THE HONORABLE SOCIETY OF KING’S INNS

ENTRANCE EXAMINATION

AUGUST 2010

Examination: LAW OF TORTS

Date: MONDAY 16 AUGUST 2010

Time: 10.00 a.m. – 1.00 p.m.

Examiner: Mr Paul Ward

External Examiner: Mr Michael McGrath SC

Instructions:

Candidates MUST attempt Question 1 and any two other questions. Question 1 carries 50 marks. All other questions carry 25 marks each.
Q.1 Candidates MUST attempt this question. 50 Marks.

Z Ltd is a factory which manufactures various tools used in the construction trade. Z Ltd is located in an industrial estate which comprises other businesses, apartment blocks and retail outlets. It is located in the south of the city near residential housing.

Z Ltd receives daily deliveries of metal to the forecourt of the premises. Metal is traded on world markets at €10,000 per tonne. X Ltd operates from adjoining premises and shares the forecourt where there is no boundary between the two operations. Over the past number of weeks, Mr A of X Ltd moved three tonnes of metal from Z Ltd’s part of the forecourt to X Ltd’s part of the forecourt and covered the material with a tarpaulin. On another occasion recently Mr A took two tonnes of metal which was used to manufacture frames to be used in a playground. The frames were sold for €30,000 to the local authority. On yet another recent occasion Mr A removed two tonnes of metal which he stored in a locked shed to the rear of X Ltd’s premises. Z Ltd captured the various interferences with their metal and sent a copy of the digital recording to X Ltd. Z Ltd has had no response from X Ltd in this regard.

Z Ltd leaves manufactured tools for collection by a courier company Y Ltd. Y Ltd recently collected a consignment for delivery to a local hardware store W Ltd. The consignment had the address of W Ltd written on the side of the wooden container. The container was not properly secured in the van and fell onto the road. A passing motorist, Mr B, gathered up the consignment and brought it home.

Z Ltd’s manufacturing process involves the use of a furnace which emits vast plumes of dense smoke during the working day. It takes a number of hours for the smoke to disperse after the furnace has been extinguished. At busy periods during the summer the factory operates on Saturdays. The residents of apartment block S cannot open windows during the day and are fed up with Z Ltd’s activity.

Last month, during an exceptionally windy period, the furnace emitted burning debris which landed on an adjoining building which operates as a restaurant run by T Ltd. T Ltd rents the building from R Ltd who expended €40,000 refurbishing the building. T Ltd has made a net loss of profit of €28,000 during the time that the building was closed for refurbishment.

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Z Ltd employs Mr C as a van driver to deliver products to customers at short notice. In December 2009 the company van was serviced by Garage P. Garage P replaced the worn tyres with tyres manufactured in China by O Ltd. M Ltd, an Irish registered company, imports O Ltd’s tyres which are then distributed by N Ltd, another Irish registered company. Last January, Mr C was instructed to deliver a consignment of goods to G Ltd in the midlands. Mr C lost control of the van on black ice and collided with Mr D. Mr C survived the accident. An engineer’s report concluded that the accident was partly caused by O Ltd’s tyres as the compound of the rubber is not suitable for harsh weather conditions. G Ltd did not receive their goods and as a consequence lost a profit of €1500 on the products they would have sold that day had the delivery arrived. Mr D was severely injured in the crash and is now a paraplegic with a wife and three dependent children. Mr D has received a payment of €250,000 from an insurance policy he took out some years ago providing for protection in the event of disability.

In June 2009, Mr E, another employee of Z Ltd delivered a consignment of goods 230 miles away in Donegal. Mr E was accompanied on the trip with Mr F who helped deliver the consignment. Because Mr E would not return to the factory before closing time on the return journey, Z Ltd allowed Mr E to take the van home and return it the following morning. When Mr E arrived back in the city he decided to go for a drink with Mr F in the local pub. Mr E and Mr F consumed five pints of beer before leaving the pub. Mr E offered Mr F a lift home and on the way he collided with a lamp post. Mr F was not wearing a seat belt and suffered severe facial lacerations, a cranial fracture and a dislocated shoulder.

You are required to advise Z Ltd on what causes of action it may have against X Ltd, Y Ltd, Garage P, M Ltd, N Ltd and O Ltd. Where relevant you are to advise on the appropriate remedy and likely quantum of damages.

You are also required to advise Z Ltd on what potential causes of action it might face from W Ltd, the residents of apartment block S, R Ltd, T Ltd, G Ltd, Mr D and his dependents and Mr F. You should advise on what remedy might be sought and the likely quantum of damages where relevant.

You should also advise on the potential liability of Mr B and Y Ltd, the likely remedy and quantum of damages where relevant.

Legend
Z Ltd: Factory manufacturing tools.
X Ltd: Premises adjoining Z Ltd.
Y Ltd: Courier Company
W Ltd: Local hardware store
T Ltd: Restaurant.
R Ltd: Landlord to T Ltd.
O Ltd: Chinese tyre manufacturer.
M Ltd: Tyre importer.
N Ltd: Tyre distributor.
Mr A: Employee of X Ltd.
Mr B: Passing motorist.
Mr C: Van driver of Z Ltd.
Mr D: Motorist.
Mr E: Employee of Z Ltd.
Mr F: Passenger with Mr E.
Garage P: Garage.
Apartment Block S: Residents.
Q.2  25 Marks.

Drumba is an established residential suburb of Dublin. The town centre is undergoing major redevelopment with the construction of a new shopping centre, hotel, restaurant, cinema and apartment complex on one site.

Bricks and Mortar Ltd (the developer) owns the site and is the developer of the new complex which it has contracted to sell to Mega Profit Ltd. Needless to say, there is considerable heavy vehicular activity in Drumba with numerous earthmovers, excavators and container lorries operating on the site, all of which are provided by Bob The Builder Ltd (the builder).

The site of the new complex is bordered by a number of residential housing estates. An eight-foot barbed wire fence protects the site, which is monitored by close circuit TV on a 24-hour basis. Located around the perimeter of the site are a number of battered and dirty "Danger" and "Keep Out" signs, the lettering of which is which partly obscured by graffiti. The local children have taken to visiting the site, via a hole they cut in the perimeter fence, and removing wooden pallets which they use as ladders to enter and exit the site. Lately they have become more adventurous in playing in the heavy excavating machinery, a fact that concerns both the developer and the builder.

In an attempt to counteract the local children's visits to the site, the developer invites all local residents, children and adults alike, to inspect the site, to view the architect's scale-model of the proposed development and partake in supervised operation of the various excavating machinery. The invitation is scheduled for a Saturday between 12 noon and four in the afternoon.

Local residents Peter and Paul and their American cousin Pat duly arrive on the Saturday and queue for and take their turns. Pat, while descending from the cab of the machine is injured by the arm of the earthmover operated by another child. At four thirty Peter leaves the site via one of the makeshift pallet ladders but becomes entangled in the barbed wire on the perimeter fence. Paul hides on the site and later that evening is injured when he falls from a caterpillar earth moving vehicle which he has started.

Peter, Paul and Pat seek your advice on claims for the personal injuries they have sustained.

Q.3  25 Marks.

The Defamation Act 2009 has significantly amended both the common law principles of defamation and the Defamation Act 1961.

Set out and discuss the changes that the Defamation Act 2009 has made.
Q.4 25 Marks.

In August 2004 Dave, an artist, was on his way home from a night out when he was stopped by the Gardai. When he refused to answer questions about what he was doing, he was arrested by Garda Murphy. Garda Murphy forcibly twisted Dave’s right hand behind his back and placed handcuffs on his wrists. Dave was shoved into the back of a squad car and taken to the local Garda station. On route, unknown to Dave, Garda Murphy placed a small quantity of heroin wrapped in tin foil into Dave’s top pocket. At the station he was duly charged with possession of heroin. Dave was prosecuted and convicted for the offence but he appealed and was successful as Dave successfully proved that Garda Murphy’s fingerprints were the only prints on the tin foil packet containing the heroin. Owing to the ordeal, Dave suffered a nervous breakdown and is receiving psychiatric treatment to date.

Dave developed pain in his right hand after the arrest which impeded his art and livelihood. In August of 2008 Dave consulted a surgeon, Mr Green, about the pain. At the consultation, Mr Green advised that surgery could relieve the pain but that such surgery was difficult and complicated. Further Mr Green advised that success could not be guaranteed. Dave agreed to undergo surgery in the hope that the operation would be successful. On the day scheduled for the operation Mr Green was detained performing at an emergency operation and Mr Brown, the senior registrar to Mr Green, performed Dave’s operation. Unfortunately, Mr Brown performed a competent but clumsy operation on Dave’s left hand.

The following day Mr Green apologised to Dave for the mix up. To appease the situation, Mr Green told Dave of an emerging surgical technique, which if successful, could relieve him of all pain in his right hand. Mr Green did warn, however, that there was a 10% risk of residual postoperative pain to the hand. Mr Green did not inform Dave of the further but remote risk of pain spreading from the hand to the arm and shoulder as a result of the surgery because Mr Green was of the view this would deter Dave from undergoing the new surgical technique. Dave agreed to undergo the operation and Mr Green duly performed the operation with apparent success.

Recently, however, Dave has noticed a pain in both hands. In addition he has a mild but increasing soreness in his right arm and shoulder. He has also learnt of the remote risk associated with the new surgical technique and is adamant that he would not have undergone the operation if he knew of the risk involved.

Dave seeks your advice on what causes of action he may have.
Q.5  25 Marks.

Bogside City Council (BCC) is statutorily obliged under the Public Health Acts to inspect and certify the foundations of all new homes as well as to provide homes for the less well off members of the community. The central purpose of the Public Health Acts is to ensure that all homes meet minimum habitation standards. Dick is the Bogside City Council official entrusted with these duties. BCC also owned land situate near a sewage treatment plant that it wanted to sell. Dick negotiated the sale of the land to Robert Construction Ltd (RC Ltd) and received an illicit payment for his efforts. RC Ltd constructed two homes on the land in question which Dick inspected and certified despite the fact that the land in question was not suitable for home building. Under the terms of the contract RC Ltd was to acquire one of the homes and the other was to be retained by BCC.

Joe bought the first home from RC Ltd without having had a survey conducted but he immediately sold it on to Max when he realised the unsuitable nature of the land. Max now has a house with dangerous defective foundations. The house also has other defects which are not currently dangerous but will cost a considerable sum of money to remedy.

The second home was sold by BCC to Jack and his family under a scheme to enable the less well off people to buy their own homes. Jack likewise did not obtain an independent survey because he could not afford one. Jack and his family are continuously ill due to the stench of raw sewage and no one is willing to buy the house even for half the price paid by Jack.

Max also farms sheep and he has a well trained sheep dog Rex. Rex is excitable, he barks, growls and jumps around a lot. Jack, also a sheep farmer, is Max’s neighbour. Rex is known to Jack and Jack sometimes borrows Rex to herd his sheep with his own dog, Spot.

Fred is Jack’s brother who emmigrated to the USA 20 years ago and is on a surprise visit home to see Jack and his old friend Max. Jack and Fred go to visit Max who is not home but Rex is. When Rex sees Jack he becomes excited and launches at Jack to greet him, but misses and knocks Fred to the ground. Fred is severely injured in the accident.

In the meantime Spot has been left unleashed and wanders off to bother Max’s sheep which are grazing near the main road. Max’s land is partially fenced off from the road by barbed wire. Spot dashes towards the sheep. They are unnerved by the oncoming Spot and bolt in all directions. Some of the sheep are injured by the barbed wire. The others escape onto the road. One group of sheep enters Ron’s corn field and destroy the crop. The other group scampers down the road and damage a parked car owned by Ted.

Max, Jack, Fred, Ron and Ted seek your advice on any cause of action they may have.