



THE HONORABLE SOCIETY OF KING'S INNS
ENTRANCE EXAMINATION
AUGUST 2017

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| Examination: | Law of Torts |
| Date: | Monday 14 August 2017 |
| Time: | 10.00 a.m. – 1.00 p.m. |
| Internal Examiner: | Mr Paul Ward, UCD |
| External Examiner: | Mr Michael McGrath SC |

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 6 pages long including the cover sheet. You should check that you have all the pages and inform the invigilator immediately if any are missing.

QUESTION 1

“Organics” is a restaurant specializing in the provision of organic food to its customers. The restaurant was an overnight success as customers flocked to the healthy eatery. “Organics” sourced its beef products from Beef Importer B which is based in Malaga, Spain. Beef Importer B in turn acquires the same beef products from an Argentinian cattle farmer. “Organics” has its own processing unit based in the restaurant where its butchers prepare the meat for cooking in the restaurant. In August 2015 “Organics” received a consignment of beef from Beef Importer B which it processed in the unit. The beef in question was contaminated. Customer C ordered a sirloin steak in “Organics” that August and after eating it became violently ill. Customer C developed a food eating disorder as a result and had to undergo psychiatric treatment for six months to help him overcome the adverse effect of the food poisoning. During this time Customer C had to take unpaid sick leave and has lost €25,000 in salary.

The local newspaper, Rag Times, learnt of the illness of Customer C and published a front page story stating that “Organics” had “poisoned hundreds of customers” and placed the entire town’s population at risk. “Organics” suffered extreme financial loss as a result of the adverse publicity from the story published by Rag Times. The loss was in the region of €100,000. A year ago “Organics” closed its doors to the public but nevertheless, it maintained its business entity as a going concern, in the hope of re-opening its doors to the public in the near future. Seeing a gap in the restaurant market, Mr X opened a similar themed restaurant called “Organixs” which has thrived in the absence of “Organics”, making a profit of €100,000 in the last six months.

That same week, in August 2015, Driver D, Driver E and Driver F decided to have a drag race down the main street of the town. Driver D had consumed half a 75 cl bottle of vodka with his passenger, G, before the drag race. Driver D misjudged a bend and crashed his car. Passenger G suffered catastrophic injuries as a result and is a quadriplegic.

Driver E was accompanied by passenger H during the drag race. Passenger H did not wear his seat belt during the race. Driver E and Driver F were jointly first placed as they approached the finish line at speed of 140 kph when, unexpectedly, Pedestrian I crossed the road in front of the speeding drivers. Driver E swerved to avoid Pedestrian I and crashed into a wall. Passenger H suffered bruising, lacerations and subsequently required physiotherapy for a torn back ligament. An x-ray taken at the time of the accident was inconclusive as to whether there was an undisplaced fracture of the lower sacrum (tailbone). Passenger H recently had a second x-ray taken of his lower back which has revealed that he has indeed suffered an undisplaced fracture of the lower sacrum.

Driver F failed to avoid Pedestrian I and collided with him, throwing him into the air. Pedestrian I landed on the roadside and was run over by Driver L who had joined in the drag race. Pedestrian I was fatally injured. Pedestrian I is survived by his

girlfriend of some five years, Miss J and their three year old daughter Miss K. Pedestrian I worked as a barmen earning €500.00 a week which was paid tom in cash without any income tax deductions. Pedestrian I had life insurance cover to the sum of €250,000.

You are instructed to advise:

“Organics” on its potential liability to Customer C;

“Organics” on what causes of action it may have against Rag Times and “Organixs”;

The liability of Driver D to Passenger G and the level of damages Driver D may be exposed to;

The liability of Driver E to Passenger H;

The liability of Driver F and L and the damages Miss J and Miss K can recover and against whom.

[50 marks]

QUESTION 2

Farmer A and Farmer B are adjoining land owners. Farmer A grows potatoes and supplies them exclusively to a chain of German supermarkets. The German supermarkets only purchase potatoes of a high standard and specify in their contract with Farmer A that if any crop of potatoes comes into contact with bacterial wilt, no crop of potatoes within a twenty kilometre radius of the outbreak can be used for a period of five years.

Potato Importer C approached Farmer B five years ago to trial a new potato seed that could compete with Farmer A's crops. Potato Importer C imported a new seed that was infected with bacterial wilt and planted it in Farmer B's land.

The German supermarket learned of the bacterial wilt and refused to take Farmer A's crops for five years. Farmer A managed to sell his crops to an Irish based supermarket chain but at a lower price than it would have sold to the German supermarket, incurring a loss of €50,000 per annum.

Farmer B's land borders a dual carriageway to the nearest town. Bordering the dual carriageway are 100 year old trees, one of which inexplicably collapsed on motorist D's car last month after a particularly stormy week with winds of 120 kph. The local council had advised all land owners to inspect trees on their land but Farmer B ignored the letter. Motorist D has a repair bill of €10,000 for damage to his five year old hatchback. He hired a replacement vehicle for 4 weeks whilst his car was being repaired. The vehicle he hired was a luxury executive vehicle costing €120.00 per day.

Last month, to compound matters, Farmer B left unbolted the gate to one of his fields in which there were a number of bullocks. The bullocks escaped and trampled the wheat crops of Farmer E, who incurred a loss of €20,000. Some of the bullocks managed to make it onto the dual carriageway where they collided with Motorist F, causing his vehicle to be written off at a loss of €10,000.

You are to advise:

Farmer A on what cause of action he has for loss arising from the potato crop;

Farmer B on what liability he may have to Motorists D, E and F.

[25 marks]

QUESTION 3

“Sales and Loans” is a pawn shop. In 2014, Customer A needed to raise funds to take a holiday so he decided to pawn his limited edition Omega watch issued in celebration of the 45th anniversary of the Moon landing. Customer A borrowed €5,000 over a three year period against the value of his €20,000 watch.

Last month, Customer A proceeded to make his final repayment on the loan and to retrieve his watch. Having made the final payment, Customer A requested the return of his watch and “Sales and Loans” refused to hand it over, stating that they had sold it the previous year to Customer B for €15,000.

Customer C recently visited the pawn shop, which is protected by a German Shepherd Rottweiler cross breed called Hans. Hans is a well-trained guard dog but unexpectedly bounded over the counter, knocking Customer C to the ground and proceeding to bite Customer C on the arm before being called to heel.

Customer D also visited the pawn shop and purchased a used gas heater. “Sales and Loans” provided the wrong lighting instructions for the gas heater resulting in Customer D inhaling toxic gas fumes, causing him a severe lung infection.

You are to advise:

Customer A on what cause of action has against “Sales and Loans” and what damages, if any, he is entitled to;

Customer B in relation to Hans’ behaviour and the cause or causes of action he may have;

Customer D on what cause of action he may have in respect of the lung infection.

[25 marks]

QUESTION 4

Critically assess how the Superior Courts have interpreted the Occupiers’ Liability Act, 1995.

You should refer to the relevant sections of the Act, the circumstances in which liability may arise thereunder and relevant case law.

[25 marks]

QUESTION 5

Dentist A operates a private dental clinic. Last year, Patient B attended Dentist A and wished to have her teeth whitened. Dentist A explained the procedure to Patient B. Patient B signed a consent form provided to her by Dentist A. In the course of carrying out the procedure, Dentist A discovered two badly decayed molars. Dentist A immediately put Patient B under a general anaesthetic and carried out a double root canal operation. The operation was clumsily performed and Patient B now suffers from chronic pain in the upper parts of her jaw bone.

Patient C underwent a course of dental treatment which required her to be hospitalised in order to undergo the dental treatment. The treatment was successfully carried out by Dentist A, who on completion of the treatment provided a bill for €7,000.00. Patient C refused to pay. Dentist A dragged Patient C back to her room and flung her on to the narrow balcony ten stories above ground level. Dentist A then locked the door to the balcony leaving Patient C in a state of severe distress because of her previously existing vertigo condition. Hours passed before a resident of the apartment block situated directly across from the dental clinic noticed Patient C. The resident phoned the fire brigade giving the address of the dental clinic. A fire engine was dispatched to the incorrect address by the controller, resulting in further trauma to Patient C who is now receiving psychiatric care for the ordeal she suffered. The Local Authority D is statutorily responsible for the provision of fire services in the area.

You are to advise:

Dentist A on his potential liability to Patient B;

Dentist A on his potential liability to Patient C;

Local Authority D in relation to the fire brigade engine.

[25 marks]