NOTE:

1. This is an open book examination. Candidates may have with them any written material they wish. Laptops are only permitted for the use of ExamSoft.

2. Communication devices such as mobile phones, tablets, etc. are not permitted. Candidates are asked to ensure that their phones are turned off.

3. Full citation of cases is not necessary. You may refer to cases in short form (e.g.: “Scalera”).

4. This examination is designed to test material covered in this course only. Do not concern yourself with material covered in other courses, or with sources not covered in the course materials, class discussions, or lectures for this course.

5. This exam consists of two (2) questions. Please select only one (1) question to answer.
Question 1

It has been 10 years since Harry Potter graduated from Hogwarts, and he has been living a nice and quiet life. Shortly after his graduation, he returned to Hogwarts as a teacher and has been in this post for 8 years. Last year, Draco Malfoy was hired by Hogwarts as their new Defence against the Dark Arts teacher. Harry was concerned about Malfoy joining the professorial ranks; he didn’t trust Draco as far as he could throw him! Harry and Draco had a long history of rivalry and dislike for each other, dating back to their time as students at Hogwarts, and which had never been resolved.

This November, a post to recruit a new Headmaster at Hogwarts suddenly and unexpectedly arose. Malfoy had big plans for Hogwarts, and jumped at the chance to apply. The next week, Malfoy heard that Potter had also applied to be the new Headmaster; he was furious.

That night, Malfoy walked over to Harry’s living quarters, intent on trying to sort things out. The door was ajar, and Malfoy heard Harry talking with his friend, Ronald Weasley. Malfoy listened carefully. Harry told Ron how important Hogwarts was to him, and that’s why he decided to apply for the Headmaster position, but sometimes he wondered if it was the right move. He said he was exhausted from teaching, and some days he just wanted to lay in bed all day and watch Netflix. Ron told Harry he was doing the right thing, and he would be a great leader.

When Malfoy heard this exchange, he came up with an idea. He cracked Harry’s door open just a little more. Harry was sitting on a couch, in sweatpants and an old t-shirt. He had a mug of butter beer in his hand, and his hair was disheveled. Malfoy was able to take a picture without Harry noticing. Then, Malfoy quietly retreated and went back to his own room.

The next morning, the Hogwarts daily newspaper, distributed to all students and staff at the school, had a giant picture of Harry Potter on the front page – the one that Malfoy took the night before. The headline read: “I just want to lay in bed and watch Netflix”. The short article that appeared below the picture was authored by Malfoy, and included the statements: “If he treats Hogwarts with the same care as his own appearance, we’re in for trouble!”, and “If you don’t care about Hogwarts’ future as a world-class institution, go ahead and appoint him as Headmaster.” In the article, Malfoy referenced another news story from two years ago where Potter had been quoted as expressing his contentment with his current position. Malfoy also wrote about his own active involvement in the school since arriving to Hogwarts, including coaching a Quidditch team, heading up the curriculum committee, and participating on the school’s outreach committee. The article noted that Potter had not taken on any additional positions during his teaching tenure at Hogwarts.

Assess the claims that Harry Potter could bring against Draco Malfoy. Assess any defences that Malfoy could raise.

Refer only to the materials, cases and readings we have examined in Tort Law. Do not refer to materials or concepts from other courses. Do not discuss actions that might exist between other parties in this fact pattern. Do not discuss damages.
Question 2

This term, we examined several torts that are actionable per se, meaning that the plaintiff does not have to establish a material loss or injury in order to make out their claim. How does this align with, or depart, from the core compensatory function of tort law?

Discuss the above question, drawing on the relevant materials, themes and topics we have explored in Tort Law this term.

Refer only to the materials, cases and readings we have examined in Tort Law. Do not refer to materials or concepts from other courses.