



THE HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION

AUGUST 2004

Examination: Law of Torts

Date: Friday 27 August 2004

Time: 10.00 a.m. – 1.00 p.m.

Internal Examiner: Mr Paul Ward

External Examiner: His Honour Judge Bryan McMahon

Instructions:

Candidates are to attempt FOUR questions.

Q.1 Tom, Dick and Harry are labourers employed by Rubble Ltd, a building demolition firm specialising in asbestos removal for the last 10 years.

In 2001, subsequent to widespread media and public concerns about exposure to asbestos fibres, Rubble Ltd provided its employees with protective masks and clothing. Recently Tom, being fearful of the harmful effect of long term exposure to asbestos, attended a consultant pulmonary physician who assured him that there was little risk of contracting a fatal lung disease notwithstanding the fact that the exposure to asbestos fibres more than likely caused miniscule scarring to his lungs. Tom, however, is convinced that he will contract a fatal lung disease.

Dick, who is estranged from his wife Mary for the last 10 years, has two adult sons, Jim and Jack, with whom he has a very good relationship. Tragically Dick and Harry were killed in an accident on a building site when a roof collapsed on top of them. Dick was taken to the local hospital where Mary works as a nurse. Mary collapsed when she realised Dick was dead. When Mary recovered she broke the sad news to Jim and Jack who took the news very badly. Their sadness was compounded by the numerous television and radio broadcasts of the accident.

Harry is survived by his girlfriend, Jane, and a two-year-old son Dave, both of whom are financially dependent upon him. In addition to Harry's employment with Rubble Ltd, Harry worked at weekends on building sites for which he was paid in cash but which he did not disclose to the Revenue Commissioners.

Rubble Ltd has admitted they were negligent in relation to the failure to provide protective clothing for Tom and in relation to the roof collapse. They have received proceedings from Tom, Mary, Jim and Jack seeking damages for psychiatric disorders and a claim for financial compensation from Jane and Dave.

Rubble Ltd seeks your advice on their potential liability.

Q.2 Helen and Janet are neighbours for the last twenty years. Janet's house is on an elevated site above Helen's and both properties are on an incline. The elevation and incline causes soil to tumble from Janet's garden on to Helen's.

Helen is a regular summer time barbecue enthusiast which causes Janet no end of concern because of the smell and dense plumes of smoke that envelope her garden when the barbecue is lit and more particularly aggravate Janet's mild asthmatic condition. The smoke also agitates the bees housed in the 20 or so bee hives in Janet's garden which causes them to swarm.

Janet has a water feature which she can adapt to water her garden and the excess water flows onto Helen's garden. Janet also has a number of fruit trees that overhang the boundary picket fence which separates the two gardens.

After numerous complaints about the barbecue smoke, Janet extinguished the barbecue using the water feature. Helen obtained an injunction to restrain this conduct but Janet still complains about the smoke.

Irritated by Janet's conduct, Helen dropped a plum line almost mid point over the picket fence and cut down the overhanging fruit laden branches. Helen then threw the severed branches over the fence but kept the apples and plums for her own consumption.

Recently Helen invited Paul for a barbecue. The barbecue caught fire and exploded. The flying hot charcoals injured Janet and her garden shed was burnt to the ground from the ensuing barbecue fire. This in turn caused the bees to swarm, a number of which stung Paul very badly.

This summer was particularly dry and the accumulated soil hardened and became brittle. Following an extraordinary downpour the soil turned into a mudslide damaging the rear of Helen's house. During the remedial decorative work, Helen discovered that the back of her house was damp owing to the constant flow of water from Janet's garden.

Advise what cause / causes of action (other than in negligence) each of the individuals may have and the likelihood of success.

Q.3 Discuss the current standing in Irish Law of the decision *Rookes v. Barnard* (exemplary damages) [1964] AC 1129.

Q.4 Sue, Tara and Wally are adjoining farmers. Sue owns a horse, "Lamb n Cod" which is kept in an enclosure adjoining the roadway and surrounded by an eight-foot fence. Tara keeps sheep, cattle and deer. The deer are owned by Larry who lives 50 miles away but are fed and watered by Tara. Tara owns a well-trained sheep dog, Oscar.

One day Tara is driving the sheep along the road to the grazing field. Tara stops to gossip with the postman and does not notice the sheep break loose and enter Wally's farm where Judge, Wally's excitable guard dog harries the sheep. This causes the sheep to flee and some are hurt when they become entangled in barbed wire. Tara runs to rescue the sheep but Judge lunges at her and causes her severe personal injuries.

In the meantime the cattle and deer break from Tara's farm and split into respective groups. The cattle enter Sue's land and destroy her crops. The deer career off down the road and collide with Harry's car which is damaged. Then "Lamb n Cod" inexplicably escapes from his enclosure and collides with Harry's car causing further damage.

Jerry, Wally's brother, is home from the USA on a surprise visit to Tara. As Jerry and Wally enter Tara's farm, Oscar launches at Wally to greet him but misses and knocks Jerry to the ground who sustains an injury in the process. Jerry now suffers from a canine phobia.

Advise all the parties on their respective causes of action and / or liabilities.

- Q5. Barry and Larry are car thieves and drug addicts who in 1998 were lurking around the local hospital looking for a car to steal. Barry found an executive car owned by Dr. Ratchet. Dr. Ratchet and his secretary Ms. Red caught Barry and Larry attempting to steal the car. Barry produced a blood filled syringe which he jabbed at Ms. Red. Dr. Ratchet retaliated by striking Barry below the knee with a golf club he had retrieved from the boot of his car. He bundled Barry into the back of the car, activated the remote central locking and called the Gardai. Dr. Ratchet then swung at Larry rendering him unconscious.

Larry was taken to casualty where Dr. Bob performed an operation to relieve the swelling to his eye. Unfortunately during the operation, Dr. Bob severed a nerve rendering Larry partially blind in one eye.

Meanwhile, owing to Barry's extreme pain, Dr. Ratchet drove him to casualty where Dr. Bob also tended to him. Dr. Bob told him that there was a new drug, as yet untested, that relieved pain but did not tell Barry of the 0.005% risk of permanent numbness in the affected area.

Dr. Bob also told Barry that he had fractures to both his tibia and fibula but that the operation was routine. Barry signed the requisite consent forms. During the operation Dr. Bob decided to amputate the leg from the knee down. Barry complained about the operation but Dr. Bob told him that the amputation was necessary to save his life.

Recently Larry and Barry read that Dr. Bob was struck off the medical register for the performing unnecessary amputations.

Advise the various parties as to their respective claims and liabilities.

Q.6 Local Authority X (hereinafter LAX) is vested with number of statutory duties and powers. The Local Authority Act 1990 (a hypothetical piece of legislation for the purposes of this question) obliges LAX to provide housing for the economically less well off members of society.

LAX's functional area is in the south east of Ireland. In 1996 LAX acquired a plot of land and contracted with Build Ltd to construct a housing development, Vale View. The Vale View properties were hastily built in the late summer of 1997 and constructed on defective foundations. LAX leased a number of the properties to impoverished families. The remainder of the properties were retained for sale to encourage home ownership. Sales were hampered by the unruly behaviour of the impoverished tenants who held late night drinking parties with blaring music.

In 1998, Joe Bloggs, a London based low-income earner, contacted LAX with a view to purchasing a Vale View property. LAX assured Joe that Vale View was home-owner orientated and that owing to his financial standing, Joe qualified for a local authority loan LAX was obliged to provide under the aforementioned 1990 Act. LAX also instructed an estate agent to inspect the property whose report indicated that the property was good security for the loan to be advanced to Joe. LAX forwarded a copy of the report to Joe who did not bother to undertake an independent survey. Joe took possession in late 1999.

In the spring of 2000 all the residents noticed a crack in the back wall of their properties. Some of the tenants have developed lung infections owing to rising damp caused by the same said crack in the wall.

Early in 2004, Joe, exasperated after years of unruly behaviour from the neighbouring tenants, formally complained to LAX about his unruly neighbours. To date, LAX has done nothing to alleviate the problem. Further, Joe discovered that it will cost €50,000 to remedy the crack in the back wall of his house which a structural engineer has classified as a risk to personal safety.

Joe and the tenants of Vale View served proceedings on LAX. LAX seeks you advice on its potential liability, if any, and how it may avoid same.