

FINAL EXAMINATION**LEGAL DRAFTING**
LL140-27140-TA-201920
PROFESSOR LUMSDEN
9 JULY 2020

1. You have **three (3) hours** to complete this exam.
2. This is an **open book** exam.
3. This exam consists of **one part**, worth a total of **100 (one hundred) points**. The suggested time to complete the exam is two (2) hours, but you may take the full 3 hours.
 - **You will need to complete one (1) essay question, and correctly use a minimum number of vocabulary words.**
4. Write your **exam number at the top of your exam. Do not use your name, student ID number or any other personally identifying information on any exam materials.** Please make sure there is no identifying information, as you may be disqualified if such information is included.

GOOD LUCK!

PART I**ESSAY QUESTION
100 POINTS**

The Friendly Rooster is a restaurant that serves traditional Portuguese dishes. The restaurant is located in Alfama, a neighborhood in Lisbon that is filled with many historical landmarks and is very popular with tourists. The owners are a young couple descended from one of the oldest and most noble families of Portugal. After years of fighting within the family about the idea, they have been granted permission to share centuries of secret family recipes with the world through their restaurant. Since its opening in December of last year, the family-run establishment has become popular with both locals and tourists and is a Michelin star-rated restaurant. Or it *was*, until COVID-19...

Like all restaurants in Lisbon, *The Friendly Rooster* was forced by government decree to close its doors in March 2020 when the global pandemic struck. However, by late June, the restaurant had opened up again. The owners were relieved when they saw that their old customers had not abandoned them; their tables were full once again! At least they claim that was the case until *The Portugal News*, the largest English-language newspaper in Portugal, printed an article with the following headline:

The Friendly Rooster DOES NOT CARE about its customers: They opened too soon, didn't wear masks, and have not implemented appropriate social distancing measures!!! Customers now INFECTED with COVID-19!!!

The couple claim that since the publication of the article, the numbers of diners at *The Friendly Rooster* have declined significantly. The owners furiously issued a press release stating that the story is entirely false. Still, locals and tourists are avoiding the restaurant.

According to *The Portugal News*, the paper is not to blame for the restaurant's lack of customers, because:

- One of their reporters actually ate at the restaurant and personally observed the chef not wearing a mask one night;
- *The Friendly Rooster* is a new restaurant, and "everyone" knows that around 60% of new restaurants fail within the first year (this is true); and
- While acting legally, *The Friendly Rooster* did not HAVE to open as early as they did; the restaurant next door waited another 2 weeks before opening.

The owners are aware that at least two of their regular customers have been diagnosed with COVID-19, but no one is exactly sure where they might have picked up the deadly disease. They admit that they opened up early, and immediately after the government gave the "all clear", but claim that they followed all of the proper sanitization procedures. They are considering suing *The Portugal News* for defamation.

You are a junior associate working in the litigation group of a law partnership located in Lisbon, Portugal. The young couple are clients of the firm and wish to restore their good name. You have been asked to write a Memo to Amália Rodrigues, a senior partner in the firm, that will outline their likely chances of success if they choose to proceed with litigation.

Amália will use your Memo to advise the owners about their legal options. She is looking for an organized, and professionally produced document that outlines the arguments on both sides of the dispute. She also wants you to clearly state the likely outcome. Throughout your analysis, Amália requests that you include the reasons supporting your analysis (facts + law).

For the sake of this assignment, please assume that the common law rules of civil liability for defamatory statements apply to this dispute.

Please write a Memo to Amália answering the following questions:

- 1) What are the common law elements of a defamation claim?**
- 2) Can the clients prove a prima facie claim?**
- 3) Will the legal claim be successful? Why or not?**

***Again, please ensure that no personally identifying information is included in your written response: the Memo should be sent “From: Junior Associate”.

Note: In order to pass this exam, you must correctly, and in context, use a minimum of ten (10) of the vocabulary words listed below in your response. Alternate forms of the words below may be used (for e.g., you may use “apprehend” instead of apprehension).

Legal Vocabulary

Distinguishable	Obviate	Affirm	Deliberate
Undertake	Triggered	Affidavit	Patently
Customary	Incidental	Deter	Frivolous
Contention	Liable	Gratuitous	Negligent
Obligated	Apprehension	Aver	Exhaustive
Mere	Abrogate	Scintilla	Preponderance
Constitute	Intervening	Sustain	Propound
Tortious	Notwithstanding	Disadvantageous	Render

END OF EXAM