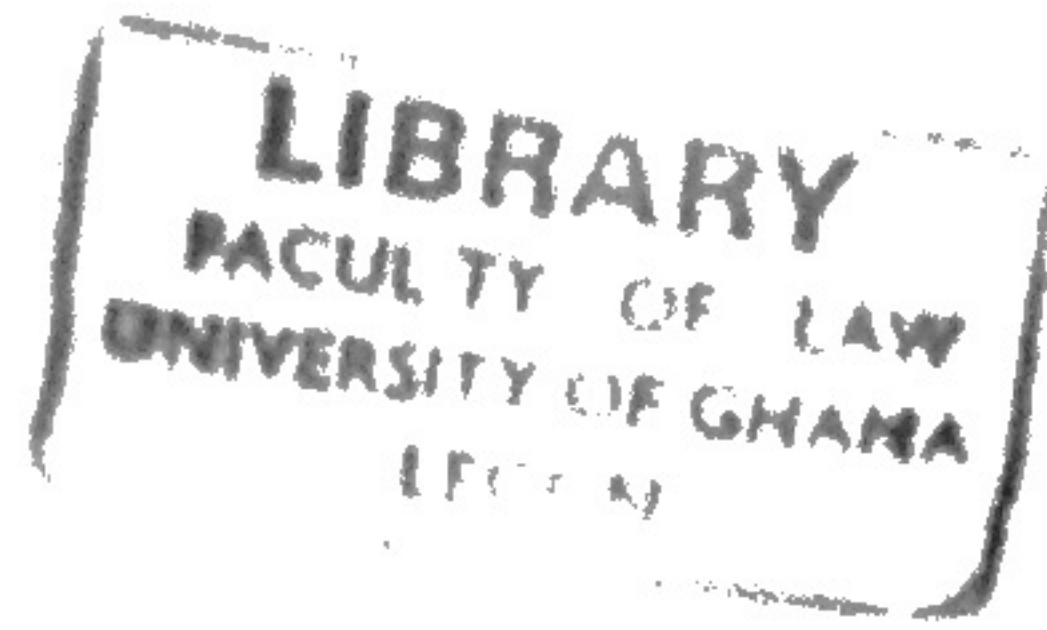


UNIVERSITY OF GHANA



FACULTY OF LAW

FIRST SEMESTER EXAMINATIONS, 2013/2014

LEVEL 200 & 300

FLAW 207/307/317: TORTS I

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS:
ANSWER FOUR (4) QUESTIONS IN ALL. ANSWER QUESTION ONE WHICH IS COMPULSORY AND CARRIES 40 MARKS AND ANY OTHER THREE QUESTIONS.

*****NOTICE TO INVIGILATORS AND STUDENTS**

STUDENTS ARE ALLOWED A 15-MINUTE PREVIEW OF THE QUESTIONS BEFORE THE START OF THE EXAMINATION PROPER

Answer by indicating TRUE or FALSE

1:

For a tort to be committed, among others, the type of person the tortfeasor is or his/her relationship to the victim may be relevant.

The rights created by the Law of Torts are in general *iura in personam*, that is, available against a particular person.

The modern Law of Torts springs from three actions; Trespass, Case and Detinue sur trover.

4. The distinction between Trespass and Case was dependent on whether conduct was **intentional** or **negligent**.
5. Torts actions such as nuisance, conversion and malicious prosecution evolved from Case.
6. Liability under the rule in *Rylands v. Fletcher* is strict but liability in assault and battery is not.
7. The court decided in *Leame v. Bray* that the plaintiff must prove a direct act on the part of the defendant to succeed in an action for battery.
8. It was decided in *Cole v. Turner* that unless the contact is hostile it cannot be a battery.
9. Justice Abban (as he then was) said in *Agbovi v. Setordzie* that to point a loaded revolver at another in a hostile manner and within shooting distance thus causing him to apprehend a battery constitutes an assault.
10. *Tuberville v. Savage* decided that words alone, like a gesture, can constitute an assault.
11. The legal requirement that a person arrested should be given the reason(s) for his arrest does not apply, if the person is caught in *flagrante delicto*.
12. Abatement is a defence to an action in Trespass as well as in private nuisance.
13. The action for private nuisance lies, in general, for direct non-trespassory interferences with another person's use of his land.
14. The court decided in *Bamford v. Turnley*, per Baron Bramwell, that a householder must tolerate his neighbour's noisemaking during sexual intercourse.
15. In conversion, the value of the goods is assessed as at the time of the conduct constituting the conversion.
16. Conversion is an action *in rem* but Detinue is an action *in personam*.
17. The case of *Wansborough & Anor v. Maton* is an example of a situation in which the denial of access is total for purposes of an action in Conversion.

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18. The denials in *Simmons v. Lillystone* were deemed total and so the court held that conversion had been committed.
19. *Williams v. Geese* decided that Conversion cannot be negligently committed.
20. The court decided in *London Corporation v. Appleyard* that the banknotes found loose on the floor of the shop were in the possession of the plaintiffs.
21. The Supreme Court of Ghana speaking through Justice Date-Bah, in the case of *Yungdon Industries v. Roro Services & Ors.*, held that, for detention of a chattel to amount to Conversion, it must be adverse to the owner, excluding him from the chattels.
22. The case of *Warner v. Riddiford* provides illustration for what is "imprisonment" for purposes of the tort of false imprisonment.
23. If you scare a person into nervous shock by dressing up as a ghost you will not be liable under the rules in *Wilkinson v. Downton*.
24. In false Imprisonment, the assumption is that the defendant departed from due process. But, in Malicious Prosecution, it is assumed that the process is regular but has been perverted by the defendant.
25. It was decided in *Quartz Hill Mining Co. v. Eyre* that, if you knowingly make a false complaint which results in another being prosecuted, you are responsible for the prosecution, for purposes of an action in malicious prosecution.
26. *Boaler v. Holder* decided that, if a person is prosecuted for an offence but is convicted of a lesser offence, the criminal proceedings are deemed to have terminated in his favour, for purposes of an action in malicious prosecution.
27. Conversion is the principal means through which Ghanaian law protects ownership of goods.
28. The law of torts is clear that, for every battery, it is not reasonable to bang a person with a cudgel.
29. It was decided in *Leward v. Basely* that a servant might justify a trespass in defence of his master, but a master cannot justify a trespass in defence of his servant.

30. *Bird v. Heslop* decided that, for the protection of interests in land, the use of any force will be justifiable in law.
31. One may justify a trespass on the grounds of necessity.
32. The law allows Trustees to sue for trespass to chattels in the hands of beneficiaries.
33. In *St Helen's Smelting v. Tipping*, it was said that, in private nuisance, when the alleged interference causes material damage to property, the surrounding circumstances should not be considered relevant.
34. An entry of *nolle prosequi* by the Attorney-General or his officers to bring a criminal proceeding to an end is termination in favour of the plaintiff in malicious prosecution, so it was decided in *Musa v. Limo-Wulana*.
35. The law of torts distinguishes between acts done as genuine competition and illegal pressure which interferes with the trade or contract of another.
36. It is not a tort for A to intentionally induce B to break his contract with C, unless C suffers damage as a result.
37. It is a tort, without justification, to knowingly and intentionally interfere with a contract between two other persons, whether one is aware of the contract or not.
38. The action for injurious falsehood will not succeed unless a reasonable man will take defendant's claim in denigration of plaintiff's goods seriously.
39. Originally, the tort of injurious falsehood was concerned with unwarranted attacks on ownership of goods.
40. The Rule in *Rylands v. Fletcher* applies only where a person is putting his goods to a **non-natural use**.
- Q2. Discuss the legal issues involved in the following situation:
 Abankwa is having an affair with Claudia, the daughter of his classmate, Mr. Brown. Mr. Brown does not like this relationship one bit. Mr. Brown goes to the house of Abankwa to persuade him to end the affair with Claudia. Mr. Abankwa promise to build a hotel for Mr. Brown rather than end the affair with Claudia. Enraged, Mr. Brown pull a gun from his pocket, point it straight at the head of Mr. Abankwa and said were it not Sunday, he would

have blown off his head. Mr. Brown is a well-known elder in the Christ Will Come Again Charismatic Ministry located at Nungua in the Greater Accra Region. Frightened, Abankwa falls down and breaks his right leg.

Q3. Rachel is a Christian. Her friend, Kafui is a Moslem. One day, they had a heated argument about Christ and Mohammed. Suddenly, Kafui said Christ was a well known gay in his days and therefore could not have been the son of God as claimed by his followers. Rachel responded by aiming a blow at Kafui's forehead. Kafui dodged the blow which landed on the jaw of Atakora who was standing behind Kafui momentarily blinding him. When he recovered, he hit Rachel with a chair, breaking her arm. Atakora has told friends who have been taunting him about beating a poor girl that he did so in self defence.

Discuss the legal issues involved.

Q4. Critically examine the decision in *Walter v. Smith & Sons Ltd.*, (1914) 1 K.B. 595, with the aid of the relevant decided cases.

Q5. "The law in the tort of false imprisonment relating to the relevance or otherwise of consciousness of the restraint by plaintiff is in a state of confusion. The 1992 Constitution has also failed to clear this confusion" (anon). Do you agree?

Write a legal opinion to the Law Reform Commission indicating how, in your considered opinion, this confusion may be addressed.

Q6. Gifty owns a piece of land at Kokomlemle on which some people are fond of parking their vehicles. She puts up a large visible notice on the land that, as from Christmas day 2013, nobody should park his/her car on the land. She warned that any car found on the land would be clamped and released only upon the payment of a sum determined by her. Dong considers this notice as evidence that Gifty is mean. He therefore parked his car on the land the day after Boxing Day (26 December, 2013) without seeking the permission of Gifty. Gifty promptly clamped the car as she had threatened and closed the gate to the land. Unknown to Gifty, Dong sneaks into the land at midnight by breaking the lock on the gate. He then destroyed the clamp and drove the car away.

Dong has heard that Gifty is threatening to sue him in torts and has come to consult you. **DISCUSS** the legal issues with him.

Q7. Obodai, a physician specialist, acquired a plot at the Airport Residential Area in 1980. He built a consulting room on this plot. In 1982, Eric, a popular womaniser, installed a corn-mill on a plot adjacent to the consulting room. The corn-mill attracts a lot of customers because majority of the people in the area are Ewes who swear by their banku. The noise from the corn-mill is audible in the consulting room but Obodai made no complaints. Obodai is beginning to lose some of his patients who appear irritated by the noise from the corn-mill. Last year, Obodai decided finally to take action for an injunction to restrain Eric from continuing to operate the corn-mill there.

Does Obodai have a reasonable cause of action in torts? Advise him.

*Examiners: Kwame Gyan (Co-ordinator); C.E.K. Kumado; Dr. Peter Atupare; Dr. Kweku
uson.*