



THE HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION

AUGUST 2006

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| Examination: | LAW OF TORTS |
| Date: | FRIDAY 25 AUGUST 2006 |
| Time: | 10.00 a.m. – 1.00 p.m. |
| Examiner: | Mr Paul Ward |
| External Examiner: | His Honor Judge Bryan McMahon |

Instructions:

Candidates are to attempt FOUR questions.

All questions carry equal marks.

1. The decisions of *Moy v. Pettman Smith & Perry*, [2005] 1 W.L.R. 581.; *D'Orta Ekenaike v. Victorial Legal Aid* [2005] HCA 12 and *Lai v. Chamberlains* [2005] NZCA 37, demonstrate a considerable divide in the common law world on the abolition of the barrister's immunity from suit in negligence when acting *qua* advocate.

Discuss the approach you think the Supreme Court should adopt if asked decide on endorsing or abolishing this immunity.

2. Bill and Dave are old friends. In the summer of 2004 they went on a driving holiday around the north west of Ireland in Dave's rare vintage open top sport's car. Bill has a girlfriend, Breda, who is the mother of his two year old son, Bert. Breda and Bert are financially dependent upon Bill who supplements his main income with private work he undertakes and for which he is paid in cash but does not disclose this in his tax returns. Dave is married to Jane.

Bill and Dave recorded the driving holiday on a digital video camera and transmitted back live pictures to Jane's home computer through the use of a lap top computer, modem and mobile phone. In the course of filming, recording and transmitting live pictures whilst driving on a long straight road, Dave encountered Mick who was driving on the wrong side of the road. Dave was forced to swerve and leave the road careering down a steep ridge where his priceless car collided with a tree rendering the vehicle a write-off. Tragically Bill was fatally injured in the crash. Miraculously Dave was uninjured in the accident. All the while the pictures were transmitted live to Jane's computer at home. Jane was out shopping at the time of the accident and witnessed the graphic scenes some hours later. She then travelled to the hospital where Dave was being treated for shock.

After the accident Dave called for an ambulance which arrived promptly. One of the ambulance crew was Ben, Bill's brother. Bill assisted in the removal of his brother to the morgue at the local hospital.

Some months later Dave was prosecuted for dangerous driving causing death. He was convicted following his solicitor's failure to follow up on the information Dave gave him about the other driver, Mick who he claimed was responsible for the accident and which was recorded on the video camera. Dave successfully appealed his conviction and was released having served six months in prison.

Dave is now suffering from post traumatic stress disorder as a result of the damage to his car, witnessing the death of his friend and his imprisonment. Likewise Jane and Ben are receiving psychiatric care arising from the accident. Breda and Bert are emotionally distraught having no money to survive upon.

Pay Out Ltd is an insurance company providing cover for Mick and solicitors registered with the Incorporated Law Society of Ireland. Pay Out Ltd seeks your advice in relation to the various claims it might have to defend.

3. “Fancyflutter” is a European wide chain of betting shops with a distinctive Irish theme which has been in business for a decade. The entrance doors to the shops are carved in the shape of a shamrock and the betting slips are a green coloured shamrock shape. Chained at the entrance are Irish wolfhound dogs.

“Fanciflutter” recently opened a few betting shops in competition with “Fancyflutter” to cash in on the lucrative betting market. The entrance to “Fanciflutter” shops have large green imitation shamrocks stuck onto the entrance doors and plastic Kerry Blue terriers positioned inside the doors which are used as rubbish bins for used betting slips. “Fanciflutter” betting slips are shamrock shaped on plain white paper. Outside the shops are large placards which read “Fanciflutter – the real authentic Irish betting experience”.

Mr Odd manages one of the “Fancyflutter” Dublin betting shops. Recently he noticed some discrepancies in the accounting of Joe, one of the cashiers in the betting shop. Mr Odd handed his PA, Ms Green, a note which read “Tell Joe I want to see him about being on the fiddle”. Ms Green forwarded the note to Joe in an email. Unfortunately the email was copied to all staff in the office and also flashed upon the large TV screens in the bustling shop.

Tom, a professional pool player, was entering a “Fancyflutter” betting shop when he stopped to pet the Irish wolfhound. The dog bit his hand and he cannot play competitive pool for a year which has cost him in the region of €35,000 in prize money.

“Fancyflutter” has noticed deterioration in its revenue in the past six months.

You are retained to advise on the above facts.

4. Mr Bacon applied for and was granted planning permission for a piggery and wind farm. His neighbour, Mr Rind, objected during the planning process but to no avail. Mr Rind also sought an injunction restraining the operation of the piggery due to the smell generated by the piggery which is exacerbated by the wind farm. The court refused the injunction on the basis that planning permission had been granted.

Mr Rind planted fast growing plants along the border of the adjoining properties. The plants are poisonous to pigs. Mr Bacon recently discovered a number of deceased pigs on his land. Having discovered the cause of the deaths, Mr Bacon lobbed pig excrement onto Mr Rind’s land. This has accentuated the foul smell.

Mr Rind retaliated the other night by entering Mr Bacon’s house in the middle of the night, blindfolding him and taking Mr Bacon to a remote woodland where he left him guarded by a savage dog. Mr Bacon escaped from the woodland area after a couple of days when the dog fell asleep.

Mr Bacon is undergoing psychiatric care for a canine phobia and seeks your advice in relation to the above facts.

5. Dental Care is a Brazilian dental implant manufacturer. The implants come with implantation instructions written in Portuguese. Dental Health Care is a Portuguese based importer of Dental Care products which it distributes to dentists in Europe. Dental Health Care translates the Portuguese instructions into the various European languages prior to distribution to the relevant country.

In the summer of 2003, Tim experienced an excruciating pain in his tooth and went to see his general practitioner, Dr Cavity who told him to go home and chew on some cloves. Matters did not improve for Tim and he contacted Dr Cavity who told him to go and see a dentist. Tim made an appointment with Dr Decay in the late summer of 2003 after months of near paralysing pain.

Dr Decay informed Tim that he required a dental implant operation. Dr Decay explained that there was a risk of recurring and on-going pain associated with the procedure but did not specify the percentage risk as he felt this might discourage Tim who really needed the surgery. Tim signed the consent form prior to the surgery.

Dr Decay, assisted by a junior colleague, Dr Canal, performed the procedure and implanted a Dental Care dental implant. Subsequently Tim experienced the same level of pain he had experienced prior to the procedure being carried.

In the months prior to the procedure being carried out, an article was published in "Dentists Monthly" (a hypothetical leading journal for the dentist profession) which identified that Dental Care implants were not defective in themselves but that the original Portuguese instructions were inaccurately translated resulting in patients suffering severe levels of pain similar to that experienced by Tim.

Tim has just learnt that there is a 5% chance of suffering the pain he is experiencing in undergoing the procedure. He is now adamant that he would not have consented to the procedure if he was aware of the risk.

Tim seeks your advice in relation to the above facts.

6. Mary had a flock of sheep whose fleeces she used to shear. Mary stored the sheared fleeces in a shed which was situate on the boundary with the neighbouring farm owned by Debbie but which was leased to Jane. Jane farmed pigs. In 2003 Jane employed Jeff, an architect to construct a slurry pit. Jeff erroneously drafted the plans with the result that the builder, Bob, fell into the half constructed pit and broke his spine in five places and was rendered unconscious. Bob regained consciousness last week.

That same winter after an unusually heavy and prolonged down pour the slurry seeped from the pit and crossed onto Mary's farm. The stored fleeces absorbed the slurry which were ruined and Mary has lost some €20,000 as a result.

To make matters worse, Jane's bull somehow managed to jump the padlocked fenced field in which it was kept and demolish Mary's shed in which she also stored her priceless collection of fine bone china.

You have been retained to advise the parties in relation to their respective liabilities, if any.