him surviving. He also said that their eldest son Joojo has passed on and sent to 37 military hospital mortuary. Mrs. Acquah suddenly had a violent shock to her nervous system, and other permanent physical consequences. Later, it turned that it was untrue statement made by Ransford Baiden. Mrs. Acquah wants to sue Kwame Baiden on the case. Advise her.

Solution

Area of law: The Rule in *Wilkinson v Downton*

Issue: Whether or not compensation could be made for Mrs Acquah's illness and suffering following the false representation made by the Kwame Baiden

Rules:

- The Rule in *Wilkinson v Downton* states that any act done wilfully, calculated to cause and actually causing physical harm to another is an actionable wrong.
- To succeed in an action brought under this rule, the following elements must be established:
 1. Deliberate or wilful act of misrepresentation.
 2. Calculated to cause harm to the plaintiff.
 3. Actually causing harm to the plaintiff.

- **Cases**

Wilkinson v Downton, it was held that any act done wilfully, calculated to cause and actually causing physical harm to another is an actionable wrong

Janvier v Sweeney, in that case, the plaintiff was a maidservant; the defendants were detectives. They wanted to read certain letters of the plaintiff's mistress. They represented to her that she was suspected of collaborating with the Germans and, if she did not bring out the letters they would report her boyfriend to the authorities as a traitor and have her deported. The plaintiff fell ill, and had nervous shock. The court held that the act of the defendants was wilful and aimed at causing nervous shock under the rule in *Wilkinson v Downton*.

Khorasandjan v. Bush: this was a case of harassment by phone calls. The plaintiff succeeded on the *Wilkinson v Downton* principles because of the risk that the cumulative effect of continued and unrestrained phone calls would cause physical or psychiatric illness.

Question 7:

The house of Nana Yebo's adjoins to the garden of Ponko. Plantain which grew in the garden of Ponko spread itself over the side of Nana's house. Nana, a pharmacist, who has a drugstore in his house, decided to hang a sign board on that side of the house covered by the plantain. He managed by means of ropes and a scaffolding suspended over the garden, without touching the surface of Ponko's premises, to cut away such a portion of the Plantain as was sufficient to admit his sign board and fixed the board to his own house. Ponko sued Nana for alleging both the cutting of the plantain and projecting of the board into his air. Nana justified the cutting by the fact of its projection into his premises. Ponko argued that more harm had been done by Nana than was necessary. Advise the parties.

Solution

Area of law: Trespass to land (Intentional Interference with Property)

Issue: Whether or not Ponko could sue Nana Yebo for cutting of the plantain and the projection of the board into his premises

Rules

- Trespass to land is defined as intentionally or negligently entering or remaining on directly causing any physical matter to come into contact with land in the possession of another person.
- To succeed in an action brought under this, the following elements of trespass to land must be established:
 1. the act complained of must be direct
 2. there must be positive act
 3. there must be physical interference with the land
 4. lack of consent
 5. the act must be voluntary
 6. state of mind of defendant (that the defendant acted either negligently or intentionally)
- Trespass to land is actionable at the suit of the person in possession of the land at the time when the trespass was committed. The subject matter of trespass is land and everything attached to it.
- **Cases:**

Pickering v Rudd: In this case, the Rudd erected a board on his property which protruded onto his Pickering's property. P cut the board down along with a tree that had also grown on to his property. It was held that the board did not constitute a trespass.

Smith v Stone, an action was brought against Stone for trespass to Smith's land. Stone pleaded that he was forcibly carried onto Smith's land by others and did not go there on his own volition. It was held that the trespass was committed by those who carried Stone onto Smith's land and not Stone.

Basely v Clarkson, the defendant, in mowing grass on his own land, mistakenly, because the boundary between his land and the plaintiff's was ill-defined, mowed the plaintiff's land and took the grass away. It was held that this was trespass because the act appeared voluntary and his intention and knowledge are not known.

Question 8:

Dr. Joshua Ntiamoah, a stroke specialist acquired a plot of land at Amasaman in 2020. He built a consulting room on this plot. Papa Kofi Haruna aka Operator had been

operating his corn mill since 1992 on a plot adjacent to the consulting room. The corn mill attracts a lot of customers because majority of the people are Ewes who swear by their banku. The noise from the corn – mill is audible in the consulting room but Dr Ntiamoah made no complaints. Dr. Ntiamoah is beginning to lose some of his patients who appear to be irritated by the noise from the corn – mill. Last year, Ntiamoah decided to finally take action for an injunction to restrain Operator from continuing to operate the corn-mill. Does Dr. Ntiamoah have a reasonable cause of action in tort? Does Operator have any defence? Advise the parties.

Area of law: Private Nuisance

Issues:

1. Whether the character of the area or locality as a residential area meant that there was a nuisance
2. Whether or not Eric has any defence for engaging in the activity for many years

Rules:

- Nuisance is an unreasonable conduct that causes annoyance or inconvenience to a person or causes injury to land or interferes with the enjoyment of the land. A defendant is guilty of private nuisance, if he does an unreasonable act which either directly causes physical injury to land or substantially interferes with one's use or enjoyment of his land or of an interest in the land.
- According to **Miller v Jackson**, the essence of private nuisance is the unreasonable use of a person's land to the detriment of his neighbor.
- Some common forms of private nuisance are noise, excessive tolling of bells, pestilential smell, vibration and escaping fumes from factories.
- In determining whether an act constitutes private nuisance, the courts take the following factors into account: the purpose of the defendant's conduct and the suitability of the locality. Some places are specially designated for certain purposes and as a result some activities are not allowed at such places. Some activities are not allowed at specially designated places such as residential area. What will not constitute nuisance at some places will be a nuisance at these specially designated places.
- **Cases**
Christie v Davey, the claimant was a music teacher. She gave private lessons at her home and her family also enjoyed playing music. She lived in a semi-detached house which adjoined the defendant's property. The defendant had complained of the noise on many occasions to no avail. The defendant took to banging on the walls and beating trays and shouting in retaliation. It was held that the defendant's action was actuated by malice and therefore did constitute a nuisance. An injunction was granted to restrain his action.

Thompson Schwab v Costaki, the court held that practicing prostitution in a residential area was not suitable in the area

Aidoo v Adjei, it was held that it is nuisance to operate a chop bar in a residential area

Ball v Ray, it was held that keeping horses in a residential area was actionable nuisance

- **Defences:** the main defences to action in nuisance are prescription, consent, statutory authority and abatement of nuisance. Prescription is where a defendant can show that he has acquired a right to commit the nuisance. To acquire this right, he must have **committed it for at least 20 years before the action**; he must have done it openly without a show of force, and without the plaintiff's permission. This is expressed in a maxim: *nec vi, nec clam, nec precario*. However, this defence is not available in terms of public nuisance. *Prescription is limited where it affects national policy*.
- In **Sturges v Bridgman**, the defendant ran a confectionary shop which operated a noisy pestle and mortar for more than twenty years before the plaintiff moved into the area of nuisance. The court held that there was a nuisance, and the fact that the doctor had "moved to the nuisance" was no defence to the nuisance itself. What constitutes a nuisance was to be decided on a case to case basis, and it is necessary to consider the particular locality itself. What is not a nuisance in one area may well be a nuisance in another and it would be unjust if the nuisance maker had been permitted to continue with the nuisance indefinitely and without power of law to interrupt if this was to be considered a right acquired by long usage.

Question 9:

Two years ago Kenpong Leather Works Ltd (KLW), opened a treatment plant as part of their real leather clothing business in Kumasi. The treatment plant was opened on land that adjoined land owned by Winston Water Ltd. KLW's arrival led to a significant number of jobs being created in the area, as well as causing an upturn in the local economy through the extra employment. However, the company's arrival also caused a lot of controversy with numerous animal rights protests staged in the town. In order to try and get the treatment plant closed down, Charles Hagan, a leading protester who had been evicted from KLW's premises numerous times having broken in to the grounds, did so again and tampered with some of the plant's safety valves. Consequently, some chemicals escaped by seeping through some minute cracks in the floor of the plant and ultimately entered Winston' Water's reservoir polluting their reserves of water. Advise KLW on their potential liability for the damage.

Solution

Area of law: Rule in *Rylands v Fletcher*

Issue: whether or not Winston Water Ltd could bring an action against Kenpong Leather Ltd for the damage under the rule in *Rylands v Fletcher*.

Rules

- The rule in *Rylands v Fletcher* states that a person who, in the course of a non-natural user of his land, accumulates or is held to be responsible for the accumulation on it of anything likely to do harm if it escapes, is liable for the damage to the use of the land of another, which results from the escape of the thing from his land.
- This rule covers situations where damage is caused arising from the escape of dangerous things from the defendant land in the course of non-natural user of land. The damage suffered by the plaintiff must be foreseeable by the defendant.
- Examples of the things are: gas, water, electricity, explosives, dynamites, chemicals.
- **Elements**
 1. There must be non natural use of the land
 2. There must be a thing
 3. There must be accumulation of the thing
 4. There must be escape of the thing
- **Cases**

Rickards v Lothians, the court held that the defendant was not liable because water supplied to a building is a natural use of the land. The rule of *Rylands v Fletcher* requires a special use of the land.

Read v Lyons, it was held that escape, for the purpose of applying *Rylands v Fletcher*, means escape from a place where the defendant has occupation of or control over land to a place which is outside his occupation or control.

Ponting v Noakes, a horse reached over the defendant's land and ate of yew tree's leaves and was poisoned. It was held that *Ryland v Fletcher* did not apply because the trees did not extend beyond the defendant's land and so there was no sufficient escape.
- **Defences:** The main elements are consent, act of a third party, and act of God. The defendant would not be liable if the escape is caused by the deliberate unforeseeable act of third parties. But if the defendant could have foreseen or prevented the act of the third parties and did not then he is liable. ***Rickards v Lothian***, it was held that the act which caused the damage was a wrongful act by

a third party and there was no non-natural use of land. Therefore, the defendants were not liable.

Question 10:

David is a driver in the employment of VVIP Transport Ltd in Ghana. He is allowed to take the vehicle home at the close of business each day. One Sunday, he took his family to Church in the company car. At the close of the church service, he went to see the Human Resource Manager of the Company to find out whether he can be excused from work the following Monday to help in the preparation for the funeral of his father-in-law, a Ga man. On his way out of the Manager's house, he knocked down Amina in circumstances in which it was admitted he was negligent. Discuss whether action will lie against the company at the instance of Amina.

Solution

Area of law: Vicarious liability

Issue: Whether or not Amina could bring an against the VVIP Transport Ltd for the negligent act of David

Rules:

- Vicarious liability principle states that a master is liable for the acts or torts of servants committed in the course of his employment. It is the liability of an employer for acts committed by employees in the course of their employment.
- There are basically two conditions to be fulfilled for the employer /master to be liable the person so charged should be a servant and the wrongful act should be in the course of employment.
- Under vicarious liability, the employer is held liable because he who stands to profit from an enterprise should also bear its risks; and it encourages the employer to exercise better control over his employees.
- If a servant makes a slight detour for his own purposes while performing the master's duties, then he is within the scope of his duties and therefore the master would be vicariously liability in case of any liability. A person is on a frolic of his own if he does something wholly unconnected to his employer's business. in that case, the employer would not be liable.

Cases

- **Akyigina v Adjei:** A driver of the appellant, while driving his vehicle knocked down and killed the deceased. It was held that since the vehicle was owned by the appellant who employed the driver who drove the vehicle at the material time

to cart sand and stone, a presumption was raised that the accident occurred at a time when the driver was driving in the course of his master's business and therefore, the master was held liable.

- Lister v Hesley Hall Ltd
- Beard v London Omnibus Co
- Ricketts v Tilling
- Zagloul v Kumasi Brewery Ltd

Question 11

Kojo Boadi hails from Agona Nyakrom in the Central Region. He attended this year's Akwambo festival. It was customary that once he reunites with his SHS mates, he tries to "spread them" at Oziyo Bar. While Kojo Boadi was drinking beer with his friends, found a human hair in the beer bottle after he had consumed about three-quarters of the contents of the bottle. He had a funny feeling after seeing the hair and felt like vomiting. During the night he vomited and had frequent stools. The following morning, he was seen by a doctor, who after examining him stated that the vomiting and diarrhoea resulted from food poisoning. Advise him.

Solution

Area of Law: Negligence in relation to chattel (Manufacturer Liability)

Issue: Whether or not Boadi could bring an action against the company for negligently producing beer

Rules:

- Negligence is the breach by the defendant of a legal duty to take care, which results in damage. It is committed by failure to act as a reasonable person to someone to whom he owes a duty, as required by law under the circumstances. The main elements of negligence are duty of care, breach of duty and damage.
- Product liability is the legal liability a manufacturer or trader incurs from producing or selling a faulty product. It is the area of law in which manufacturers and others who make products available to the public are held responsible for the injuries those products cause.

Cases

- In **Donoghue v Stevenson**, the court stated the modern products liability principle as follows: "*a manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with on reasonable possibility of intermediate examination and with the knowledge that the absence of reasonable care in*

the preparation or putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care."

- **Aboagye v Kumasi Brewery Ltd**, the plaintiff while drinking with some friends found a rotten palm-nut in the beer bottle after he had drunk about 3-quarters of the contents of the bottle. He said that he felt funny after seeing the rotten nut and felt sick. The court found the defendant liable.
- **Acheampong v Overseas Breweries**, the plaintiff drank club beer which was contaminated with kerosene. The defendants were found liable.

Question 12:

Mr Appiah was a police constable on duty inside a police station at Accra Central, Tudu, located in a busy street, often attended by many people, including children selling "Obroniwawu". Uncle Ben owned "Aboboyaa" van which was left unattended by its driver in the same street. The driver had put a stone on one of the wheels of the van that was subsequently broken. For an unknown reason, supposedly because a stone was not properly placed, the van moved at the direction of the hawkers on the main street at Kinbu. The police constable saw them from the police station, got out and managed to stop the van but sustained injuries. He has come to you as a renowned lawyer seeking your professional legal advice whether he has any claim against Uncle Ben. Advise him.

Solution

Area of law: General Negligence, specifically rescue cases

Issue:

1. Whether or not Uncle Ben was negligent by virtue of leaving the van unattended in a busy street.
2. Whether or not Uncle Ben could rely on the defence of *volenti non fit injuria*

Rules:

- Negligence is the breach by the defendant of a legal duty to take care, which results in damage. It is committed by failure to act as a reasonable person to someone to whom he owes a duty, as required by law under the circumstances. The main elements of negligence are duty of care, breach of duty and damage.
- A duty of care is a legal obligation to take reasonable steps not cause foreseeable harm to another person or their property. It is the first element that must be established to succeed in an action in negligence. The plaintiff must prove that the defendant was under a legal duty to exercise due care and skill not to cause

harm to him. In *Caparo v. Dickman*, it was held that there are three requirements in determining the existence of duty of care: *foreseeability, proximity and fairness*.

- Rescue deals with where a person puts other in precarious situation which requires others to respond. The duty of care that is owed to the person (victim) in such difficulty is the same as the rescuer. Rescues are not for everybody. The act must be within the domain of the rescuer. The general principle is that a defendant owes a duty of care not to cause physical harm to another and also owes a duty to those who may foreseeably attempt to rescue victim (that other person) from the peril in which he or she has been placed by the defendant.
- On policy grounds, the common law insisted that the rescuer must be: an expert qualified to rescue the particular situation, a parent motivated by parental concern, and he must be a person whose normal duties will require him or her to intervene.
- **Cases**
 - **Haynes v. Haywood:** The Defendant left a horse-drawn van unattended in a crowded street. The horses bolted when a boy threw a stone at them. A police officer tried to stop the horses to save a woman and children who were in the path of the bolting horses. The police officer was injured. *The court held that the defendants are guilty of negligence by virtue of leaving the horses unattended in a busy street. The defendants must or ought to have contemplated that someone might attempt to stop the horses in order to prevent injury. The police are under general duty to intervene to protect life and property and therefore, the act of the police constable and his injuries were a direct consequence of the defendant's negligence. The maxim volenti non fit injuria does not prevent the police constable from claiming damages for an injury sustained as he did not voluntarily agree to take the risk but did it pursuant to his official duty*
 - **Baker v. T. E. Hopkins:** It was foreseeable that if a defendant by his negligence places another in peril that someone may come to his rescue and the doctor's actions were not unreasonable in the circumstances. The Claimant's action was not defeated by volenti non fit injuria.

Question 13

Following months of speculation, the legendary indie guitar band – Blinking Idiot – are about to embark on a reunion tour of the UK. They are performing a warm-up gig at a small intimate venue when a spotlight falls onto the stage causing a massive explosion

killing the band members: Madeleine, Amish and Dave. Unfortunately, the lighting rig onto which the spotlight was fitted had been negligently maintained by Rack & Horse Lighting. The sight is particularly gruesome. Hannah, Amish's wife, is watching the gig from the VIP area of the venue. She is physically unharmed, but later suffers nightmares and depression. This is particularly traumatic for her as she had previously suffered from depression, but had sought help and recovered. Pete, Madeleine's brother, is listening to the live radio broadcast of the gig from his hotel room in Paris. He hears the explosion and thinks he can hear Madeleine screaming. He rushes to the airport, managing to catch a flight that is just leaving, and arrives at the hospital three hours after the accident. Unfortunately, Madeleine's body has not yet been moved to the morgue and is still covered in blood and grime from the explosion. He develops post-traumatic shock disorder. Lucy has attended every Blinking Idiot gig in the UK and has travelled to a number of their overseas concerts. She is a founder member of their fan club and regularly contributes to their fan magazine. She always tries to stand as close as possible to the stage. Miraculously she was not hurt by the explosion but has since been overcome with grief. Tim was one of the first on the scene. He is a trainee ambulance man and this was his first major incident. He rushes to the stage but quickly sees that there is little he can do. He spends the next two hours comforting distraught fans. He later suffers from recurring nightmares and panic attacks. Stuart, one of the roadies, is overcome with feelings of guilt and depression. It was his job to fix the lighting and he feels the explosion was his fault. A subsequent investigation completely exonerates him. *Advise the parties.*

Solution

Area of law: General Negligence, specifically nervous shock

Issue: whether the defendants – Rack & Horse Lighting – owe a duty of care to those who have suffered psychiatrically injured as a result of their negligence

NB: In order to do so, the parties need to establish that they are either *primary* or *secondary* victims.

Rules:

- Negligence is the breach by the defendant of a legal duty to take care, which results in damage. It is committed by failure to act as a reasonable person to someone to whom he owes a duty, as required by law under the circumstances. The main elements of negligence are duty of care, breach of duty and damage.
- Nervous shock is a psychiatric illness or injury inflicted upon a person by intentional or negligent action or omission of another. For the plaintiff to succeed he must suffer a genuine psychiatric illness or disorder. There are two main theories on nervous shock namely impact and shock theories.

- For the impact theory, the claimant is the primary victim. Impact Theory this theory holds that shock is only an extension of physical injury. Therefore, if no physical injury is foreseeable, then there no liability for shock. In **Bourhill v. Young**: In this case Bourhill a pregnant lady upon disembarking from the truck heard a motor cyclist crushed about fifty feet away. She later saw blood and suffered a nervous shock and gave birth to a still born child. It was held by the court that the claimant was so far away from the scene of the accident that the defendant did not owe her a duty of care because it was not reasonably foreseeable that she will suffer nervous shock as a result of the accident.
- For the **shock theory**, the claimant is not directly affected but only a secondary victim. The theory states that the test for liability is whether it is reasonably foreseeable that injury by shock will arise from the defendant's negligence. **Mcloughlin v O'Brian** is the leading case on secondary victims and nervous shock. In this case, the court stated three conditions of nervous shock and for determining secondary victims. These are the class of persons whose claim should be recognized; the proximity of the claimant to the accident; and the means by which the shock is caused.
- **Alcock v Chief Constable of South Yorkshire Police**, the court stated three conditions to be satisfied to be considered as a secondary victim namely: the *class of persons* whose claim should be recognized; the *proximity* of the claimant to the accident; the means by which the *shock* is caused.

Question 14:

Kate and Iris have spent the afternoon looking at wedding dresses. Before heading home they go to a new champagne bar to celebrate finding 'the one'. Iris offers Kate a lift home in her car, assuring Kate that she's all right to drive as she's 'probably only just over the drink-drive limit'. On the journey home Iris loses control of the car and crashes into a lamp post. Kate suffers minor cuts and bruises and is taken to hospital for a check up. At the hospital Kate contracts an infection in a cut to her right arm. The doctor on duty decides not to treat the infection with antibiotics immediately as he has recently read a report in a little-known medical journal which suggested that it is better to allow the body 'time to heal' following a trauma. Kate's right arm is partially paralysed. Advise Kate

Solution

Area of law: Negligence specifically breach of duty – standard of care

Issues:

1. Whether or not Iris owed Kate a duty of care
2. whether or not the doctor's actions were reasonable

Rules

- Negligence is the breach by the defendant of a legal duty to take care, which results in damage. It is committed by failure to act as a reasonable person to someone to whom he owes a duty, as required by law under the circumstances. The main elements of negligence are duty of care, breach of duty and damage.
- A duty of care is a legal obligation to take reasonable steps not cause foreseeable harm to another person or their property. It is the first element that must be established to succeed in an action in negligence. The plaintiff must prove that the defendant was under a legal duty to exercise due care and skill not to cause harm to him. In *Caparo v. Dickman*, it was held that there are three requirements in determining the existence of duty of care: *foreseeability, proximity and fairness*.
- **Bolton v Stone**, in this case Miss Stone was walking down a road past the fence of a cricket pitch. She was hit with a ball that was hit over the fence and seriously injured. The pitch was surrounded by 17 feet fence and balls have only flown over the fence approximately six times in the last 30 years. The court held that there was no breach of duty because of the likelihood of harm was low as the defendants have taken all practical precaution in the circumstances. The cricket ground had been there for ninety years without injury and provided useful service for the community.
- **Paris v Stepney Borough Council**, in this case the claimant has suffered damage to one of his eyes in war. He was employed in a garage but was not provided goggles while working with dangerous equipment. As a result, he was blinded when a piece of metal hit him in his undamaged eye. He sued his employer in the tort of negligence. The court held that, the defendant was in breach of its duty of care to the claimant by failing to provide him with goggles. See: *Bourhill v Young*,
- **Bolam v Friern Hospital Management Committee**, the court set out the test for determining the standard of care owed by medical professionals to their patients (sometimes referred to as the 'Bolam test'). It was held that the professional will not be in breach of their duty of care if they acted in a manner which was in accordance with practices accepted as proper by a responsible body of other medical professionals with expertise in that particular area. If this is established, it does not matter that there are others with expertise who would disagree with the practice.

Analysis:

- Iris clearly owes Kate a **duty of care** and she **breached** this duty by failing to act as a reasonable driver should. The facts state that she believes she is probably only just over the 'drink-drive limit. Clearly, the reasonable man would not drive a car if she believed himself to be 'just over the drink-drive limit and therefore she was in breach of her duty of care – that is she has fallen below the standard of care required of the reasonable man. Do not introduce other facts as to why Iris might have crashed.
- The doctor clearly owes Kate a duty of care. It is very unlikely that the doctor's actions are reasonable - a reasonable doctor would have treated Kate's infection. But for' the doctor's failure to treat the infection Kate's arm would not be paralysed and that the harm is of a sufficiently foreseeable kind.

Question 15

Ben, Graeme and Andy are old school friends. Every year they go camping together in Aburi National Park. After they arrive on the Friday night, they decide to go to the pub where Ben and Graeme spend several hours reminiscing and by the time they leave they are both over the legal driving limit. Andy has not been drinking. On their way back to the campsite they pass a farm and notice a tractor with its keys in the ignition. Graeme gets in and starts the engine. Ben and Andy quickly jump in beside him. None of them wear a seat belt. At first, Graeme drives slowly around the farmyard but when Ben says 'is that the best you can do?' he decides to go 'off-road' and drives it into a field. Unfortunately, on the rough ground he loses control of the tractor and it overturns. Ben and Andy are thrown out onto the field. Ben is seriously injured. Though Andy escapes with only minor physical injuries, he later develops post traumatic stress disorder (PTSD) as a result of the incident. One day while walking home from work Andy 'snaps' lashing out at an innocent passer-by and causing them serious injury. Though it is recognised that his actions were as a result of his PTSD, he is jailed for six months and loses his job. Advise the parties

Solution

Area of law: Defences To Action In Negligence

Issues:

1. Whether or not Ben failed to exercise reasonable care for his own safety

2. Whether or not Ben's failure to wear a seat belt together with his jumping in quickly alongside Graeme indicated that he accepted the nature and extent of the risk he was exposed to
3. Whether or not Andy's claim against Graeme would be defeated by the defence of illegality

Rules:

- **Volenti non fit injuria:** this means voluntary assumption of risk. As a rule, willing self-exposure to injury or loss, or its risks, releases others from the duty of care which would normally devolve upon them provided the willingness is genuine. *Volenti* or Voluntary assumption of risk is a complete defence. For the defence to be available, it must be established that the plaintiff knew the nature and extent of the risk of harm; and voluntarily agreed to it. **Smith v Baker**, it was held that one who has invited or assented to an act being done toward him cannot, when he suffers it, complain of it as a wrong. In **Morris v Murray**, it was held that for the defence of *volenti non fit injuria* to apply it must be proved that the plaintiff knew the nature and extent of the risk of harm; and voluntarily agreed to it. **Gyasi v State Gold Mining Corporation**, it was held that to succeed on the defence of *volenti non fit injuria* the defendants must prove the fact that the plaintiff voluntarily and freely with full knowledge of the nature of the risk, impliedly agreed to incur it.
- **Contributory negligence:** Contributory negligence is conduct by the plaintiff showing an unreasonable disregard for the safety of his own interest, which disregard together with the defendant's negligence causes harm to that interest. **Jones v Livox Quarries Ltd**, it was held that a person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless'.
- **Illegality:** The defence of illegality denies recovery to certain claimants injured while committing unlawful activities. The defence is grounded in the principle that no action may be founded on an illegal act (*ex turpi causa non oritur actio*). In **Pitts v Hunt**, the court held that where the plaintiff's action arose directly *ex turpi causa* (out of his own illegal act, he would be prevented from recovering compensation from the defendant.

Question 16

Camden Cool', an after school youth club run by a local authority, is holding an open day to raise funds for the club. One of the main attractions is a large bouncy castle supplied, erected and supervised by Elsinore Castles, a small local company. Joseph and Harry are the first to try the large bouncy castle out. They both suffer minor cuts and bruises when the castle breaks free from its moorings and lifts into the air. It later turns out that it had not been appropriately tethered to the ground. Unfortunately, despite assuring Jake, the club's youth worker, when he phoned to book the castle, that they had the necessary documentation, Elsinore's public liability insurance had expired two months before the accident. In the chaos that follows, Iris wanders off alone. She is too young to be a member of the club and so doesn't know her way around the buildings. She is seriously injured when she falls down a flight of stairs after going through a door marked 'Private: No Unauthorised Entry'. Meanwhile Frank and Bill (who are members of the club) have sneaked off to play football. After a particularly poor shot at goal their ball lands on a flat roof. Although they know the roof is 'out of bounds', as everyone is busy at the open day, they decide to climb onto the roof to retrieve it. As they do so one of the skylights breaks. Bill falls through the roof hitting his head hard, causing him to lose his hearing. Advise the parties.

Solution

Area of law: Occupier's liability / Negligence in relation to premises

Issues:

1. Whether or not Joseph and Harry are visitors or non-visitors
2. Whether Iris is a visitor or a non-visitor
3. Whether or not the council owes common duty of care to Frank and Bill who are members of the club

Rules

- Negligence is the breach by the defendant of a legal duty to take care, which results in damage. It is committed by failure to act as a reasonable person to someone to whom he owes a duty, as required by law under the circumstances. The main elements of negligence are duty of care, breach of duty and damage.
- Occupier liability refers to the duty of care owed by those who occupy real property to people who visit or trespass. It deals with liability that may arise from accidents caused by the defective or dangerous conditions of the premises. An occupier is one who is in occupation or control of the premises. Premises is widely defined to include land, buildings and fixed or moveable structures.

- The occupier owes a duty of care to all those who visit his or her premises to ensure that they would be reasonably safe in using the premises or facilities for the purposes they were allowed in. The obligations of the occupier for damage which occur on his premises depends on the character of the entrants. In this respect, the law draws a distinction between lawful and unlawful visitors.
- Contractual visitors are persons who enter the premises in pursuance of a contract. The occupier owes a duty to contractual visitors to ensure that his premises are safe for the purposes of his contract. That is, he warrants that his premises are as safe, for the purposes of the contract, as reasonable care and skill on the part of anyone can make them. The occupier will be liable if the negligence is that of the occupier's servants or independent contractors. However, the occupier will not be liable for defects which could not reasonably be discovered by inspection or even by the exercise of reasonable care. Premises may include building, vehicles, stands, hospital, hotels, stadium, shops, race-stands, railway carriages, restaurant etc.
- **Frances v Cockrell:** The defendant and some other persons engaged the services of an independent contractor to erect stands for the accommodation of persons who wished to watch steeplechase race. The plaintiff who had paid for admission was injured, when the stand, as a result of being negligently done collapsed. Neither the plaintiff nor the defendant knew that the stand had been improperly constructed. It was held that there was an implied warranty that due care had been used in the construction of the stand by those whom the defendant employed to do the work and therefore the defendant was liable to the plaintiff.
- A trespasser is one who enters the land and has neither the right nor the permission to be there. His presence is unknown, and if known, is practically rejected by the occupier. A trespasser, simply put is someone who enters premises without the owner's consent or permission. In **Addie v Dumbreck**, the court held that no duty of care was owed to trespassers to ensure that they are safe when coming onto the land. The only duty was not to inflict harm willfully.
- However, the occupier will owe a duty of care to a trespasser if three conditions are met:
 - a. The occupier must be aware of the hazard, or have reasonable grounds to believe it exists.
 - b. The occupier must know or have reasonable grounds to believe that a trespasser is in the vicinity of that danger.
 - c. The risk must be one which the occupier would reasonably be expected to protect against.

- The general principle is that occupiers or owners have duty to make their premises reasonably safe for children that might be attracted to the premises.
- In **Young v Kent County Council**, the claimant, 12 years, fell through a skylight whilst on the roof a school building. This had occurred at a time when a youth club was using the school premises. There was a report which noted that the skylight was brittle. The court found the defendant liable. The court held that the state of the premises was inherently dangerous given the brittle nature of the skylight. The area was a known meeting place for children. The Council knew or ought to have known that children were likely to climb the flu onto the roof. The solution to the problem was low cost. There was a duty to protect children. If the Claimant had not been a child he would have recovered nothing. However, as the Claimant was as much to blame as the County Council and the Claimant's contributory negligence would be assessed at 50%.
- **Herrington v British Railway Board**: A six-year old child was playing on a field close to a railway track which had been electrified. He trespassed on to the line through a broken fence and got injured. He sued for damages against the defendants and the defendants relied on Addie's case to deny any liability. The court held that the occupiers were liable for the child trespasser's injury since they knew of the possibility of trespassers coming onto the premises and could have avoided the risk at "small trouble" and expense by mending the fence. The defendant did owe a duty of common humanity to trespasser.

Question 18

MTN Ghana Ltd decides to set up a fund to allow a promising young businessman to spend some months in Europe studying European business methods. A committee consisting of Diana, Edward and Fenella is set up to consider applications. An application is received from George, and Diana circulates a memo to Edward saying: "I understand that George is on the point of insolvency. He doesn't seem to be a suitable candidate". Edward also circulated a memo stating: "George is not competent and not fit to represent MTN Ghana Ltd in Europe". Edward types this himself, but leaves a copy on the photocopying machine where it is seen by Henry. Edward's company tendered for some business with George's company, but failed to obtain the contract.

Advise George

Solution

Area of law: Defamation

Issue: Whether or not Edward could sue George for publishing defamatory statement about him

Rules

- Defamation is a publication without justification or lawful excuse, calculated to injure the reputation of another by exposing him to hatred, ridicule or contempt. It may be libel or slander.
- **Elements of defamation**
 1. The communication is capable of a defamatory meaning
 2. Interpretation of the words to determine whether they are actually defamatory
 3. There must be reference to the plaintiff
 4. The defamatory statement must be published
- **Cases**

Villers v Monsley, the defendant wrote of the plaintiff that he is stunk of brimstone and that he had the itch. It was held that if any man deliberately or maliciously publishes anything in writing concerning another which renders him ridicule or tends to hinder mankind from associating with him, it is actionable.

Bonsu v Forson: It was held that the words were capable of a defamatory meaning but as they had been spoken in the heat of passion, they were not defamatory. So, the law is that words spoken in the heat of quarrel or argument are not defamatory.

Huth v Huth: The defendant posted a statement to the plaintiffs, in a sealed envelope, which they alleged was defamatory. In a breach of his duty and out of curiosity, the statement was taken and read by butler. The plaintiff claimed that this constituted a publication of the libel for which the defendant was responsible. It was held that statement was not published in law and the plaintiff's action failed.
- **Defences of defamation**: absolute privilege, qualified privilege, fair comment, justification or truth, and consent