THE HONORABLE SOCIETY OF KING’S INNS

ENTRANCE EXAMINATION

AUGUST 2014

Examination: Law of Torts
Date: Monday 18 August 2014
Time: 10.00 am – 1.00 pm
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 and questions 2 – 5 carry 25 marks each.

This paper is 7 pages long including the cover sheet. You should check that you have all the pages and inform the invigilator immediately if any are missing.
Q.1

Hospital A has experienced a number of unfortunate mishaps in the recent past. A couple of years ago Patient B, whilst giving birth, required a blood transfusion. The blood used in the course of the transfusion came from the United Kingdom five years earlier and was part of a batch of blood donations that were contaminated leading to a number of patients suffering from Hepatitis C. Patient B had heard of the contaminated blood scandal and became convinced that she too would succumb to the same infection. As a consequence her mental health deteriorated significantly the following year. Patient B underwent a number of blood tests subsequent to the transfusion that indicated that there was a minimal chance of contracting Hepatitis C. Notwithstanding the medical advice to this effect, Patient B became convinced she would die in the near future.

Patient B is undergoing psychiatric treatment to deal with her morbid obsession. Patient C last year miscarried her pregnancy and underwent a gynaecological procedure to remove the foetus. Subsequent to the procedure, the organs of the foetus were removed and used for teaching purposes in medical schools. Patient C recently discovered this fact which shocked her so badly that she too is suffering post traumatic stress disorder for which she is also receiving psychiatric treatment.

Dr D is an accident and emergency consultant at Hospital A. Last month her husband and children were involved in a horrific road traffic accident caused by the negligent driving of driver E. Dr D was on duty at the time of the accident when the victims were transported there to the accident and emergency department. Dr D instantly recognised her husband and children who were severely injured and covered in blood. Dr D tended to her family and tragically her youngest child died whilst Dr D tried to revive her. Dr D’s mental health deteriorated after the tragedy and she is undergoing psychiatric care for her condition. Driver E was also taken to hospital A where he required emergency surgery but was unconscious at the time of arrival. He was brought to theatre and a life saving brain operation was performed during the course of which the surgeon made a slight mistake resulting in Driver E being rendered blind in his right eye.

Patient F was advised to undergo plastic surgery to improve his personal appearance. Dr G, an employee of Hospital A, advised Patient F of a general risk associated with the procedure but failed to inform him that there was a minimal risk of permanent
deformity of the face. The risk arises from the complexity of performing the procedure. Unfortunately for Patient F, Dr G clumsily performed the procedure resulting in the facial deformity.

Driver H is an ambulance driver at Hospital A. Last winter on a particularly cold morning Driver H was dispatched to collect a patient for surgery. On route to the patient, the ambulance skidded on black ice and tragically Driver H was killed in the accident. Driver H was in a relationship with Miss J and they together have a two year old son, K. Driver H’s life was insured for €350,000 which Miss J received from the insurance company. Miss J and K, however, were financially dependent on Driver H who also drove a taxi at weekends to earn additional income which he failed to disclose in his tax returns. The taxi driving earned the family an additional €15,000 per annum.

Company I is a local garage that maintains Hospital A’s ambulance fleet. Six months ago an ambulance was serviced by Company I who had replaced the tyres and wheel nuts owing to worn treads. The replacement wheel nuts were manufactured in 2005 in Korea by Company M and imported by Company N into Ireland which has its registered place of business in Dublin. Company N sells the car parts to local garages of which Company I is a long standing customer. Driver L was driving the ambulance last month when the wheel came off causing him to crash into Driver O. Driver O was physically injured in the collision and has been unable to work for a six week period owing to his injuries. Driver O’s van cost €7500.00 to repair and Driver O lost €7500.00 in lost income from his courier business.

You are requested to advise on the following:

– The liability of Hospital A to Patients B, C, E and F, Driver H’s dependents Miss J and K. Please also advise Miss J and K on quantum and the basis for recovery.

– The liability of Driver E to Dr D.

– Whom should Driver O sue and on what basis?

50 Marks
Q.2

“Atkin and Lord” is a firm of solicitors which has encountered a number of problems recently. Mr A wanted to purchase a property from Client B who is a client of “Atkin and Lord”. Mr A’s solicitors sent requisitions on title enquiring about the property and in particular whether the property was the subject of any legal dispute. “Atkin and Lord” responded negatively to the requisition without consulting with Client B. Client B has been in dispute with a neighbour for the past decade in relation to a strip of land which provides access to Client B’s property. Without ownership of the land, Client B’s property is landlocked and inaccessible. Mr A purchased the property for €250,000 last month.

“Atkin and Lord” prepared a will for client Client C a number of years ago in which he bequeathed a sum of €100,000 to each of his three daughters. Two years ago Client C’s daughters fell out with their father and he changed his will whereby the daughters were to receive nothing. Six months ago, however, Client C and his daughters were reconciled and he decided to re-instate their entitlements under the original will. Client C contacted “Atkin and Lord” and instructed them to make the necessary changes five months ago. Solicitor D of “Atkin and Lord” immediately re-drafted the will but never made an appointment for Client C to sign the re-drafted will. Client C died unexpectedly last week.

“Denning and Son” is also a firm of solicitors which recently considered employing Solicitor E who was a former employee of “Atkin and Lord”. “Denning and Son” sought a reference from “Atkin and Lord” about Solicitor E. “Atkin and Lord” sent a letter stating that Solicitor E had left their employment after a client’s personal injury award went missing and that Solicitor E was suspected as being involved but no enquiry or action was taken in the matter by “Atkin and Lord”. Solicitor E has been told by “Denning and Son” of the reference and has been refused employment. He would have started on a salary of €75,000 but now finds it impossible to even get an interview for a job, let alone a job.
Client F is a financial investor considering making an investment in X Ltd. Client F contacts “Atkin and Lord” about X Ltd and in particular whether X Ltd is solvent. X Ltd’s solicitors are “Denning and Son” so “Atkin and Lord” contact “Denning and Son” and enquire about X Ltd explaining that their Client F is considering making an investment. “Denning and Son” respond positively about their client without running any credit check on X Ltd. Client F invested €150,000 in X Ltd three months ago and then a month ago X Ltd went into receivership owing close on €1 million.

For each of the following clients, identify the relevant tort, the criteria for that and the nature of the loss incurred:

1: “Atkin and Lord” on its liability to Mr A;
2: Client C’s daughters;
3: Solicitor E;
4: Advise Client F on who to sue and on what basis.

25 Marks

Q.3

Ms A and Ms B are neighbours whose properties are separated by a strip of land abandoned by Mr C thirty years ago.

Ms A was walking the abandoned strip of land recently when she discovered a Viking shield protruding from the soil which she easily managed to free. As Ms A was doing this she was observed by Ms B from her bedroom window. Ms B hurried from her house and caught Ms A in a headlock and flung her to the ground. Ms B then blindfolded Ms A and dragged her off to Ms B’s garden shed where she locked the door from the outside leaving Ms A with no means of escape except through a broken perspex roof window with an eight foot drop to the ground. Ms A tried to escape but could not extract herself from the shed through the broken window. Two days later Ms B secretly opened the locked shed door enabling Ms A to escape.
In the intervening two days Ms B sold the Viking shield to the State for €100,000. She also complained to the Gardaí that she had been assaulted by Ms A. The DPP has indicated an intention to prosecute Ms A for the alleged assault.

Ms B has asked you for advice as to what cause or causes of action she may face in relation to the above facts.

Q.4

Q.5
Mr A breeds thoroughbred Doberman Pinschers in a rural area much to the annoyance of his neighbours. The neighbours are fearful of the large and powerful dogs but they fail to realise that once properly trained, these dogs are not dangerous. Nonetheless the irrational fear of the neighbours results in them attempting to shut down Mr A’s operation. Neighbour B contacts Journalist C and inaccurately informs Journalist C that Mr A is operating a puppy farm and breeding dogs for fighting. Journalist C visits Mr A’s property to verify the story. Journalist C cannot gain access to the property and sees a sign saying “beware of the dogs”. Journalist C inspects the property to see if he can gain access to the property. Journalist C finds a hole in the fencing and climbs through the fence only to be confronted by a Doberman Pinscher which starts barking and growing at journalist C. Startled by the unleashed and unmuzzled dog, Journalist C stumbles backwards and is rendered unconscious when he hits his head off the ground.
Journalist C later writes about his ordeal claiming that Mr A is indeed operating a dog fighting puppy farm. The story engenders public concern to the extent that local Councillor D raises the matter at a Council meeting in the course of which he makes specific mention of Mr A.

Mr A seeks your advice on what cause or causes of action he may have and any potential liability he may have in relation to his dog.

25 Marks