

MODULE CODE: SOLM216

MODULE TITLE: Media Law: Reputation Management

MODULE CONVENOR: Gavin Sutter

DATE OF FINAL ASSESSMENT: 4th-5th December 2019

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 09:59am BST by **5th December 2019**
- 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

Question 1

Since his debut professional match four years ago, soccer player Brahm Stoker, now centre-forward for the Liverpool first team playing in the Premier League, has proven to be a rising star of the game. Indeed, it is rumoured that he is being considered for the post of Captain of the England team in the Qatar 2022 World Cup tournament. Brahm has also developed a reputation as something of a ladies' man, although he claims to have turned over a 'new leaf' since he married his model girlfriend Florence Rondpoint this time last year.

This week, tabloid newspaper the *Sunday Sizzle* published what they called "An Explosive Expose of Bonking Brahm", a kiss and tell piece in which pop singer Thomasina Magelland, Brahm's ex-girlfriend whom he left for Florence, claims to have slept with Brahm several times after his marriage. The interview is designed to promote Thomasina's new book, due out next month, published by Ugly Rumours Books. She refers to it as "a volume of autobiography, my story so far", though the promotional material distributed by the publisher refers to it as "The Thomasina and Brahm Story", and it seems likely that a substantial proportion of the book is dedicated to the details of their relationship. The newspaper promises "exclusive, pre-publication extracts" from the book to come "from next week!"

Brahm is furious as he is worried this will embarrass his family, especially his children, with whom he recently appeared alongside his wife in a photoshoot for *Hiya!* Magazine. He is also worried that Thomasina will publicise personal bedroom preferences that he would prefer to keep hidden. In particular, Brahm enjoys a sado-masochistic roleplay in which he pretends to be a WW2 Nazi guard at Colditz Prison, and that his sexual partner is an Allied prisoner of war who has been caught trying to escape and must be "punished."

Brahm has also received a tip-off from a friend in Australia that details of his family history are about to be exposed in the *Sunday Sizzle*. Specifically, ten years before moving to the UK and marrying his father, Brahm's mother, Mina, who was born and grew up in Australia, had been married with a young son. Tragically, her son died in a car accident in which she was driving; her then husband blamed her and tried to murder her before killing himself. Mina survived but was traumatised by the attention the case attracted in the Australian media, so moved to England where she met and married Brahm's father. These events, which took place over thirty years ago now, were widely reported in the Australian media at the time, though not in England. The *Sunday Sizzle* team only discovered the story by chance, and acquired photocopies of the original newspaper reports from an old university friend of the editor who now works as a librarian in Australia after failing to find any reference to it at the British library. The *Sizzle* plans to frame this as a sympathetic story, entitled "Stoker's secret family heartache".

Brahm wishes to take legal action against Thomasina, the *Sunday Sizzle*, and Ugly Rumour Books over what has already been published, and to seek an injunction to prevent the publication of the as yet unpublished material, including his mother's history. Advise Brahm as to his likely chances of success.

Question 2

In *Douglas & ors v Hello! Ltd & ors (No 3)* [2007], the following statements were made in the House of Lords:

"There is in my opinion no question of creating an "image right" or any other unorthodox form of intellectual property. The information in this case was capable of being protected, not because it concerned the Douglasses' image any more than because it concerned their private life, but simply because it was information of commercial value over which the Douglasses had sufficient control to enable them to impose an obligation of confidence." (Lord Hoffman)

"Their claims come close to claims to a "character right" protecting a celebrity's name and image such as has consistently been rejected in English law: see *Elvis Presley Trade Marks* [1999]... The present limits of the law of passing off as a protection of a celebrity complaining of "false endorsement" were thoroughly reviewed by Laddie J in *Irvine v Talksport Ltd* [2002]...

"Although the position is different in other jurisdictions, under English law it is not possible for a celebrity to claim a monopoly in his or her image, as if it were a trademark or brand. Nor can anyone (whether celebrity or nonentity) complain simply of being photographed...." (Lord Walker of Gestingthorpe)

Discuss whether and to what extent the Court of Appeal in *Fenty v Arcadia* (2015) deviated from these statements of the lack of legal status of a right in personality under English law, and whether statutory reform in this area is desirable.

Question 3

'The Defamation Act 2013 was designed to rebalance English libel law, which was overly favourable to the claimant. Depending upon how you look at it, it either failed, or was too successful, as what the Act achieved was to make it overly favourable to the defendant instead.'

Discuss whether you agree with this statement, and why.

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