



THE HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION

AUGUST 2005

Examination: LAW OF TORTS

Date: FRIDAY 26 AUGUST 2005

Time: 10.00 a.m. – 1.00 p.m.

Examiner: Mr Paul Ward

External Examiner: His Honor Judge Terence O'Sullivan

Instructions:

Candidates are to attempt FOUR questions.

1. The Child Welfare Agency (CWA) is a statutory body vested with various statutory powers and functions. CWA's primary statutory obligation is to promote and provide for the welfare of children. In furtherance of this obligation, CWA contracted with Foster Ltd. to provide foster care facilities for children placed in care by court order.

Three orphans, Tom, Dick and Harry were all aged 10 when they were placed by CWA in the care of Foster Ltd in the summer of 1991 until they left in 1999. Mr. Bloggs was employed by Foster Ltd. as a physical education teacher for the children in care. Foster Ltd did not check the supplied references nor did they run a Garda check on Mr Bloggs for criminal convictions.

Tom was regularly sexually abused by Mr Bloggs in the showers after PE classes. Dick was coerced into observing the sexual abuse of Tom but was never sexually or physically abused by Mr Bloggs. Dick, believed, however, that his turn to be sexually abused would eventually arrive. Harry was made wait naked outside the showers and was beaten on the buttocks with a leather strap while Tom and Dick listened to his cries of pain.

In 1995 Larry was a player on a visiting under 14's football team playing against the residents of Foster Ltd, when he too was sexually abused in the showers by Mr Bloggs. Larry complained of his abuse to Mr Doolittle, an official of the CWA but Mr Doolittle ignored the complaint.

Since 1999, Tom, Dick, Harry and Larry have been receiving psychiatric treatment for the abuse they were subjected to.

You have been retained to advise each individual on:

- a) what cause or causes of action (if any) in Tort they may have;
- b) against whom they may have a cause of action;
- c) the amount of any damages (if any) that may be awarded
- d) any problems they may face in prosecuting their respective cases.

2. During 1999, Jack Moran employed Build Ltd to construct a house on his land which Mr O'Brien purchased. Shortly after taking possession in August 1999, Mr O'Brien noticed that the house had a large crack in the side wall and that there was a damp smell inside the property. Jack, having consulted with Build Ltd, assured Mr O'Brien that there was nothing to worry about.

By the late summer of 2002, Mr O'Brien noticed he had breathing difficulties but put it down to the wet weather that summer.

Also during the summer of 2002, Jack employed Build Ltd to construct a second house on his land. Jack vacated his property during the construction work. The neighbouring children frequented the construction site and often hitched rides on the mini excavating machinery to the amusement of Build Ltd's machine operator. Unfortunately, Dave fell while hitching a ride and sustained personal injuries.

While Jack was away, he asked his neighbour Mick Murphy, to look after Fido, Jack's pet dog. Mick agreed as he thought Fido would be good company for his dog, Spot.

Also that summer, a neighbour's child, Barry climbed over the wall into Mick's garden to retrieve a ball. Spot bit Barry on the hand which surprised Mick as Spot was accustomed to children in the garden. The same day, when Peter was delivering a pizza to Mick's house, Fido jumped up at the disembarking Peter who fell to the ground and suffered a slight graze to his hand. More significantly, Peter is now attending a psychiatrist because of the incident.

A report now indicates that the foundations to Mr O'Brien's house are defective and that the absence of damp proofing is the cause of his pulmonary condition. In addition, a survey reveals that €100,000 is needed to remedy the structural defects to the house and €20,000 to decorate the property.

The injured parties (Mr O'Brien, Dave, Barry and Peter) seek your advice on:

- a) what cause or causes of action (if any) in Tort they may have;
- b) against whom they may have a cause of action;
- c) any problems they may face in prosecuting their respective cases.

3. *"The Irish courts have endorsed, departed from and reunited with their English counterparts in the interpretation and development of the duty of care in negligence."*

Discuss.

4. Liability & Co is a firm of solicitors run by Sue and Ron is an employee. In 1999, Jack instructed Sue to purchase a property and carry out the necessary conveyancing. The property in question has a leasehold interest with 30 years to run. Sue assumed Jack was aware of the difference between a freehold and a leasehold interest in property and did not advise Jack on the implications of such. Recently, Jack's neighbour, Jim, knocked down the wall separating the neighbouring properties and this has led to a boundary dispute which Ron has been unable to resolve. Ron decided not to tell Sue of the problem.

Sue also acted for Jack in preparing his will in which Peter was named as a beneficiary to the sum of €100,000. Sue asked Peter to witness the will with the result that Peter's intended gift is void.

Ron acted for Mary in her divorce from Peter and retained Bertie, a barrister. Bertie settled the case but negligently failed to obtain a lump sum payment, a pension adjustment order and a transfer of the family home into Mary's name. The settlement was made in full and final satisfaction of all claims made by Mary against Peter. The settlement was approved by the court. Mary has just realised the gravity of the error made by Bertie and is deeply shocked.

Brian intends to purchase Jim's house and Sue is acting for Jim. Sue just responded to a set of "Requisitions on Title" in which she replied "No" to a standard query about boundary disputes.

Liability & Co, Sue, Ron and Bertie seek your advice on the above facts.

5. James owns an estate on the outskirts of an urban location. Along one border of the estate runs the main road to the urban centre. The main road is bordered by a number of 200 foot high trees which overhang the main road. Recently Paul was driving his vintage car along the main road when a tree suddenly fell on his car causing damage and personal injury to Paul. James is baffled by the accident as he recently nailed a number of notices to the trees and noticed nothing untoward as he has attended a number of lectures on tree maintenance in the past.

James grows mushrooms on his estate which he sells to the lucrative local market. The growing of mushrooms is governed by Ministerial regulation which stipulates that any crop within a twenty mile radius of bacterial infection cannot be sold in the local market for a five year period. Mr Pear is a neighbouring land owner of James who has been testing new mushroom species for Fungus Ltd. Fungus Ltd introduced a new mushroom variety which it was aware had a bacterial infection. As a consequence James has lost €20,000 on this year's crop.

In the 1980's James granted Mr Pear an easement over James's land in the form of a gas pipe which services Mr Pear's property. Recently during a very bad storm, James's swimming pool overflowed and washed away the earth protecting Mr Pear's gas pipe. Mr Pear slipped in the mud slide and as a result suffers from severe headaches not to mention the bill of €15,000.00 to protect the gas pipe which remedial work he is lawfully obliged to carry out.

James seeks your advice on his predicament.

6. "Handy Andy's" is a well known chain of D.I.Y. stores in Northern Ireland which has attracted customers from the Republic of Ireland over the years.

Recently "Handy Andy's" decided to open stores in the Republic of Ireland in all newly constructed shopping centres. At the same time and in the same locations, Mr Andie, opened similar D.I.Y. outlets but also sells gardening supplies. Mr Andie has styled his business "Handy Andie's".

Outside all Mr Andie's stores there are price comparisons between his goods and those of "Handy Andy's" which indicate that Mr Andie's goods are on average 20% cheaper than his rival, "Handy Andy's". Mr Andie's goods as compared, however, are of inferior quality to those of "Handy Andy's"

"Handy Andy's" is concerned about the drop in the number of customers to its stores. It has taken to interviewing customers leaving "Handy Andie's" to ascertain why they shop in that store rather than his. The customers indicate they are a little confused as to which store is which.

"Handy Andy's" contracted with "Antitheft Ltd" to provide in store security to arrest the recent increase in shoplifting. Sam is a security guard with "Antitheft Ltd". Recently Sam observed Dave apparently shoplifting. Sam followed Dave to the shop car park and just as Dave was about to leave in his car, Sam aggressively shouted out "Stop thief". Dave froze on the spot, humiliated by the accusation as there were some customers in the car park. Sam then grabbed Dave by the scruff of the neck and dragged him to the office. A number of customers observed the incident on the CCTV screens around the shop. Dave also had to pass by a number of customers in the shop as he was manhandled into the office where it transpired Dave had not stolen anything from the shop. Dave is receiving psychiatric care as a result of the ordeal.

Handy Andy's seeks your advice on the above facts.

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