

# Mid-Term Timed Assessment

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 a small portion of your overall grade. Do take this primarily as the learning opportunity that I hope it is.

There is only one (1) compulsory hypothetical for you to answer. That question has three sub-parts and you must answer all of them. For these, you are given **ninety minutes** from when the test begins. 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. You are free to start writing anytime.

Your answer should be typed into the response box. Use clear headers to demarcate which part of the question you are answering. Do not include any potentially personally-identifying information in your answer.

**Turn over the page only when you are told to do so.**

Twenty-eight year old Marcela is a streamer who has built a sizeable fan base (of around 500,000 subscribers) on the augmented reality (AR) streaming platform “Witch”. The platform was founded 6 years ago and is based in Singapore. Its main selling point is a range of AR filters called — “perspectives” or “paxes” by the community — which let streamers superimpose hyper-realistic 3D graphics over real world video. These can be activated at the click of a button, and streamers generally do not concern themselves with how they work.

The platform rose to fame because of its dedication towards helping its creators make content (and money) “like magic”. Since the beginning, Witch maintained a “creator first” policy which very publicly declares that all subscription fees “go directly in the first instance to our content creators; we only take a modest amount to keep the platform running”. This modest amount is 10% of the subscription fee viewers pay. Creators alone decide how much to set these fees at. In this regard, Witch differs from usual platforms where, in those other platforms, (1) viewer money goes first to the platform which takes a cut before disbursing funds to the streamer’s account, (2) average platform fees range between 20–30%; and (3) creators are required to charge an amount the platform sets.

The relationship between Witch and its creators is shaped by Witch’s Terms of Use which binds **both creators and viewers** alike. The Terms state that Witch is “not responsible for any content our creators publish on our platform”. Nothing else in the Terms is material.

As for Marcela, her success really began in October last year, when she decided to do a Halloween special. She streamed herself taking a walk through Bishan-Ang Mo Kio park at night while using one of Witch’s “horror” paxes to make it seem as if every other human in the park was some kind of nightly horror — zombies, werewolves, giants, beasts, vampires, and ghosts galore. That stream attracted 50,000 active viewers.

But all that was last year. Since then, Marcela has organised her channel around horror streams: night visits to the abandoned Old Changi Hospital, mysterious spots in Pulau Ubin, etc, all of them enhanced by Witch’s paxes. This has won her dedicated subscriber base amongst Singapore teens aged 14–20, who enjoy watching her streams with friends at sleepovers and the like.

Capitalising on her success, on 12 August 2022 Marcela planned a huge “Seventh Month Special”. This coincided with the first day of the Lunar seventh month, a date broadly understood in Chinese superstition as the day the gates of the Underworld open, allowing its denizens to roam the world of the living. Marcela asked Witch if they could make her a “special, extra scary Seventh Month pax which shows extremely realistic ghosts flying everywhere, so that my subscribers get the fright of their lives”. Witch readily agreed, as it was raring to try out a new AR generation software its engineers had just finished building. Marcela marketed the event aggressively on her channel, asking her viewers to “invite all your friends and non-believers to come and witness the true meaning of horror (at your own risk!)”.

Marcela then set herself up on 11 August 2022, 2300 hours, in the middle of Lim Chu Kang cemetery. Together with her viewers, she counted down to midnight. By 2355 hours, her stream had upwards of 250,000 viewers (not including those watching through their friends’ accounts). Once the clock struck twelve, Marcela turned the new pax on.

What transpired was truly the meaning of horror. It turned out that Witch’s engineers had built the new software by training a machine learning algorithm on particularly gruesome and grisly images — the sort that would be banned outright from television. This included real images of dead, dismembered, and decaying humans and other (previously) living things. That was how they were able to replicate hyper-realistic, and utterly frightful AR visions. Witch did not realise that paxes created by this software had the potential to reproduce the exact same images on their platform (in hyper-realistic 3D no less). Because of a careless oversight on Witch’s part, the new software did not go through quality assurance or censorship before deployment.

The moment the filter was enabled, gory images in the software’s training data were instantly broadcast to all of Marcela’s viewers, inflicting severe distress and emotional damage. As she was busy filming, Marcela did not realise what was happening until a sharp fall in viewer count minutes into the stream prompted her to check what they were seeing. She immediately turned the filter off when she did.

By then, however, the damage had been done. Marcela went from expecting 10,000 *new* subscribers from that event to *losing* 250,000 subscribers overnight. This causes her monthly subscriber revenue to plunge by \$250,000, as she charges \$1/month. She also

had to cancel planned specials for the rest of the Seventh Month. These, she estimates, would have net her another 25,000 new subscribers. To make things worse, two months later she gets a lawyer's letter from Khan, who had developed a recognised psychiatric injury from watching her stream. Though she is completely fine herself, Marcela suspects that many other viewers could have come down with such psychiatric injuries as well.

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**Answer all the following questions using only material covered up till and not including the Standard of Care. You also need not discuss anything to do with defences.**

1. Does Witch owe Marcela a duty of care?
2. Do either Witch or Marcela owe Khan a duty of care?
3. Other than negligence, are there any other tort(s) which Khan may use to sue Witch and/or Marcela? Briefly explain.

**Make sure that your answer to each sub-question is clearly demarcated. If more facts are needed for your analysis, state them and explain why.**