

NATIONAL UNIVERSITY OF IRELAND, GALWAY
FACULTY OF LAW

SUMMER EXAMINATIONS 1999/2000

LL.B. – ALL YEARS
1st YEAR CORPORATE LAW
ERASMUS

TORT(LW329)

Professor E. McKendrick
Mr. T. Carney

Time allowed: **THREE** hours. ERASMUS students have an extra 30 minutes.
Answer any **FIVE** questions

1. John purchased a second-hand motorcycle from Trike Garages in Galway in May 1999. Shortly before Christmas he asked Handy Andy, an employee at Trike Garages to service the machine. On the last Sunday before Christmas, Handy Andy finished servicing the motorcycle in a shed in his own back garden. The following day, John paid Handy Andy £30 in cash when he called at Handy Andy's house to collect his machine. At 3.30 p.m., on a wet St. Stephen's Day, while John was travelling on his motorcycle from Galway to Dublin, he collided with a barrier erected by local authority workmen on the hard shoulder of the dual carriageway outside a large midlands town. John, who had been knocked to the ground by the impact, was attempting to lift his motorcycle when a truck driven by a drunken Yorkie hit him. The lorry was also travelling in the direction of Dublin and is believed to have been exceeding the speed limit at the time of the accident. There is evidence that the brakes and headlight on the motorcycle were defective at the time of the accident. John died as a result of the injuries he received. His estate now wishes you to institute proceedings against Yorkie, Handy Andy, Trike Garages and the local authority. Advise.
2. Examine the successfulness of the standard of the reasonable man as a standard to measure negligence in the Tort of Negligence.
3. Critically assess the Doctrine of Remoteness in Irish Tort law. In your answer, please consider the influence of Commonwealth decisions on its development.
4. Ernie is employed by B. Potter-Skimpit Ltd. as a general operative. B. Potter-Skimpit Ltd. is a firm that specialises in painting and decoration. Ernie and a fellow employee, Bert, are asked by their boss to go to No. 99 Oak Valley to paint and decorate a living room for its owner Biddy O'Malley. When they arrive at No. 99, Ernie and Bert are shown to their place of work by Biddy. During the course of their work, Ernie spills paint on Biddy's carpet and Bert breaks one of her antique jam jars. Biddy, who enters the room to inspect progress is injured by a piece of metal which flies from a nail being hammered by Bert. She loses an eye as a result. Advise Biddy of her legal rights in Tort.

PTO

5. Examine the extent to which the Common Law on Products' Liability has been recast by the statutory provisions on the liability of manufacturers for defective products.
6. Gunther, a German tourist, is anxious to see the tomb of the Goban Saor. Folklore records the site of the tomb to be in a field outside Swinford in County Mayo. Ownership of the field is vested jointly in two farmers, Paddy Patch and John Socky. John Socky claims to be a direct descendant of the Goban Saor and does not like anyone "interfering" with the resting place of his ancestors. Paddy Patch, however, is anxious to benefit materially from the location of the site on his property. Paddy Patch, every day, stands at the entrance to the field with a milking bucket to collect "donations" for the upkeep of the monument. Any tourist who fails to "donate" money is turned away. When Gunther visits the field, he refuses to part with his money stating that the tomb is listed as a national monument. He enters onto the property despite Paddy's protestations. When on the property, Gunther is chased by John Socky who happens to be wielding a pitchfork at the time. In his efforts to escape John Socky's attentions, Gunther falls down a concealed well in the corner of the field and is seriously injured. Advise Gunther of his rights under the Occupiers Liability Act, 1995.
7. Discuss with reference to the case law any TWO of the following:
 - (a) Assault
 - (b) Battery
 - (c) Intentional Infliction of Emotional Suffering
 - (d) False Imprisonment
8. Answer **EITHER** (a) or (b)
 - (a) Mary receives a telephone call from the Gardai informing her that her husband, Jim, and two children were involved in a road traffic accident on 9 May 1999 and have been removed to a Dublin hospital. When Mary arrives at the hospital, some three hours later, she finds Jim in a critical condition. Her older child has already died. The younger of the two has had a leg amputated. She suffers extreme distress and during the course of her family's recovery, Mary undergoes an extreme personality disorder. The Gardai advise Mary's solicitor that the accident was caused by another driver, Barry. Mary wishes to sue Barry for the nervous shock. Advise

OR

- (b) Answer **both** of the following:
 - (i) List briefly the similarities and differences between the Tort of Private Nuisance and the rule in *Rylands v Fletcher*
 - (ii) Xplode Ltd. produces dynamite on its premises. Last Monday, Jane who was walking in the vicinity of Xplode's premises was seriously injured when its factory was destroyed in a violent explosion. Jane's husband was killed when their house adjacent to the factory collapsed on him as a result of the explosion. Advise Jane of her rights (if any) under the Tort of Private Nuisance and the rule in *Rylands v Fletcher*.