

Mid-Term Assessment (G1)

This question is meant for you and I to gauge how far you've understood torts. It is not particularly heavily-weighted and will only count for 15% of your overall grade. Do take this primarily as the learning opportunity that I hope it is.

You will have **ninety minutes** to read and do this question, of which the first 15 minutes is reading time. 15 minutes is just a guide. Take as long as you need to read and understand the question, even if it means going beyond 15 minutes. One cannot answer a question one does not understand.

The exam should be typed using the relevant exam software. You are allowed to refer to any non-Internet materials you have with you. You are not to communicate by any means, electronic or otherwise. Dishonesty of any sort, I should remind you, is a potentially disqualifying and also disbarable offence. You may also be suspended and/or expelled.

Since I have excess space to kill on the first page, here is an excerpt from a poem I particularly like. Like the legal tests we have for duty of care, it is primarily a collection of made up words.

'Twas brillig, and the slithy toves
Did gyre and gimble in the wabe:
All mimsy were the borogoves,
And the mome raths outgrabe.

"Beware the Jabberwock, my son!
The jaws that bite, the claws that catch!
Beware the Jubjub bird, and shun
The frumious Bandersnatch!"

– Lewis Carroll (1871), *Jabberwocky*

The question begins on the next page. **Do not flip the page over (or try any X-ray vision tricks) until I tell you to do so.**

*All the best and good luck! Please read the questions on page 4 **carefully**.*

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Aisya, 38, is a newly-minted equity partner specialising in commercial law at a mid-sized Singapore law firm. Her husband Kwan, also 38, does investments and trading at a local bank. The two had recently gotten married in Jan 2020.

On 1 Feb 2020, they moved into a 3 storey landed bungalow they had bought in the Katong area. The house is one of those nice heritage houses with a long colonial history. It was designed and built in 1940 by Due South Ltd, now a big listed Singapore property developer. Aisya and Kwan (henceforth “A&K”) are the fifth owners of the house. They officially took over ownership on 31 Oct 2019.

Before moving in, they engaged Safe Interiors Pte Ltd (“SI”), an interior design and furniture company, to plan and also implement a series of renovations. This included building a new wall fountain in their living room (the sort where water flows down along a feature wall and into a pool). To preserve the heritage feel of the house, A&K asked that SI construct the fountain on an existing 3-metre long stretch of heritage wall that lined their living room. SI inserts some water pipes and pumps in the wall to make this happen. They also add some claddings to the heritage wall. The \$200,000 contract between A&K and SI does not contain any relevant exclusion clause.

A&K’s discussions with SI took place over Nov 2019. From 1 Dec 2019 to 31 Jan 2020, SI cordoned off the house as a construction site, putting up the usual barriers and warnings, and carried out the renovations. From time to time SI would invite A&K over to have a look at the progress, and A&K would give some creative direction and feedback.

Unfortunately for the newlyweds, their new life together was fraught with twists and turns. Within a month of moving in, they received a lawyer’s letter from one Tommy, a 24 year old photographer who specialises in taking pictures for interior design magazines. On 15 Jan 2020, SI had closed but forgotten to lock the construction site gate. The wind was very strong that day and so blew the gate ajar. Passing by outside, Tommy spied a beautifully renovated colonial house and ventured in to take a few pictures. Tommy did not however notice a long electrical wire that was carelessly strewn across the floor. He

tripped, dropping and breaking his \$10,000 camera. Because his camera was broken, he also had to miss the photoshoot he was heading to that day, making for lost profits of a further \$25,000. He is now demanding compensation for both from A&K **only**.

Around Feb 2020, parts of the wall fountain started breaking off and falling into the pool below. It turned out that the original heritage wall as designed and built by Due South was defective. The result is that it would easily disintegrate if some weight was placed on it. There was nothing wrong with SI's fountain or the materials they used. But because A&K had specifically asked for the fountain to be built on that wall, SI did not check whether the wall was suitable for a wall fountain to begin with. A&K will need to pay \$100,000 to re-do the entire wall and wall fountain. They are hoping to claim compensation for this from either Due South or SI or both.

Finally, within days of moving in, the couple started hearing strange noises and having strange sightings in the house. They had heard from the previous owners a folk tale that the house was previously used as a holding area for prisoners during the Sook Ching massacre.¹ They would catch momentary glimpses of what seemed like a phantom dressed like the Japanese military police patrolling their corridors. Once the phantom even shouted Kwan's name. Kwan is a serious history buff who knows about the atrocities committed during the time. He is very afraid and has many sleepless nights. Eventually he develops severe paranoia, a recognised psychiatric injury.

Aisya, who witnesses her husband slowly falling into paranoia, is extremely distressed as well. She takes it upon herself to confront the phantom. Having practiced law for so many years, she had developed nerves of steel. One night, as the phantom emerged, she lunges at it without thinking. To her utmost surprise, she did not pass right through the phantom. Instead, both of them fell to the ground. "Ouch! That hurt!", belches the 'phantom'. It was actually Harto, Aisya's jilted ex-boyfriend, who had been jealous of the newlyweds. He had spent the last month sneaking into their home trying to sabotage their relationship. He especially wanted to scare Kwan into leaving Aisya.

¹This was a period during the Japanese Occupation (1942–1945) where thousands of Singaporeans were murdered by the Japanese military.

Consider the following questions only:

1. Does Tommy have any tort claim(s) against A&K? If not, who if anyone should they ask Tommy to go after and why?
2. **Leaving aside any limitation issues**, do A&K have any tort claim(s) against Due South or SI in relation to the wall?
3. Do A&K have any **intentional** tort claim(s) against Harto?
4. Are there any other tort-related issues that A&K should know about?

Make sure that your answer to each question is clearly demarcated. Focus your answer on materials covered in class so far (except breach and causation). Do not discuss any potential claims in contract law either. To be clear, no credit will be given if you discuss topics out of scope. If more facts are needed for your analysis, state them and explain why.