

# THE HONORABLE SOCIETY OF KING'S INNS

## DEGREE OF

## BARRISTER-AT-LAW

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## ENTRANCE EXAMINATION

# LAW OF TORTS

## August 2022

**DATE** | Tuesday, 9 August 2022

**TIME** | 3 hours

**EXAMINER** | Mr Paul Ward (UCD)

**EXTERNAL EXAMINER** | The Hon Ms Justice Emily Egan

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### Instructions

A candidate must answer Question 1 (50% of marks) and **TWO** other questions (each 25% of marks).

This paper is 5 pages long including the cover sheet.

# LAW OF TORTS

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## Q1 | COMPULSORY QUESTION

**50 MARKS**

Mr Purple established Toe Doctor Ltd 10 years ago as a chain of chiropodist clinics treating various foot ailments from corns to ingrown toenails. The business took some years to gain a foothold in the marketplace, but the last three years have seen a huge rise in profitability with an annual turnover of €5 million from the national outlets in Dublin, Cork, Limerick and Galway. There have been considerable waiting lists for appointments in the last few years for the Toe Doctor Ltd outlets.

Mr Brown decided to set up a rival chiropodist business 12 months ago styled as Toe Doctur Ltd, opening its first outlet in Galway in August 2021 adjacent to the Toe Doctor Ltd outlet. The Toe Doctur Ltd outlet in Galway managed to absorb Toe Doctor Ltd's waiting lists within 2 weeks. This prompted Mr Brown to open outlets at locations in Dublin, Cork and Limerick adjacent to Toe Doctor Ltd's outlets immediately thereafter. Toe Doctur Ltd has gained considerable market share in the last 9 months by mopping up Toe Doctor Ltd's waiting lists. In the same time period, Toe Doctor Ltd has seen a 50% decline in turnover and profits cut by €100,000.00.

Last month, deliveries of scalpels and bandages were delivered to Mr Purple's Dublin premises and were left unattended for a number of days. Mr Brown noticed the delivery and took it into his clinic. He used the scalpels and bandages for his clients. The delivery had cost Mr Purple €10,000.00.

Nine months ago, Mr Brown treated Mr Yellow for a toenail ailment on his left toe and applied Iodine to the wounded toe area. The Iodine was purchased from a Dublin based distributor, "Claret Ltd" from a Paris based importer "Burgundy Société Anonyme" who in turn sourced the Iodine from Green Ltd, a Brazilian pharmaceutical company in July 2012. The Iodine solution was defective causing Mr Yellow's left toe to become severely infected with gangrene.

A month later, Mr Yellow consulted his General Practitioner, Dr Amber, about the condition of his left toe infection and was immediately referred to the Emergency Department ("the ED"), of the local hospital, hospital Red. Dr Amber sent an accompanying note to the hospital staff advising that Mr Yellow's right toe required amputation to stem the infection as otherwise the leg may need amputation.

On arrival at hospital Red, Mr Yellow was rushed to the ED and was immediately informed by the ED surgeon, Mr Opal, that emergency surgery was needed to save his right toe. Mr Opal duly performed the surgery on the right toe of Mr Yellow and, before completing the operation, also checked Mr Yellow's left toe and saw the gangrene infection.

This turn of events necessitated further surgery requiring a blood transfusion and a double lower limb amputation. The blood transfusion batch administered to Mr Yellow, was supplied by the National Blood Bank in Ireland, having been imported

from the UK. Unfortunately, it transpired that the imported blood product was contaminated with Hepatitis C, requiring Mr Yellow to take additional medications for several weeks following the operation.

Mr Yellow works as waiter in a busy restaurant on a salary of €40,000 per annum. He also receives tips on a weekly basis averaging €200.00 which he does not disclose as income. He also has medical insurance which will cover the hospital bill of €15,000. Mr Yellow has an income protection plan which will pay him 75% of his salary now that he is a double amputee.

You have been retained to advise on the following:

Mr Brown's liability to Mr Purple on the actions he may face in Tort in relation the loss of profits and the deliveries;

Mr Brown's liability to Mr Yellow in relation to the cause or causes of action in Tort he may face;

Whether Claret Ltd has any responsibility in Tort on the facts of this problem, and if so, what and to whom;

The liability of Dr Amber, hospital Red, Mr Opal and the National Blood Bank in relation to the cause or causes of action in Tort they may face from Mr Yellow;

The quantum of damages Mr Yellow may recoup if successful.

## LAW OF TORTS

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### Q2

**25 MARKS**

The Department of Justice, headed by the Minister for Justice, is statutorily obliged to operate and maintain penal detention facilities for adult and youth offenders. This obligation includes the supervision of all detainees incarcerated in the various facilities.

Situated off the coast of Cork is Monte Cristo Island, a juvenile detention centre housing male teenagers serving sentences for criminal convictions. In mid-August 2019, the detention centre guards held an impromptu drinks party. The guards became intoxicated and fell asleep at 10 pm. The guards had left access to the cell keys in easy reach of the detainees.

A small group of detainees managed to access a set of cell keys and escaped the detention centre. The group made their way to the jetty where they took the boat used to ferry supplies to the island and headed to the port of Cork City. On entering

the port, the boat navigated by the detainees collided with a number of yachts moored in the marina causing €1 million in damage to 10 “super yachts”.

The group of detainees made their way to a farmhouse barn owned by Farmer Black where they hid for the night. The next morning, they stormed the farmhouse and robbed €500.00 from farmer Black.

A week later the group then made their escape to the west of Ireland intending to make it to an island to hide out. The group entered a hardware store and stole hammers and chisels. They used the tools to threaten the staff in B Bank where the staff handed over €5,000.00.

You have been retained by the Minister for Justice to advised on her potential liability to the super yacht owners, the hardware store, Farmer Black and B Bank. You are to identify what tort or torts may be pleaded against the Minister.

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### Q3

**25 MARKS**

Mr White owns a house that borders a busy suburban road. His back garden has a row of sycamore trees along the roadside of his garden to shield the noise. The trees are old and 100 foot high but also overhang the roadway. Mr White also keeps 10 beehives in his back garden, housing 40,000 bees per hive. Mr White makes his own honey. Three years ago, Mr White built an extension to the rear of his property consisting of an additional *en suite* bedroom. The guttering for the roof slightly overhangs the patio of his neighbour's garden, Mr Grey.

Mr Grey is Mr White's next door neighbour. Last summer, Mr White's bees swarmed Mr Grey's garden and stung Mr Grey. Also last summer, Mr White received a letter from his local council informing him of his obligation to ensure the health of the trees that border the roadway. Mr White took his garden fork and prodded each tree in the garden and was satisfied each was externally firm and therefore in a healthy state in his opinion. A month later, a vintage rally car motorcade was travelling along this stretch of road adjacent to Mr White's house when, unexpectedly, a large branch fell from one of the trees and damaged Mr. Blue's 1955 Rolls Royce Silver Spur, which had been in original immaculate condition and valued at €100,000.00. The incident caused €5000.00 in repair damage and devalued the vehicle by some €20,000.00. The reason for the falling branch was that the core of the tree was rotten and the whole tree was structurally unstable, problems which a qualified tree surgeon would have detected by a simple external inspection of the trees. However, Mr White did not engage any tree surgeon to inspect the trees, having been satisfied with his own inspection of them.

Last winter, owing to the harsh weather conditions, the plastic guttering, water and waste out pipes of Mr White extension cracked and warped. This caused rainwater and toilet waste material to pool on Mr Grey's patio. The water seeped into the foundations of Mr Grey's kitchen and the kitchen now has rising damp. He is facing a repair bill of €50,000.00 and also has to endure the foul smell from the human waste material which he cannot eradicate.

You have been retained by Mr White to advise him on his potential liability to Mr Grey and Mr Blue in relation to what causes of action in Tort he may face and what potential damages he may have to pay, if any, to the parties affected.

## LAW OF TORTS

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**Q4**

**25 MARKS**

Green Ltd is an agricultural fertiliser importer based in Dublin and distributes its merchandise to various tried and tested distributors around the country. Chancer Ltd recently entered the fertiliser distribution market and approached Green Ltd with a view to placing orders for fertiliser for the coming year. Green Ltd operates a 3 month payment process whereby orders are delivered once the order is placed and payment is to be made within 90 days of receipt of order.

As a new distributor, Green Ltd decided to conduct a credit check on Chancer Ltd and contacted their commercial bank, Banker plc. Banker plc explained to Green Ltd that as Chancer Ltd was not a customer of theirs that they would have to contact Chancer Ltd's bank for clarity on the financial stability of Chancer Ltd. Banker plc contacted Dubious Bank plc, Chancer Ltd's bank, to enquire on the financial stability of Chancer plc, explaining that their client, Green Ltd needed this information as Chancer Ltd was a new client of Green Ltd. Dubious Bank plc simply replied that Chancer Ltd was financially stable without investigating Chancer Ltd's financial history with other financial institutions.

On foot of the information sent from Dubious Bank to Banker plc and on to Green Ltd, Green Ltd agreed to take on Chancer Ltd as a distributor 12 months ago. Green Ltd delivered the first order on time at the end of September 2021. No payment for the September 2021 order was received by December 2021 by Green Ltd. A further delivery was made at the end of December 2021 on foot of the clear credit assurances given to Green Ltd. No payment was made for the December 2021 delivery but March 2022. Nonetheless Green Ltd delivered a further consignment of fertiliser at the end of March 2022. As of the end of June 2022 €1 million was owed to Green Ltd by Chancer Ltd, which last month was declared bankrupt by the High Court owing to historic financial debt liabilities.

Green Ltd has retained you to advise on what cause of action it may have in relation to Banker plc and Dubious Bank plc, the nature of the damages potentially recoverable and the quantum thereof.

## **LAW OF TORTS**

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**Q5**

**25 MARKS**

Critically assess, with reference to relevant case law, the Statute of Limitations, 1957 as amended.