

COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATIONS

SEPTEMBER, 2010

LAW OF TORT

**Instructions**

- (a) Candidates **MUST** answer Question One and **any other 3 questions**
- (b) All questions carry **25 marks** each
- (c) Time allowed is **3 hours**

- 
- 1. (a) Critically discuss the elements necessary to prove a tort of negligence. **(15 marks)**  
(b) Discuss with the aid of appropriate case law, the guiding principles that the court would ordinarily employ in establishing a duty of care. **(10 marks)**
  - 2. Explain the Rule in Rylands v Fletcher, and the defences available to it. **(25 marks)**
  - 3. Distinguish between strict liability and vicarious liability in the law of tort. **(25 marks)**
  - 4. Discuss the defences available under the tort of defamation. **(25 marks)**
  - 5. Alan Bradley elected to take his fiancee Shawn Bradley to his rural home in Bungoma, and to accomplish his mission, he was of the view that a road trip would serve them better than travel by air. He accordingly purchased two tickets from Easy Coach Ltd. They set off on the night of 4<sup>th</sup> August 2010 aboard Easy Coach Bus Registration No. KBG 464C. While the bus was exiting Nairobi, both Alan and Shawn fell asleep only to be awakened by a loud bang arising from a head on collision with an oncoming Eldoret Express bus registration No. KBC 480S. The Easy Coach bus veered off the road and rolled several times as a consequence of which Alan and Shawn sustained fatal injuries.  
Both the parents of Shawn and Alan have approached you for legal advice. Prepare a legal memorandum on their nights. **(25 marks)**

6. Wazimu Mingi, a struggling lawyer and polygamous man was very elated after his friend Chama Ojwang introduced him to USONKO MARA MOJA LIMITED, an investment club which apparently was operating a get-rich quick scheme. The rules were simple; deposit Kshs.100,000 and at the expiry of sixty months the depositor would walk home with Kshs.60,000 as interest. The deal was naturally very enticing and as a matter of fact, there were bronchures with numbers of individuals who you would call to confirm the credibility of the scheme.

Wazimu Mingi had Kshs.500,000 in his clients' account and without hesitation withdrew the whole amount and deposited it with USONKO MARA MOJA LIMITED. At the expiry of the six months grace period, the investment club had gone under and he did not receive what he had bargained for.

It is against that backdrop that Wazimu Mingi approaches you for legal advice on what action he should/would take against Usonko Mara Moja Limited.

Advise him.

**(25 marks)**

---