

GX 1306

Ollscoil na hÉireann, Gallimh
National University of Ireland, Galway

Semester II Examinations, 2002/2003

Exam Code(s)	2BA1
Exams(s)	2BA1 Erasmus & Occassional
Module Codes(s)	LW206
Module(s)	Tort
Paper No.	1
Repeat Paper __ Special Paper __	
External Examiner(s)	Mr. Eoin Quill
Internal Examiner(s)	Ursula Connolly
<u>Instructions</u>	Please answer THREE questions. All questions carry equal marks. Please indicate to question you have attempted on the front of your answer book.
Duration	TWO Hours Erasmus Students have 2½ Hours
No. of AnswerBooks	
<u>Requirements:</u>	
Handout	
MCQ	
Statistical Tables	
Graph Paper	
Log Graph Paper	
Other Material	Products Liability Act 1991
No. of Pages	3
Department(s)	Law

1. John attends the *Body Beautiful Clinic* to correct a condition which causes his left eye to twitch uncontrollably when he is nervous. It is a condition which he feels, has had a significant negative impact on his ability to progress in his career or form relationships, as he is very reluctant to place himself in stressful situations. Dr. Fixit advises John that a remedy for his complaint would be an operation to disable that particular nerve and that he, Dr. Fixit, would be qualified to carry it out. John agrees to the operation. Dr. Fixit performs the operation according to method A, a method, which although popular in England and Ireland, has largely been abandoned in the United States. The Americans generally favour method B, due to a minor risk (0.1%) that method A can lead to numbness of the side of the face. Unfortunately for John, he emerges from the operation unable to move his left cheek and it is expected that the condition will last for up to two years. John argues that had he known about the risk he would not have agreed to the surgery. Dr. Fixit for his part, argues that he did not tell John about the risk as it was a relatively minor one and that the numbness in any event generally disappears within 5 years. Advise John as to his ability to recover for medical negligence.

2. To what extent is the Liability for Defective Products Act 1991 (giving effect to the EC Products Liability Directive) more advantageous to the "consumer" than reliance on an action in negligence under the Common Law?

3. Serenity, a former rock star, moves to rural Monaghan in an attempt to recover from her rock-star lifestyle. On impulse, she purchases a cottage with impressive views of the surrounding countryside where she hopes to spend time writing folk songs and poetry. Unknown to Serenity, Monaghan County Council have been carrying out extensive drainage works in the area for the past three months. This has resulted in a significant amount of noise from the machinery and from passing trucks and lorries. A surveyor has also advised her that the drilling associated with the drainage works is causing cracks to appear in the structure of her house. Monaghan County Council is under pressure to get the work completed to a strict deadline and regularly works from 7 a.m. until 8 p.m.. It is clear that the area is far from the rural idyll Serenity was hoping for. She has complained to Monaghan County Council but it argues that it has statutory authority to carry out the drainage works and that in any event, she moved to the area after the commencement of the works and cannot, therefore, complain. Advise Serenity as to her ability to recover under the tort of nuisance.

4. To what extent would you agree that the tort of employers' liability has struck an acceptable balance between the protection of employees' safety in the workplace and the rights of employers. Support your answer with reference to appropriate legal authority.

PTO

5. *College Chat*, a left-wing NUI, Galway, student gossip magazine has recently published articles about a fictitious character called Ignasious Walsh. An extract from one of these articles reads as follows:

"The dashing Ignasious strikes again, being spotted last Saturday night with a beautiful mystery girl. It is a credit to his liberal thinking that gender rarely affects his choice of date on any particular night. Ignasious used the occasion to lobby again for the legalisation of cannabis, in the hope that it will lead one day to his ultimate goal of free will in the taking of what are, for now, illegal stimulants. As ever, Ignasious leads by example!"

Unfortunately for *College Chat*, a lecturer in the Classics Department, coincidentally also called Ignasious Walsh, hears of the articles. He has received calls from disgruntled parents who believe the articles are about him and are shocked given that he is a married man, who had for a number of years sat on the committee of GAD (Galway Against Drugs). He is threatening to sue the magazine, the printers and the college bookshop, which stocked the magazine.

Advise Ignasious as to the merits or otherwise of his case.

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