



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A

CITY CAMPUS

**P.O. Box 62157
00200 Nairobi - KENYA
Telephone: 891601-6
Fax: 254-20-891084
E-mail: academics@cuea.edu**

MAIN EXAMINATION

AUGUST - DECEMBER 2014 TRIMESTER

FACULTY OF LAW

EVENING PROGRAMME

CLS 106: LAW OF TORTS

Date: DECEMBER 2014

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and any other Two Questions

- Q1. In 2004 Theo was aged 19, an apprentice plumber and a talented rugby player. He hoped to sign a contract as a professional player and eventually to play for New Zealand. However, he had back problems and so was referred to Ursula, a neurosurgeon. She told him that it would be impossible for him to take part in professional rugby without soon sustaining serious injury and no club would sign him on as a professional. If he were to give up rugby she advised him that he would be able to lead a normal life without back trouble for many years. There was however, a new surgical procedure that offered a very good prospect of strengthening his back sufficiently to enable him to play rugby. Ursula knew that recent research had suggested that the new procedure carried a small risk of damaging the spine. She was critical of this research and did not tell Theo about it. Theo decided to have the surgery. Although the operation was carefully performed he suffered serious damage to his spine. He was unable to work as a plumber and suffered considerable pain.
- In January 2005 Theo's mother collapsed just outside her front door on a very cold night. As there was no help available, Theo lifted his mother inside. He experienced terrible back pains and is now permanently disabled. Advise Theo as to any tort claim against Ursula on each of the following:

- a) He would probably have suffered no injury as the result of lifting his mother but for the earlier operation. **(15 marks)**
- b) He would probably have suffered the same injury as the result of lifting his mother even if he had not had the earlier operation. **(15 marks)**

Q2. Has the tort of battery been committed in any of the following situations?

- a) Junita was at a crowded party and was enjoying herself tremendously. While dancing she trod on Kumar's toe, hit Susan hard on the back and knocked James over. **(5 marks)**
- b) While getting on a crowded train John jabbed his umbrella in Fred's leg. He saw a vacant seat and noticed that Rogers was about to sit down. He pushed Roger out of the way. Roger dropped the baby he was carrying. **(5 marks)**
- c) The train pulled up too quickly and caused Fred to stand on someone's foot. When he saw that it was John he refused to remove it **(5 marks)**

Q3.a) Give the meaning and justification of vicarious liability **(3 marks)**

- c) Briefly explain the various defences in tort **(12 marks)**

Q4. Hopeful District Council has decided to use a local church hall as

- a) drop-in centre for drug addicts. It is very successful and attracts a number of people each day. Unfortunately, local householders have complained that after visiting the drop-in centre, saying that the addicts been throwing needles in their gardens and the burglary rate has Increased.

- a. Would the Council be liable for the actions of the addicts in nuisance

(3 marks)

- b) Explain the general remedies of nuisance **(12 marks)**

Q5. Using decided case law, discuss the special problems in negligence. In your opinion has the jurisprudence in tort developed to the better or worse?

(15 marks)