

DEGREE OF
BARRISTER-AT-LAW
THE HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION

TORT LAW

2024

DATE: 8 August 2024

TIME: 3 hours

EXAMINER Mr Paul Ward UCD

EXTERNAL EXAMINER | The Hon Ms Justice Emily Egan

INSTRUCTIONS

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

This paper is 3 pages long including the cover sheet.

TORT LAW

Q1 | COMPULSORY QUESTION

50 MARKS

On the Northeast Coast of Ireland lies an inland port (“the port”). Access to the Irish Sea is via a canal some two kilometres in length. Access to the port is via a bridge which is supported by a concrete pillar built in the middle of the canal. The bridge is one kilometre from the port. Heavy goods vehicles use the bridge to transport shipping goods for export and import to and from the port. In 2014 “We Ship Cheaper Ltd” commenced an import and export business of various goods. The business has been very successful over the years with a profit of €1 million on average each year. Two years ago, “We Transport Cheeper Ltd” was established to complete with “We Ship Cheaper Ltd” in the same business. The premises of the two companies adjoin one another without any boundary fencing. Delivery of goods for export are stored in the yards of the companies. The couriers transporting goods for export by the companies have, on a number of occasions, delivered goods for export by “We Ship Cheaper Ltd” to the “We Transport Cheeper Ltd” premises. Employees of “We Transport Cheeper Ltd”, on the instructions of the company’s owner, Mr A, have covered the deliveries with tarpaulins to prevent “We Ship Cheaper Ltd” from exporting them. The hidden goods are then loaded aboard a cargo ship at night and exported to the intended customers on mainland Europe. “We Transport Cheeper Ltd”, invoices the customers and is duly paid for them. “We Ship Cheaper Ltd” has lost €100K in revenue over the past eighteen months as a result of this.

Six months ago, two employees of “We Ship Cheaper Ltd”, Mr B and Mr C, discovered the devious activities of “We Transport Cheeper Ltd” employees in concealing the goods of “We Ship Cheaper Ltd”. Mr B and Mr C confronted Mr A’s employees, Mr D, Mr E and Mr F who were loading a concealed consignment of goods on to a cargo ship. Mr B and Mr C challenged Mr D, Mr E and Mr F. Mr D grabbed Mr B from behind and put him in a headlock, then dragged him to a nearly full container and locked the door. Meanwhile Mr E tackled Mr C to the deck of the ship and threw him overboard into the canal dock. Mr F dove into the dock to assist Mr C, but failed in the rescue attempt as he did not remove enough clothing before entering the water. Mr C drowned as a result. He is survived by his partner Ms G and by his three-year-old son Mr H. In addition to his salary of €1000 per week from “We Ship Cheaper Ltd”, Mr C had a side income of €200.00 per week working as a security guard. Mr C was paid in cash for this side income and did not declare this income to the revenue.

The loaded cargo ship departed the dock and headed towards the Irish Sea. The captain of the ship, employed by Mr A, misjudged the distance between the side of the canal and the support pillar. He caused the ship to collide with the pillar, causing structural damage to it and blocking access to the port and the sea. After two days, the ship was freed from its wedged position between the support pillar and canal bank. The bridge was closed for a month whilst remedial work to the structural integrity of

the pillar support was completed. "We Ship Cheaper Ltd" has missed shipping order deadlines and incurred contract penalties of €50,000. The bridge closure has also cost the company €250,000 in failed imported deliveries and export of goods to disappointed customers.

Mr B managed to climb to the top of the container to an opening big enough to enable him escape, but on exiting the container he was forced to jump overboard or return to the container. He chose the latter option and was released from the container some hours later when discovered by the ship's crew. He has been traumatised by the ordeal.

On behalf of "We Transport Cheaper", Mr A engaged "Dogsecurity Ltd" to guard the yard overnight. "Dogsecurity Ltd" use Doberman Pinscher dogs to guard the premises it protects. Three months ago, Mr G, an employee of Mr A, forgot to lock the gate to the yard. Two Doberman Pinschers left the yard and ran to the public street. One dog caught and held a passerby, Mr X. The other dog encountered a cyclist, Ms Z. The dog crouched and barked viciously at Ms Z, causing her to fall from her bike and to suffer a fracture to her collar bone. She has since developed a phobia of dogs.

You have been retained to advise:

- a) What cause or causes of action in Tort "We Ship Cheaper Ltd" may have and against whom;
- b) What cause or causes of action in Tort Mr B may have and against whom;
- c) What cause or causes of action in Tort Mr C's partner and son, Ms G and Mr H, may have, against whom and the quantum of damages recoverable;
- a) What cause or causes of action in Tort Mr X and Ms Z may have and against whom.

TORT LAW

Q2

25 MARKS

Critically assess the Superior Courts' interpretation of the Statute of Limitations Act, 1957 and the Amending Acts of 1991 and 2000 with reference to relevant case law.

TORT LAW

Q3

25 MARKS

Ms G and Ms R are sisters. They have a number of very close cousins. In August 2022 Ms R bought a tandem bicycle to cycle to a south County Dublin bathing location. In late August 2022, the sisters set off for a swim at 8 am. Cycling in a cycle lane and turning left at a roundabout, a heavy goods vehicle (HGV) was taking the left turn at the same roundabout. The driver of the HGV was texting on the phone at the time and cut the roundabout curve short. The HGV crushed the tandem and Ms G who was the front cyclist on the tandem. Ms R witnessed the horrific collision from the pillion position of the tandem. Mr C was a minute behind on his bicycle when he rode over the debris of the carnage. His front wheel tyre burst from the shrapnel of the crushed tandem bike frame causing him to fall from his bike and graze his elbow. Mr C immediately went to assist Ms G and Ms R but he was overwhelmed by the crash scene and unable to assist. Ms G was then attended to by an off-duty nurse, Ms A, who stabilised Ms G's condition until the First Responders arrived within minutes. Ms G was rushed to the nearest hospital's Emergency Department Unit (EDU). The EDU immediately contact Mr B and Ms V, Ms G's parents, and informed them of the emergency situation with their daughter Ms G. Mr B and Ms V made phone calls to their daughter's aunts and uncles.

Ms N, an aunt of Ms G, immediately phoned her daughter, Ms E, a dietician in the hospital to which Ms G was brought. Ms E is Ms G's cousin. Ms E, as a hospital employee, was admitted to the ED where, despite efforts to revive Ms G, she died from multiple internal organ failure. Ms G was then removed to the morgue. Ms E was admitted to the morgue to see her cousin thirty minutes after Ms G's death. Ms E phoned her mother, Ms N, who called her son, Mr T, who is studying in Japan. A video call took place, during which Ms E showed the corpse of her cousin to her mother and brother. Mr B and Ms V arrived at the morgue two hours after Ms G's death. They viewed the corpse of their daughter in the morgue.

Ms R, Mr C, Ms A, Ms E, Ms N and Mr T are all receiving treatment for psychiatric conditions suffered from what they witnessed in the course of the tragedy. They all seek your advice on what action or actions in Tort that they may have and the likelihood of success.

TORT LAW

Q4

25 MARKS

In July 2023, Mr A was experiencing chest pain. He attended his GP, Dr B, who immediately referred him to a cardiologist, Mr C, a surgeon with twenty-five years' experience. Mr C diagnosed a narrowing of two aorta valves in the heart which required surgery and the insertion of a transcatheter aortic valve replacement (TAVR). Mr C recommended the use of a Chinese made aortic valve first launched in June 2022. The aortic heart valves were heralded as a breakthrough in heart surgery and were commonly used worldwide. "Heart Parts Ltd", is a medical parts importer registered in Ireland. "Heart Parts Ltd" imported 1000 TAVR valves from China in December 2022.

In December 2023, US cardiological research revealed a fundamental flaw in the Chinese heart valves as they deteriorated over time. The medical research revealed a number of unexplained fatal heart attacks after surgical implants of the Chinese manufactured valves. The research was published in a medical journal in January 2024. Mr C did not see the journal article about the unreliability of the Chinese heart valves, nor did "Heart Parts Ltd".

In January 2024, Mr A underwent cardiac surgery to implant the Chinese valves. The surgery was initially successful but in March 2024 Mr A suffered a massive coronary failure and was rushed to the ED (Emergency Department) at the local hospital. He is currently on life support and unable to recover any meaningful standing of living or to work.

Mr A seeks your advice on what cause or causes of action in Tort he may have, against whom, and the quantum of damages he may recover.

TORT LAW

Q5

25 MARKS

"Rubber Recycle Ltd" (RCL) recycles worn vehicle tyres. RCL is in a rural location with no fencing or security. The worn tyres are stacked on land adjacent to a trout fish and buffalo farm owned by Mr Salmon.

RCL shreds the worn tyres for use in astro turf for playing surfaces and playgrounds. The shredded rubber tyres are treated with a chemical that makes it safe as a playing surface. The shredded tyres are also stored in thirty-foot piles.

Last year a group of adolescents entered RCL's property and set alight a stack of tyres awaiting shredding. Another neighbour, Mr A, entered RCL's land to extinguish the fire. The fire engulfed and spread dense toxic fumes to Mr Salmon's land causing the

buffalo herd to contract pulmonary infections. The infections made the buffalo milk, used for making mozzarella cheese, inedible for human consumption. This cost Mr Salmon €50,000 in lost revenue.

Later that year, a heavy rainfall caused a pile of shredded tyres to collapse into the trout farm, poisoning the entire fish population valued at €100,000.

Mr A has suffered third degree burns to his skin as a result of the incident in which he attempted to extinguish the fire.

You are requested to advise Mr A and Mr Salmon on what cause or causes of action they may each have against RCL.

END OF PAPER