

**LAW OF TORTS EXAM 2004 Q2**  
**[High Distinction – 90%]**

Various actions arise. Henry, Ian and Nancy as plaintiffs may bring an action for negligent misstatement of economic fact against Jacko and Curtis. Henry and Ian may also bring an action of False Imprisonment against Lamont and Marco. They may further bring an action in defamation against Pat, whiles Kurtis may bring an action against Roger for his negligence in preparing his ulter virus gift.

Regarding negligent misstatement of economic fact, a 'special relationship' of passing information must arise. The case Hedley Byrne v Heller established this tort, whilst Tepko v Water Board established that one must factor the 'reasonable foreseeability' that the info will be relied upon against the 'reasonableness of the plaintiff's reliance'. Caporo v Dickman protects auditors from their statements being misread by a secondary audience. The High Court embodied this in San Sebastien v The Minister.

Thus, on the facts, it is arguable that a special relationship arises in all of the situations involving the plaintiffs and defendants. However, under Capro and San Sebastien, Jacko's report is protected from being liable for economic loss, and in Nancy's case, no duty of care arises. However, as the Tepko outlines, it is reasonably foreseeable that by calling Jacko both Henry and Ian would rely upon his silence, compounded this issue, and he thus arguably owes them a duty of care for his statement. They may recover damages following the normal steps of negligence. Similarly, under Tepko, they may arguably be held to have relied upon Curtis' encouraging words, so arguably damages from him as well.

In the false imprisonment action, it requires the plaintiffs to be deprived of their liberty so there is no reasonable route of escape. It is designed to protect their freedom. Three elements must be satisfied. The first is that the action of the defendants were a positive voluntary act, brought about by verbal or physical means. Second, there must be directness. To satisfy this element, there must be no reasonable escape route, and courts must take into account the context. Finally, the defendant must act recklessly or intent the act to occur to be determined as 'at fault'.

Thus, Lamont and Marco arguably satisfied the positive voluntary act by shouting threats and insults, as well as waiting outside the room. The direct nature of their restraint, despite being actionable per se, caused damage. Being the main floor of the building, the escape route attempted by Ian was arguably not reasonable. Similarly, it is clear that Lamont and Marco intended to keep Henry and Ian imprisoned.

Thus, it is arguable that Henry and Ian may collect damages. Compensatory damages are those to compensate for actual injuries as a result, including psychiatric injury. Thus, both plaintiffs would arguable recover damages under this head, as Ian may argue that he was in the 'agony of the moment' and scared for his wellbeing due to the defendants actions. Likewise they may receive aggravated damages, for their injured

feelings or outrage, and the court may award exemplary damages as a disapproval of Lamont and Marco's conduct.

In their action for defamation against Pat, Henry and Ian must satisfy the elements, as well as show how the imputation against their company arose. Pat may argue that his article was a 'fair ???' or that he relied on 'truth and justification'.

The elements of defamation are that the material was published; that the material was defamatory; and the plaintiffs are identifiable as being defamed. If the material has the tendency to lower the plaintiff in ??? of others, then it may be found defamatory, following *Sungrauive Pty Ltd v Middle East Airlines*. The test set out in *Chakravfi v Advertiser Newspaper* determines whether a 'natural or ordinary' meaning of words can be made out to be defamatory: essentially it is what imputation an 'ordinary person' may make, based on 'reasonable foreseeability', as outlines in *Farquhar v Bottom*.

Thus, Pat's article was published in the local Mercury Newspaper. The material, especially the statement given in consistent with Sungrauive, in lowing the estimation of Amalgo. Satisfying Chakravfi, an ordinary person would reasonably imply the imputation of ??? made by Pat on the ordinary meaning of the words. Finally, the article specifically mentions Amalgo, satisfying the final element. Arguable thus, Pat has defamed Henry and Ian.

However, Pat may possibly rely on two defence in his defence. Under fair comment, *Carleton v ABC* the majority held that it was fair for the ABC as they did not in their report directly call Carleton a ??? – they made an observation based on fact. However, Pat arguably did not follow this, as he used 'exploitive employees' According to *Andrews v John Fairfax & Sons*, it is not the truth of the statement, but the meaning or imputation that must be proved true. This is known as 'truth or justification' defence. It is arguable that at the time of publishing, although Lamont and Marco were discurtled, Henry and Ian had already affected changes to alleviate their concerns. Thus its is also arguable that Pat may not rely on this defence and thus may be found to have defamed Amalgo (Henry and Ian) who may recover damages.

Regarding the inter virus gift action, a solicitor may be held liable for negligently preparing documents relating to the gift, as long as the situation is irremedial. *Hommens v Wilson Browne* is the authority on the matter – the majority held that if the third party changes their mind prior to the solicitors negligent conduct, then the situation is remedial, and the plaintiff, the third party benefiting from the situation, has no duty owed to him. However, if the third party changes his mind following the conduct, then a duty exists.

In the facts of this case, there arguably appears to be no duty owed from Roger to Kurtis. Although Roger agreed to prepare the deed, his neglecting to do so meant that at the time of Quiutan's change of mind, no negligent act had occurred, and the situation is remedial. Arguably thus, Kurtis would not be able to recover the substantial gift of money by bringing an action against Roger.