THE HONORABLE SOCIETY OF KING’S INNS

ENTRANCE EXAMINATION

AUGUST 2016

Examination: Law of Torts
Date: Monday 15 August 2016
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 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**

In August each year, GIG Ltd hosts summer music concerts in an open park operated by Local Authority Z. GIG Ltd is listed on the Irish Stock market where its shares are regularly traded. The park is on the outskirts of a major urban city and the concerts are held daily over a two week period from 12 noon to midnight, much to annoyance of the local residents. The concerts have grown in popularity over the years with increased numbers attending each year. The park adjoins a number of housing estates. GIG Ltd have financially profited from the concerts. Each year GIG Ltd applies for and has been granted a license to run the concerts by Local Authority Z, which derives significant income from the license fee. Last year GIG Ltd provided camping facilities for concert goers who wished to attend the two week event. This proved very successful for GIG Ltd in boosting profits but most unfortunate for the local residents. Over 100,000 concert goers descended on the campsite creating excessive noise and generating chaotic traffic congestion in the suburban locality. Residents found it difficult to get to sleep at a reasonable hour due to the loud music and noisy concert goers exiting the park after midnight. The camping concert goers also generated a lot of waste material over the two weeks which caused foul odours to linger in the local area.

In August 2016 GIG Ltd will host the concerts again.

A growing concern of GIG Ltd is the amount of theft that occurs during the two week period. Mr A is a well-known convicted thief. Mr A queued and was admitted to the concert despite security and An Garda Síochána observing Mr A in the entry queue on CCTV footage. Mr A embarked on a thieving spree. Ms B witnessed Mr A stealing from a tent and immediately informed security staff, employed by BIG GIG Ltd, and the Garda Síochána who chose not to investigate the matter. Later that day Mr A stole personal items from Ms B while she slept in her tent. The items included electronic and photographic equipment valued at €7500.

On the opening night of the concert the largest crowd assembled to listen to the last performance. The concert was streamed live on the internet. Tragically, the mainstage collapsed and crushed Ms C who was fatally trapped at the front of the stage. Ms C’s twin sister, Ms D, was watching the concert from home on her laptop in disbelief at the unfolding tragedy as she heard the screaming and roaring of the injured concert goers. Ms D told her parents what had occurred. Ms C’s corpse was taken to the local hospital where her mother and father as well as Ms D later attended and observed her remains. Ms C’s parents and Ms D are now receiving psychiatric help to overcome the ordeal.

Fixit Ltd was engaged by GIG Ltd to construct the stage in accordance with the plans drawn up by Build Ltd, an engineering firm. Build Ltd had failed to inform Fixit Ltd that foundations would be necessary to support the structure of the stage.
Another concert goer, Mr E, was caught in a stampede of fleeing concert goers and suffered two broken legs. The stampede occurred owing to the lack of an evacuation plan in the event of an emergency. Mr E was taken to hospital and operated upon. The emergency procedure cost €15,000 which was covered by Mr E’s medical insurance. Mr E also has an income protection plan which will entitle him to recover 75% of his €100,000 salary while he is absent from work for the next 9 months.

Last year GIG Ltd sent its accounts for auditing to Sums Ltd. GIG Ltd informed Sums Ltd that an approach had been made by a rival concert promoter, Big Gig Ltd, who had expressed an interest in taking over GIG Ltd. Sums Ltd omitted to include the monies generated by camping, which amounts to 20% of the overall profit made by GIG Ltd. On the basis of the accounts as published, Mr F, the CEO of Big Gig Ltd, made a personal investment in GIG Ltd of €50,000 and Big Gig Ltd made a takeover bid of €5M. Owing to the recent set of misfortunate events, the value of GIG Ltd’s shares has sharply fallen by 50%.

Mr F is rueing his investment as he has less disposable income to spend on his past time of antique collecting. Mr F’s personal assistant, Mr G, expressed a desire to obtain a Queen Anne sofa and Mr F told him he would source one for Mr G. Mr F whilst browsing a charity shop identified a sofa that he recommended Mr G purchase, which Mr G duly did, expending €2000 in the process. It subsequently transpired that the sofa is a reproduction and only worth €50.

You have been retained to advise on the following:

a) The liability of GIG Ltd to the local residents and how that might alleviate it if at all;
b) The liability of GIG Ltd’s security and the Garda Siochana to Ms B;
c) The liability of GIG Ltd to Ms C’s parents and sister;
d) The liability of GIG Ltd to Mr E;
e) The liability of Sums Ltd;
f) The liability of Mr F.

[50 marks]
Question 2

Located in to the north east of County Dublin are a number of fruit and vegetable farmers. Farmer A and Farmer B adjoin each other’s farms which are separated by a lane-way owned by Farmer A.

Last summer, Farmer B purchased three large containers from Market Garden Supplies Ltd, an Irish registered limited company. The containers were manufactured in Israel by X Ltd in August 2006 and imported into Europe via Dubrovnik, Croatia, by Z Ltd. Plastics Ltd, an Irish registered company, then distributed the containers to retail outlets in Ireland. The batch of containers from which Farmer B purchased the three suffers from a design flaw that causes the contents to seep from the container.

Farmer B positioned his containers along the edge of his lands that border the lane-way adjoining Farmer A’s lands. Into two of the containers he deposited green waste and fertilising liquid respectively and the third he used as a water butt for irrigating his crops. By early spring the containers were full. The design flaw led to the contents of each container discharging into the lane-way and forming a pool of a foul smelling substance in and around Farmer A’s sizable strawberry patch. Recently, Farmer A has developed a lung condition as a result of the foul smelling discharge. His strawberry harvest that cost him €5000 to plant is now worthless and his expected profit of €20,000 on the summer sale of strawberries is lost.

Last month, Rambler C was walking the lane-way and noticed a metal object protruding from the ditch. Rambler C removed the object that resembled a Viking sword which the National Museum verified as genuine and worth in excess of €5M.

Farmer A seeks your advice on what cause or causes of action he may have against the above parties.

[25 marks]

Question 3

“The Irish Superior Courts have endorsed, departed from and re-united with their English counterpart on the interpretation and application of the duty of care in negligence.”

Discuss.

[25 marks]
Question 4

‘Molars’ is a dental clinic housing a number of independent dentists. Dentist A and Dentist B occupy the ground floor suites. Mr C attended Dentist A a number of months ago for treatment about an ongoing pain in his jaw. Dentist A advised Mr C that the treatment for his pain required a bone graft operation which had some associated risks. Dentist A did not inform Mr C of the extremely remote risk of ongoing and continuous severe pain as a result of the bone graft operation. Dentist A considered this might deter Mr C from undergoing the operation. Mr C consented to the operation which Dentist A duly performed. Recently, Mr C has developed a severe pain in the area where the operation was performed and is now suffers from chronic pain.

Dentist B ordered a number of dental supplies from his supplier who delivered a kilo of gold for use in the making of crowns for teeth. At the time of purchase, gold was being sold for €10,000 per kilo. Also delivered were braces for straightening teeth. Dentist A observed the delivery to Dentist B’s suite where Dentist B was placing the consignment in his storage cupboard. Dentist A locked the cupboard where the supplies were stored thus preventing Dentist B from accessing his supplies. Dentist A then moved around the various supplies before removing a number of sets of braces. Dentist A then fitted the braces for Mr D and Ms E. The braces, made of platinum, are valued at €5,000 each.

Gold has since plummeted in value to half the price Dentist A paid for it. Dentist A seeks your advice on what cause or causes of action he may face in light of the above facts.

[25 marks]
Question 5

Mr A, Mr B, Mr C and Mr D returned from a football tournament by ferry in August 2014. As the ferry was docking in Dublin Port, the captain abruptly switched on the port thruster causing Mr A to be thrown forward from the deck and suffer injuries. Mr A was taken to hospital, where the accident and emergency consultant diagnosed lacerations to the face and bruising to the arms and legs. The consultant recommended that Mr A undergo physiotherapy and take some time off work. Having looked at the x-ray of Mr A’s lower back, the consultant could not confirm if there was an un-displaced fracture of the sacrum.

On the same ferry crossing, Mr B and Mr C, who were off-duty gardaí, grabbed Mr D and beat him. They then threatened to throw Mr D overboard. The incident was witnessed by Mr E. Mr B and Mr C then instigated a criminal assault prosecution of Mr D, during the trial of which Mr E gave evidence of the incident, resulting in the judge directing an acquittal of Mr D.

Mr D suffered psychiatric sequelae and is receiving psychiatric care as a result of the ordeal.

Mr A has just been informed that he in fact did suffer a fracture of his lower sacrum at the time of the ferry incident. Mr A and Mr D seek your advice on what cause or causes of action they may have.

[25 marks]