

UNIVERSITI SAINS MALAYSIA

Peperiksaan Semester Kedua
Sidang Akademik 2006/2007

April 2007

**HBT 203 - BAHASA, UNDANG-UNDANG DAN
PENTERJEMAHAN II**

Masa : 3 jam

Sila pastikan bahawa kertas peperiksaan ini mengandungi LAPAN muka surat yang bercetak sebelum anda memulakan peperiksaan ini.

ARAHAN:

1. Jawab LIMA soalan sahaja.
2. SOALAN 1, 2 dan 3 di Bahagian A wajib dijawab.
3. Jawab satu soalan dari Bahagian B dan satu soalan dari Bahagian C.
4. Tulis semua jawapan dalam buku jawapan.
5. Tulis nombor soalan yang telah anda jawab di muka hadapan buku jawapan anda.

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Bahagian A

Jawab SEMUA soalan dalam bahagian ini.

1. Teliti definisi berikut dan jawab [a] dan [b].

"A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it."

- [a] Nyatakan sama ada elemen-elemen yang berikut merupakan elemen *actus reus* atau *mens rea* dalam jenayah *theft*.

- [i] *dishonestly*
- [ii] *property*
- [iii] *intention to permanently deprive*
- [iv] *belonging to another*
- [v] *appropriation*

[5 markah]

- [b] Huraikan secara terperinci elemen-elemen yang berikut dalam jenayah *theft*.

- [i] *property*
- [ii] *intention to permanently deprive*
- [iii] *appropriation*

[15 markah]

2. Jawab [a] dan [b].

[a] Teliti pernyataan berikut dan jawab soalan yang seterusnya.

“Tortious liability arises from the breach of a duty primarily fixed by law; such duty is towards persons generally, and its breach is redressible by an action for unliquidated damages.”

Terangkan maksud perkara-perkara berikut:

[i] *persons*

[3 markah]

[ii] *tortious liability*

[3 markah]

[b] Huraikan salah satu pembelaan dalam tort.

[4 markah]

3. Jawab [a] dan [b].

[a] Bezakan antara *voluntary manslaughter* dengan *involuntary manslaughter*.

[4 markah]

[b] Huraikan dua pembelaan dalam kes pembunuhan (*murder*) dan pematian orang (*manslaughter*).

[6 markah]

Bahagian B

Jawab SATU soalan sahaja dalam bahagian ini.

4. Jawab [a] hingga [e].

[a] Huraikan maksud *the burden of proof* dan *the standard of proof* dalam kes jenayah.

[6 markah]

[b] Dari segi *actus reus*, apakah perbezaan antara *robbery* dan *burglary*?

[4 markah]

[c] Huraikan maksud percubaan melalui peninggalan (*attempt by omission*) dalam undang-undang jenayah dan beri satu contoh yang sesuai.

[2 markah]

[d] "*If D causes an actus reus with mens rea, he is guilty of the crime and it is entirely irrelevant to his guilt that he had a good motive.*"

Bincangkan kenyataan ini dengan memberi contoh-contoh yang sesuai.

[4 markah]

[e] Jelaskan perbezaan antara *Absolute Privilege* dengan *Qualified Privilege*.

[4 markah]

5. Jawab [a] hingga [d].

[a] Bincangkan secara terperinci elemen *actus reus* dalam bentuk-bentuk yang berikut dengan memberi contoh-contoh yang sesuai.

[i] perihal keadaan (*a state of affairs*)

[ii] perkataan

[6 markah]

[b] Jelaskan perbezaan antara *assault* dengan *battery*.

[4 markah]

[c] Terangkan maksud perkara-perkara yang berikut dalam konteks pembelaan dalam jenayah fitnah.

[i] *justification*

[ii] *fair comment*

[6 markah]

[d] Dalam sesetengah kesalahan, elemen *negligence* sahaja sudah memadai dan elemen *mens rea* tidak perlu dibuktikan. Huraikan kenyataan ini dengan memberi contoh-contoh yang sesuai.

[4 markah]

Bahagian C

Jawab SATU soalan sahaja dalam bahagian ini.

6. Terjemahkan **TEKS A** ke bahasa Malaysia.

TEKS A

Defamation is an injury to the reputation or character of someone resulting from the false statements or actions of another. Defamation is a false attack on your good name. Your good name is regarded as a proprietary interest, not a personal interest. Defamation is an improper and unlawful attack against your proprietary right to your good name, your reputation.

Defamation is a general term for the false attack on your character or reputation through either libel or slander. Libel is a term describing visual defamation, usually in the form of lies in print, or misleading or deceptive photographs. Libel exposes or subjects you to hatred, contempt, ridicule, or disgrace, or causes you to be shunned or avoided, or injures you in your occupation.

Slander is a term describing defamation that you hear, not see, usually in the form of someone talking trash about you or spreading or repeating lies and unfounded rumor. Slander is an oral statement that tends to injure you in respect to your office, profession, trade or business. The statement or statements generally suggest that you lack integrity, honesty, incompetence, or that you possess other reprehensible personal characteristics.

A legal claim based on defamation entitles the victim to recover against the defamer for his or her emotional damages. In addition, the victim will be entitled to sue for punitive, or punishment, damages. There are other critical differences which make defamation important to be aware of. You can prove defamation on your word alone, even though it is always better to have some confirming evidence (a letter, a memo, an e-mail, statements from fellow employees confirming the defamatory remarks about you, etc.) You can testify in court as to statements made by others about you. This means that the "hearsay" rule does not apply to the testimony in court which repeats defamatory statements made out of court. You do not have to prove damages in defamation cases. Damages are presumed. This means that you do not have to testify that you were emotionally destroyed or had to see a psychiatrist or other mental health specialist or doctor.

[Sumber: Disesuaikan daripada <http://www.faceintel.com/defamation.htm>]

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7. Terjemahkan **TEKS B** ke bahasa Malaysia.

TEKS B

The Nature of Tort

First, we must examine the distinctions between (a) a tort and a crime, (b) a tort and a breach of contract, and (c) a tort and a breach of trust.

(a) A Crime. The object of criminal proceedings is primarily punishment. The police are the principal agents to enforce the criminal law, though a private person may also prosecute a criminal offence. If the defendant is found guilty the court may award the proper punishment. The object of the proceedings in tort is not punishment, but compensation or reparation to the claimant, previously designated as the plaintiff for the loss or injury caused by the defendant, i.e. damages.

The same facts may disclose a crime and a tort. Thus, if A steals B's coat, there is (i) a crime of theft, and (ii) trespass to goods (a tort) and conversion (also a tort). If X assaults Y, there is both a crime and a tort.

(b) A Breach of Contract. In contract the duties are fixed by the parties themselves. They impose terms and conditions themselves by their agreement. In tort, on the other hand, the duties are fixed by law (common law or statute) and arise by the operation of the law itself.

Here, too, the same circumstances may give rise to a breach of contract and a tort. Thus, if A hires a taxi-cab driven by B, and B by dangerous driving injures the passenger, A, the latter will have a cause of action for (i) breach of contractual duty of care, and (ii) the tort of negligence.

So, too, where A employs privately a surgeon, B, to operate on A's son, B owes A a contractual duty of care. If B fails in that duty there will also be liability in tort to the child.

(c) Breach of A Trust. As we have seen, a breach of trust fell within the jurisdiction of the Chancery Courts, and although compensation may be awarded for damage suffered by reason of the breach of trust, the real distinction is due to the history of equity and common law rather than to logical reasons and development.

[Sumber: David Barker dan Colin Padfield, *Law Made Simple*, 11th ed. (Oxford: Made Simple Books, 2002), hlm. 175-176]

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8. Terjemahkan **TEKS C** ke bahasa Malaysia**TEKS C**

An inciter, it has been said –

“...is one who reaches and seeks to influence the mind of another to the commission of a crime. The machinations of criminal ingenuity being legion, the approach to the other's mind may take various forms, such as suggestion, proposal, request, exhortation, gesture, argument, persuasion, inducement, goading or the arousal of cupidity.

A person may incite another by threats or pressure as well by persuasion. Incitement may be implied as well as express. To advertise an article for sale, representing its virtue to be that it may be used to do an act which is an offence, in an incitement to commit that offence – even when accompanied by a warning that the act is an offence.

The mere incitement of another to commit an indictable offence is a common law misdemeanour, whether the incitement is successful in persuading the other to commit, or to attempt to commit the offence or not. It was so held in the leading case of *Higgins* where Lord Kenyon said:

“But it is argued, that a mere intent to commit evil is not indictable, without an act done; but is there not an act done, when it is charged that the defendant solicited another to commit a felony? The solicitation is an act: and the answer given at the Bar is decisive, that it would be sufficient to constitute an overt act of high treason.”

The act incited must be one which, when done, would be a crime by the person incited. So it was not an offence at common law for a man to incite a girl of fifteen to permit him to have incestuous sexual intercourse. Though the man commits incest by having intercourse with her, the girl commits no offence by permitting it. The Criminal Law Act 1977, s. 54, makes it an offence for a man to incite a girl under sixteen to have sexual intercourse with him but the general principle is unaffected. It is not the offence of incitement for anyone to urge a fifteen-year-old girl to have incestuous intercourse with a third party or with himself. Arguably, however, the latter cases are attempts by him to commit the offence.

[Sumber: J.C. Smith dan Brian Hogan, *Criminal Law*, 5th ed. (London: Butterworth, 1983), hlm. 222-223]

[40 markah]