

Mid Semester Test: August-2017

Law of Torts

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Torts
Semester-I (Batch: 2017-22)

Mid Semester Test: August-2017

Date: 22nd August 2017

Duration: 2 hours

Max. Marks: 30

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Draw the diagrams only with pencil.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Marks**Answer all Questions**

- Q.1 The incident that gave rise to initiation of proceedings under the Motor Vehicles Act is that on 20.6.2009 at about 9.00 p.m. when the plaintiff Rahul Yadav, age 26 years was walking slowly and cautiously at Sundar Galli, Koba Village, bearing survey No.182, at Gandhinagar. The driver of one earth mover, TATA Hitachi Ex-2009 bearing identification No.2001-9999 was employed with the defendant company Ms. Vishwakarma Earth Movers Limited, Gandhinagar. The earth mover which was digging the said land was driven with high speed went near the plaintiff and dashed against him, due to which he sustained injuries to his arms and legs. The plaintiff has claimed for damages under the Motor Vehicles Act, 1988. (2+2+1=05)

The word 'Motor Vehicle' as defined under the Motor Vehicles Act, 1988 ('Act' for short) is as under:

Section 2(28): "Motor Vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters."

In the light of the above mentioned factual matrix, answer the following questions

- (a) What are the conditions of liability in torts? Which of it is applicable here?
- (b) Whether the equipment in question is a "Motor Vehicle" as defined under the Act? Give Reason.
- (c) Determine the liability of the parties in question?

- Q.2 The Plaintiff Mrs. Gayatri Devi is the wife of the deceased Lalu Chauhan (aged 30 Years). The locality where the incident occurred is the Hadanear Nala in the area of (2+3=05)

- Q.2 The Plaintiff Mrs. Gayatri Devi is the wife of the deceased Lalu Chauhan (aged 30 Years). The locality where the incident occurred is the Hadapsar Nala in the area of Karol Bagh was uncovered, and there was no wall or barricading informing the residents of the area that this particular area was unsafe. This Hadapsar Nala is situated in a thickly populated area. On 22.6.2010 when the deceased (Lalu Chauhan) was coming (2+3 =05)

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back from the market he saw two small children drowning in the sewerage system. The rickshaw which was carrying the children was also carrying goods had misbalanced and had slipped into the Hadapsar Nala.

In an attempt to rescue them Lalu Chauhan jumped into the Hadapsar Nala and managed to save one child namely Rahul (age 10 Years). There was extreme filth and gases in the Hadapsar Nala. The deceased Lalu Chauhan along with the second child Sandeep (age 12 Years), however succumbed to their death. The deceased was taken to Sanjay Gandhi Memorial Hospital where the doctor declared him dead. The F.I.R was not registered by the police initially. The deceased was doing business of rickshaw pulling and earning Rs.5000/- per month. He was the only bread earner of his family. Rs.20, 000/- was spent on his last rites. The child Sandeep who had succumbed to his injuries was the victim in the instant case. This petition has been filed by the parents of the Sandeep namely Laxmi Narain and Leela Devi. Sandeep was 12 years of age at the time of his death. In this petition, it has been reiterated that the Hadapsar Nala in front of residential block did not contain any warning that it was uncovered.

Facts admitted on record that Lalu Chauhan managed to save one child Rahul but he along with the second child Sandeep had succumbed to his injuries. Lalu Chauhan had died in the fore noted manner was not in dispute. It is not in dispute that in the course of this rescue operation he had succumbed to his death. This sewer drain/ Hadapsar Nala had no barricading informing the residents that this area was unsafe. The Hadapsar Nala was maintained by the the defendant Government of NCT of Delhi through its Irrigation and Flood Control Department, New Delhi, India.

Answer the following questions in the light of the following facts

- (a) Determine the liability of parties in this case.
- (b) Which is the principle of tort liability relevant to determine the liability of the parties? If any.

- Q.3 The Plaintiff herein are the owners of land, which is proximate to the Khadakwasla Dam that has been built over river Mullamutha. They had grown hybrid berry trees over the said land which, they claim, belong to their ancestors and were earning their livelihood from the fruits of the said trees. The Defendants have built a dam over River Mullamutha in the nearby area for supplying water for irrigational purpose and thereby to earn revenue. In June 2017, there were heavy rains in the said area which resulted in overflowing of the water in the dam. In order to save the dam, the respondents released nearly 60 000 cuses of water. This release of water flooded the fields of the appellants. (2+2+ 1=05)

Mullamutha in the nearby area for supplying water for irrigation purpose and thereby to earn revenue. In June 2017, there were heavy rains in the said area which resulted in overflowing of the water in the dam. In order to save the dam, the respondents released nearly 60,000 cusecs of water. This release of water flooded the fields of the appellants. With the submerging of the land of the appellants, all the trees standing on the land got uprooted resulting in destroying the whole cultivation of hybrid berries. According to the appellants, there entire 9 *bighas* of agricultural land became part of the river Mullamutha and the only source of livelihood was lost.

The Plaintiff argued that the respondents had stored more than the retention capacity of the water in the dam during the month of June 2017 despite knowing fully well that during the ensuing rainy season there would be more flow of water in the dam. This act on the part of the respondents was an act of gross negligence and lack of good administration.

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The Defendant's contested the suit inter alia on the ground that the place where the said dam, known as Khadakwasla Dam Water Scheme, is constructed was situated nearby the village Puneri of Taluka Mulshi, which is 33 kms. Away from the place of the appellants. It was further stated that due to heavy rains the water level of the dam had gone abnormally high and, therefore, there was no option but to release further water flow from the dam in the river to control the floods. For this purpose, advance information was given to the offices such as the Head of Departments, Revenue Authorities, etc. It was also stated that during the monsoon season at what level the capacity of the water is to be filled in the Khadakwasla Dam is decided in advance. But in the eventuality of the heavy rain fall at the upper side areas, to maintain the level of the water dam, the additional water received from the upper areas are released into the river by opening the doors of the dam so that any damage to the dam can be prevented. This decision of how much water has to be released into the river is taken by the Competent Officer.

In the light of the mentioned factual matrix answer the following questions with the help of relevant principles of tortious liability:

- (a) Explain how the plaintiff may prove the suit claim
- (b) Explain how the defendants may prove their non-liability?
- (c) Who has a better claim?

- Q.4 The Defendant attempted to assassinate the Chief Minister of Delhi. The shots that he fired struck several bystanders near the Chief Minister. The Defendant contends that while he was in a deluded and psychotic state of mind' he fired at the Chief Minister. The Plaintiffs, who were near the Chief Minister were struck by bullets fired by the defendant. The defendant believed that the Chief Minister was conspiring to get him assassinated and that the only means of defence was to assassinate him in the first place. (2+3 =05)

In the light of the mentioned factual matrix answer the following questions

- a) Determine the Criminal Liability of the defendant.
- b) Determine the Tortious Liability of the defendant with relevant case laws supporting

In the light of the mentioned factual matrix answer the following questions

- a) Determine the Criminal Liability of the defendant.
- b) Determine the Tortious Liability of the defendant with relevant case laws supporting the justifications.

Q.5 Explain the maxim "*The king can do no wrong*". How has the Act of state, developed as a defense in a tortious liability by the English and Indian courts? (04)

Q.6 Short Notes:- (Any Three) (3x2=06)

- (a) *De minimis non curate lex.*
- (b) *Ubi Jus ibi remedium*
- (c) Law of tort v. Law of torts
- (d) Differentiate between Torts and Crime
- (e) *Garratt v. Dailey, Supreme Court of Washington, 1955. 46 Wash.2d 197, 279 P.2d 1091*
