



MODULE CODE: SOLM216

MODULE TITLE: MEDIA LAW: REPUTATION MANAGEMENT

MODULE CONVENOR: GAVIN SUTTER

DATE OF FINAL ASSESSMENT: 21 – 22 MAY

INSTRUCTIONS:

- Please put your **student number** (9 digit number) **ONLY** at the top of the paper
- **DO NOT** put your name on the paper and **DO NOT** use the **HEADER AND FOOTER** layout
- Please state the module name and date at the top of your answers
- **You must answer any TWO of the THREE questions provided**
- **There is a word limit of 1500 words per answer**
- You have **24 hours** to answer these questions.
- Footnoting is not required; in-text citations to references will suffice
- Submit your answers via QMPlus no later than **10:59am (UK time) by 22 May 2021**
- Indicate on the attachment the numbers of the questions you have chosen to answer.
- If you have any questions concerning the exam paper, you may contact Mr Gavin Sutter at: g.sutter@qmul.ac.uk
(NOTE: the module convenor will be available for questions only for the first half an hour from the release of the paper)

Question 1

Gary Suture is a professor of arcane jurisprudence and media law at Stepney University. During the Covid-19 pandemic, Gary and all his colleagues have found themselves teaching online. Gary's experience with online learning is very limited, and it has long been rumoured that, while he will not admit it, he really struggles with technology. Students in his class often find themselves helpless with laughter when Gary has to repeat himself as he has just spent several minutes talking while his computer microphone is still on mute. Before long, Gary's eccentric ways have become something of a legend even outside his own department. The following publications are made:

- One student manages to capture a screen-shot of Gary looking confused during online teaching. This is shared on a Facebook social media group on which, unbeknown to Gary, his latest comic errors are discussed among the members of his class. The photograph is turned into a meme by one of the students after one poster suggests Gary looks 'drunk'. The meme, comprising the photograph with "I'm so drunk, lol" superimposed on it, is circulated first among the group, then more openly online. It rapidly becomes an internet sensation, known as "the drunk professor", and several versions are circulated. The most widely distributed version of the meme is the photograph with the words changed to "I don't wear no trousers when I teach".
- The "I don't wear no trousers when I teach" version of the meme spreads to the USA, where Jimmy Larson, a chat show host, finds it so funny that he prints it out and wears it on a t-shirt to present the next edition of his show. This is not broadcast in the UK, but clips from it are made available online with a 'share' button, and end up being widely shared on "RatemyProf.com", a US-based website to which students can post reviews of their teachers. There are several reviews of Gary on the website already, most of which are broadly positive, though most note that "he can go on a bit". Some of the critical reviews of Gary's teaching are several years old, but the worst have all been uploaded within the last ten months. The website has approximately 3 million registered users in the USA, and 50,000 in the UK.
- Members of the Stepney University student newspaper team, *Discere Ludere Peri*, or "*DLP*" as it is commonly known, become aware of this and think it would be a great story about how university staff can be put at risk by idle internet gossip. However, after interviewing three of Gary's former students who respond to a call for views from those who have experienced his teaching, a decision is made to make the story an expose of a poor teacher who should have been fired long ago. This is based on the testimony of these three, former students who are very critical of Gary's abilities. They also claim that he regularly turned up drunk for classes. One of the students, who took Gary's class before lockdown, is quoted as saying "He's no better in person. Always late, and stinks of whiskey. If he was a horse they'd have shot him years ago." All three of these students failed Gary's class, but did not volunteer this information ahead of publication of the article, nor did the writing team think to ask. This article runs on the front page. A small tag at the bottom of the page, in smaller type, reads "For more about Gary Suture, see our letter of the week!"
- *DLP* includes two further articles of note. The letters page, on page 35 of the paper, carries a "letter of the week" which has been written by several of Gary's other former students. These students have seen the memes of Gary that have been circulated, and wished to write to the paper to express their support for him as they feel the mockery is unfair. On page 36, the rear cover of the paper, there are a number of puzzles and cartoons. These include a cartoon entitled "Professor Leprechaun", about an Irish university professor who regularly drinks too much and has comic misadventures as a result, but always seems to come out on top. The Professor Leprechaun character wears a very distinctive tweed suit. Gary Suture is Irish, and well known on campus for his extensive wardrobe of tweed suits.

You are a solicitor working for the firm of Sue, Grabbit & Runne. Gary has approached the firm to represent him in a libel action, intending to sue in the English courts all involved in making the publications above.

Advise Gary as to his likely chances of success in each instance.

Question 2

“It is important to state at the outset that this case is not concerned with so called “image rights”. Whatever may be the position elsewhere in the world, and however much various celebrities may wish there were, there is today in England no such thing as a free standing general right by a famous person (or anyone else) to control the reproduction of their image (Douglas v Hello [2007] UKHL 21). There is a developing law of privacy but no question of that arises in this case. The taking of the photograph is not suggested to have breached Rihanna’s privacy. A celebrity may control the distribution of particular images in which they own the copyright but that right is specific to the particular photographs in question. Whether an image right can or should be developed is not what this case is concerned with.

This case is concerned with passing off. To establish passing off three things must be proved by Rihanna. She must show that she has a goodwill and reputation amongst relevant members of the public; the conduct complained of must be shown to make a misrepresentation, i.e. to be likely to deceive those members of the public into buying the product because they think it is authorised by her; and that misrepresentation must cause damage to her goodwill. If these elements are established, Rihanna has a good claim against Topshop. If they are not, Rihanna has no ground in law to object to the sale of her image on the t-shirt. That is what this case is about.”

From the High Court judgement of Birrs J in *Fenty v Arcadia* [2013] EWHC 2310 Ch

Does the lack of a right of personality in English law significantly disadvantage individuals who trade on their image? Are there hidden, long-term dangers inherent in the provision of such a right?

Explain your answer.

Question 3

Henry Tudor is a musician who rose to fame several decades ago, playing rock and roll music, and styling himself as 'The New King of Rock'. Rising to fame with his first hit "Roll over, Elvis", he recorded a string of hit albums before leaving his wife, Catherine, for a young groupie called Anne. Although they quickly married, Anne and Henry were well known to have had a stormy relationship until her sudden death from an apparent suicide. The day after Anne's death was announced, Henry became engaged to his now third wife, Jane.

Henry has been much in the press of late in order to promote his new album and upcoming tour, both entitled *Mo Wives, Mo Problems*. He has implied in many publicity interviews with the press that the songs on his new album were inspired by his relationship history, but declined to comment directly on them. During a frosty appearance on the television chat show *Leo Ten Tonight*, host Leo pressed Henry for gossip about his past relationships.

"Is it true," asked Leo, "that songs like "You gave me no Sons, Devil Woman", "Il Papa Don't Preach", "I Wanna Divorce", and "Where's Your Head At Now?" are really directly about your past relationships? You've gotten an awful lot of material out of your wives so far – will you be marrying and getting rid of another three for the next album?"

"Let the songs speak for themselves", thundered an angry Henry, before walking off the set.

Over the weekend just before the album's release, *Royal Life*, a popular celebrity gossip magazine, published an article by journalist Tom More, entitled "Sex, Scandals, Drugs, and Hate: The Toxic Relationships of Henry Tudor and his Many Wives." The article paints Henry in a very bad light, suggesting that the failure of his first two marriages was entirely his fault. Tom's article quotes an anonymous friend of Catherine, Henry's first wife, who claims that "he only left her because she couldn't give him the son he craved". The article also contains an interview with Anne's brother, George. George claims to have been Anne's confidant during her marriage to Henry, and blames Henry for her death. In the interview, George gave a number of details about Henry being unfaithful to Anne (an accusation Henry has denied), as well as some tidbits about what Anne told him of Henry's bedroom preferences. Apparently Henry liked to be addressed as "Your Majesty" during sex, and became angry if he thought Anne was playing a less than entirely submissive role in their love-making. The article finishes with a mention of Tom's forthcoming unauthorised biography of Henry, *Hooray Henry and his Bullish Ways*. It is stated that the biography will contain much more "that Henry Tudor doubtless doesn't want you to know!" The book is due to be released next month by Howard Cleeves Parr publishing group, which also owns and publishes *Royal Life* magazine.

This morning, Howard Cleeves Parr received a letter from Henry's solicitors, Cromwell & Cranmer, threatening them with legal action not only over a claimed breach of Henry's privacy by Tom More's article, but also informing the publishers that they will be seeking an injunction to prevent publication of Tom's forthcoming book. During an emergency meeting of the partners of Howard Cleeves Parr to discuss this, they also receive an office memo to tell them that Catherine, Henry's first wife, has also now threatened legal action over the book. Catherine is an intensely private person, and has never spoken to the press about her former marriage to Henry.

Advise Howard Cleeves Parr as to the likely success of the threatened legal actions against them.

END OF PAPER