



THE HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION

AUGUST 2020

Examination: Law of Torts

Date: Friday 21 August 2020

Time: 3.5 hour examination

Internal Examiner: Mr Paul Ward

External Examiner: The Hon Mr Michael McGrath

INSTRUCTIONS:

**Candidates MUST attempt Question 1 and any other TWO questions.
Question 1 carries 50 marks. All other questions carry 25 marks each.**

This paper is 5 pages long including the cover sheet.

Question 1 Compulsory

In 1990 Local Authority Z erroneously granted A Ltd planning permission to build and operate a recycling plant in a rural location. A Ltd invested €250K in purchasing a site and a further €1M in constructing the facility which commenced operating in 1991 and became profitable in 2000, making €100K profit annually.

In the summer of 2018, the recycling plant began emitting toxic matter due to the use of incorrect operating procedures. The emissions continued for two weeks before the toxicity level was discovered. Mr. B, a neighboring farmer, became ill due to the toxic emissions. He developed a pulmonary condition which required hospitalization in medical facility U. Mr. B's livestock were similarly affected by the emissions and his herd of cattle valued at €250K had to be culled.

Mr. E is also a neighbor of A Ltd. Mr. E works as a delivery driver earning €30K per annum. He also drives a taxi at night earning €250 a week which he is paid in cash and has not declared to the Revenue. Mr. E lives with his girlfriend, Ms. F, and his four year old son, Master G. Mr. E contracted a particularly severe pulmonary condition and his hospitalization required more extensive treatment in the intensive care unit (ICU) of medical facility U. Whilst in the ICU Mr. E was induced into a coma and connected to a heart monitor. The heart monitor malfunctioned and Mr. E died. The heart monitor was manufacturer in 2010 in China by XY Ltd to the then highest domestic standards but not to EU and US standards. Q Ltd, a German registered limited company, imported the heart monitors and distributed them throughout the EU in 2011. V Ltd, an Irish registered limited company, supplied the heart monitors to hospitals in Ireland including the medical facility U where Mr E died. Ms. F and Master G were informed of Mr. E's death by phone and visited the mortuary where Mr. E's body was being kept. Both are now receiving psychiatric treatment as a result of what they witnessed.

Another neighbor of A Ltd, Mr. H, also required ICU care. The medical facility adopted a policy of allowing final year medical students to monitor the heart monitors' working capacity. Medical student I was monitoring the heart monitor to which Mr. H was attached but did not understand the digital monitor readings. The warning alarm sounded on the heart monitor when Mr. H was attached to it and medical student I failed to react. A staff nurse realized there was a problem and rushed to resuscitate Mr. H. Mr. H suffered severe brain damage due to heart failure and lack of oxygen. He is now in a permanent vegetative state.

Due to the toxic emissions emitting from the recycling plant, local trade was affected to the extent that the local shopping centre was required to close for a period of time and during the period of closure the auctioneer whose business was located there lost €10K commission on sales compared with their usual profit for the time of year. The local café that thrived while the shopping centre was open also incurred a loss of €5K due to reduced footfall in the area.

You are required to advise on:

- a) The potential liability of Local Authority Z and the particular cause(s) of action in tort for which the local authority may be liable.
- b) What liability A Ltd may face as a result of the toxic emissions affecting Farmer B, Mr. E, and Mr. H and the cause(s) of action in tort A Ltd may face, including the quantum of damages that may be awarded against A Ltd where relevant.
- c) The cause(s) of action in tort that Ms. E and Master F may have and against whom.
- d) The liability of medical facility U.
- e) The liability of XY Ltd, Q Ltd and V Ltd.
- f) The cause(s) of action in tort that the local auctioneer and café may take against A Ltd.

[50 marks]

Question 2

Comres Ltd is an estate agency specializing in surveying and valuing commercial and residential properties. Comres Ltd operates nationally and has outlets in all major towns and cities and has been in business for thirty years. It is a well-known company.

In 2018 Comres Ltd was instructed by A Ltd to market an office block for commercial sale. Comres Ltd surveyed the office block but incorrectly measured the square footage of the building at ten per cent greater than it was. The measurements were published in the pamphlets used to market the office block. The pamphlets contained a disclaimer as to accuracy of the information contained therein in a footnote in very small print.

B Ltd purchased the office block €25M, paying €2.25M more than it should have, based on the square footage of the building. B Ltd rented the office block at commercial rates to C Ltd and has lost rental income of €250K over the past year since C Ltd demanded that the rent be directly in line with the square footage of the building.

In 2019 Mrs D approached her bank for a mortgage in the amount of €250K to enable her to purchase a former council house. The Bank required Mrs D to obtain a survey of the property in order to secure the loan. Comres Ltd, who also carry out surveying work as part of their business, carried out a cursory inspection of the property and reported

that it was structurally sound and represented good security for the mortgage. Mrs D paid Comres Ltd for the survey report. Mrs D purchased the house in late 2019 and took up residence. Six months later, the chimney collapsed crashing through the main bedroom and causing €10K in damage to property. An expert report obtained by Mrs D following this incident indicated that the chimney must have been structurally unsound for several years at least.

Also in 2019, a new estate agency entered the commercial and residential market styling itself Com Rez Ltd. Comres Ltd has noticed a decline in its profitability in the last six months and estimates it has lost €150K in profit.

You are instructed to advise Comres Ltd on what, if any, liability it has to B Ltd, C Ltd and Mrs D and whether it can take any action against Com Rez Ltd.

[25 marks]

Question 3

Mr. A and Mr. B are both retailers of mobile phones and accessories. They are neighbours and competitors. Last month, an order of adhesive screen protectors, phone covers and headphones were delivered to the back door of Mr. A's outlet. The order remained there for several days before being removed by Mr. B to his store room. Mr. B applied the adhesive screen protectors to his stock of mobile phones. The screen protectors cost €10.00 each and 1000 were applied to Mr B's stock. The phone covers also cost Mr. A €10.00 each and Mr. B sold 250 of them for €15.00 each. The headphones did not sell.

Mr. A discovered what Mr. B had done. He retaliated. He disguised himself by wearing a balaclava. He burst into Mr. B's outlet and brandished an imitation firearm. Mr. A aimed the firearm at Mr. B, gesturing at him to move backwards and into his storeroom. Once Mr. B was in the storeroom, Mr. A locked the door from the outside, confining Mr. B within the storeroom. The only means of escape was through a skylight to the flatroof above with a fifteen-foot drop to the ground. Mr. B was unable to escape from the storeroom and was eventually discovered and set free the following morning, when one of his employees arrived for work. Mr. B is receiving psychiatric treatment to help him overcome his ordeal.

Please advise Mr. A on what cause or causes of action he may have in in tort and the quantum of damages he may recover. Please also advise Mr. A on what cause or causes of action in tort he may face from Mr. B.

[25 marks]

Question 4

Mr. A is a serving Senator. The Daily Page is a print and online newspaper. Last year, the Daily Page investigated expenses claims by senators including Mr. A. It discovered that inflated expenses were claimed by some senators but could not find any trail linking Mr. A to the scandal. The Daily Page published a story in print and online versions claiming all senators are potential fraudsters. Mr. A took exception to claim by The Daily Page. The day after the publication of the claim, Mr. A proceeded to the Senate Chamber stated that “the Daily Page was a publication not fit to operate in a democratic society and members of the public are urged to boycott the paper refusing to buy or subscribe to it.” Mr. A left the Senate Chamber and tripped on a protruding stair iron. Mr. A broke his leg in the fall.

Over the past six months, the sales and subscriptions to The Daily Page have declined significantly, costing the newspaper some €500K.

You are required to advise Mr. A what cause of action he may have against The Daily Page and against the Senate and what cause of action, if any, The Daily Page may have against him.

[25 marks]

Question 5

Critically assess the Superior Court’s interpretation of the Statute of Limitations, 1957 and the amending Acts of 1991 and 2000. Reference should be made to the legislative provisions and relevant decisions of the Superior Courts.

[25 marks]