



NATIONAL OPEN UNIVERSITY OF NIGERIA
Plot 91, Cadastral Zone, Nnamdi Azikiwe Express Way, Jabi – Abuja
FACULTY OF LAW
DEPARTMENT OF PRIVATE AND PROPERTY LAW
2020_1 EXAMINATION

COURSE CODE: PPL 324

COURSE TITLE: LAW OF TORTS II.

CREDIT UNIT: 4

TIME ALLOWED: 2 ½ HRS

Instruction: ANSWER QUESTION (ONE)1 AND ANY OTHER (THREE) 3.
QUESTION 1 (ONE) is 25 marks and questions 2 to 6 are 15 marks each.

QUESTIONS

1. Sure Banker Ventures are a food wholesalers operating out of a large warehouse. Food is purchased there in bulk, either in person or via order. One day, a number of incidents occur in the warehouse. Employees Malami and Zephaniah meet with a customer, who wishes to buy a large quantity of rice. The desired product is on a high shelf, some two stories up on the warehouse's industrial shelving. Ordinarily, they would use a forklift system to retrieve the pallet the rice is on. Today, however, the lift is already in use. The wholesalers is busy, and so Malami and Zephaniah decide to retrieve the rice on their own. They have attempted this once before, and were caught by their employer, who forbade them from retrieving products in this manner. Zephaniah climbs up the shelving, and after ensuring Malami is ready, she shifts the bag of rice off the pallet. Unfortunately, another customer is walking by when the bag falls off of the shelves. It misses Malami (who was intending to catch it) and it hits the customer, who is knocked to the floor and suffers a broken arm.

Rice is spilled over the floor, and so Malami and Zephaniah call over Kathrine – a cleaner. Kathrine is employed by Sure Banker Ventures on a casual basis, three days each week. They ask that she wears their uniform, and that she is polite to customers as she works. Kathrine works on an independent basis – she operates under her own name, and files a tax return each year declaring her income. Kathrine jumps onto the warehouse's sweeper machine – an industrial unit used to make cleaning up large spills easier. On her way to the spill she accidentally runs over the foot of a customer. The customer's foot is broken, and he swears loudly at Kathrine

Janet, a cashier, hears the customer yelling at Kathrine. He is rather protective of her and rushes over and berates the customer for his poor attitude. The customer refuses to back down, and so Janet hits him, breaking his nose.

Meanwhile, Haruna, a delivery driver, is out on a job delivering beef to a customer. He is still on his way out when he decides to stop for lunch at a drive-through restaurant. Whilst stopped at the order window, he accidentally puts his delivery van in reverse, and hits the driver behind him.

Sure Banker Ventures is now facing four claims – one for the broken arm, one for the broken foot, another one for the broken nose, and a fourth for the vehicle damage.

Advise Sure Banker Ventures on whether it will be held vicariously liable for these claims.

2. Discuss the strict liability rule in *Rylands v Fletcher* (1866) LRL. Exch. 265.

b. Enumerate the scope of the Rule in (a) above.

c. Highlight the major differences between nuisance and the Rule in *Ryland v. Fletcher*.

3. Necessity Company Nigeria Ltd is duly registered in Nigeria. It has many vehicles including trucks used to convey goods from different parts of Nigeria. Maita is a driver in the employment of the company. On his way from Borno to Lokoja, he stopped at a popular junction in Michika to refresh himself in order to remain alert. He heard terrorists were operating in the area and drank some alcohol to give him the boldness to complete the journey.

As soon as he re-started the journey to Lokoja, he started feeling drowsy, he lost control of the truck and rammed into Auntie Bola's shop along the express road. The truck completely destroyed the shop and goods worth N10million. Sisi Clara sustained serious injuries to her two legs which were eventually amputated.

Sisi Clara wants to sue but is not sure if Maita is good for the money. Kindly advise her.

What are the two main ingredients that must be proved to succeed in recovering damages under vicarious liability from the owner of a vehicle?

Necessity Co Company Nigeria Ltd's manager says, the company cannot be liable because the company did not approve the use of alcohol for its drivers. Please advise the company.

4. Honourable Bolus Kwatas is an Honourable Member of the Federal Republic. He campaigns enthusiastically for votes at the next general elections to maintain his senate seat. He has promised to would rid the town of terrorists and infidels and advised the gathering crowd to "avoid any

attempts to be bought over by the opposition candidate Adefe Musawa, a pathological liar, irresponsible father and friend to insurgents.

- a. Clara the campaign manager informed Adefe Musawa of what was said. When he heard this, he was on the warpath. He approached you for legal action. Advise him accordingly.-- .
- b. What are the defenses if any available to Honourable Bolus Kwatas under the law?--- .

5. Mai Wawiya is a fresh graduate looking for opportunities in the labour market. In the final month of his national youth service, he attended a seminar on wealth creation organized by Speedy Limited. After the seminar, Mr. Magana Dogo, one of the facilitators of the seminar called Wawiya aside and told him that he could help Wawiya secure an interview with the Ajaokuta Steels. He pointed out that based on his recommendations his candidate always gets the job unfailingly. Based on this assurance, Wawiya parted with a huge sum of money which he had been saving for his mother's 80th birthday during his service year on the expectation that Mr Magana Dogo would come through with his promise. Mr Magana Dogo promised Wawiya he would hear from him within three days. Wawiya has waited three months without a word from Mr Magana Dogo. Luckily last night as he walked aimlessly he spotted MrMagana Dogo talking to some fresh youth venturesers. He accosted him and gave him a sound beating and demanded his money back. Wawiya was restrained and told to allow the law take its course. He approaches you as legal counsel. He claims that he parted with his money due to the representation made to him by Mr Magana Dogo However, Mr Magana Dogo contends that he cannot be reasonably expected to refund the money because in all honesty no graduate could possibly be that stupid. He claims Wawiya willingly parted with the money. Advice Wawiya. .

- b. In a new twist, Mr. Magana Dogo claims that he was also a victim of kidnappers who took the money from him and that he never benefitted from the money. Advise Wawiya. .

6. Lewis has recently had a big win on the lottery and has decided to purchase a company. He entered a contract with John, for the purchase of the company. During negotiations for the contract, Lewis enquired about the state of the accounts of the company, specifically, whether the company was profitable. John said this – 'I'm unsure, but it is my opinion that the company is profitable. However, I will check the accounts in the next week, if you do not hear from me you can assume all is well'. After a week, Lewis hears nothing. The contract is then

signed, but when Lewis receives the accounts he is upset to find the company has not profited in the last 6 months. He is extremely disappointed with the result of the contract and would like to know if there is anything that can be done about them. Would Lewis' conduct amount to a misrepresentation? If so, is it actionable, and could you ascertain what type of misrepresentation has been made?