

NATIONAL UNIVERSITY OF IRELAND, GALWAY  
FACULTY OF LAW

SUMMER EXAMINATIONS 1998/99

LL.B. - ALL YEARS  
OCCASIONAL STUDENTS

TORT (LW329)

Professor A. Ashworth  
Professor B.M.E. McMahon

Time Allowed: THREE Hours.

Answer FIVE Questions. ERASMUS students answer four Questions.

1. A owns a 1990 Ford Escort which has been giving him trouble recently. Apart from some problems with his lights and his indicators he has noticed a certain instability with the steering. He leaves his car into his local garage (Car Fix Limited) to be serviced and he draws attention to the steering in particular. Having paid for the service A drives his car away. Some days later A discovers that the steering is worse than before he left it into Car Fix Limited. A telephones the garage and books the car in for the following week. In the meantime, as he is busy, he continues to drive the car. On Saturday afternoon while driving home, the steering column breaks and A crashes into B a pedestrian who is injured as a result. B is taken to hospital where he has to have his leg amputated. As a result he suffers a personality change, he has to be treated for alcohol abuse and finally, his wife files for a divorce.
- When A's car was examined after the accident it was discovered that not only was the steering defective but the tyres were bald and the indicators did not work.
- Advise B.

2. Paul, a publican, notices that Seán, a regular customer, is seriously intoxicated at closing time. When Paul cleared the pub he enquires from Seán how he is getting home. Seán tells Paul that he left his car at the local hotel where he attended a meeting of the Irish Farmers Associated earlier in the day. Paul drives Seán to the hotel car park, helps him find his keys and opens the car for him. Paul then drives off. Paul learns next day that Seán crashed the car on his way home. As well as injuring a cyclist, Seán, himself suffered serious personal injuries.

Advise Seán and the cyclist as to any rights they may have against Paul who says he owed no duty to either, and was only doing "*the good Samaritan*" by driving Seán to the hotel as it was raining heavily at the time.

3. "Under the heading of trespass to the person, one finds four separate torts:

- (i) Assault
- (ii) Battery
- (iii) False Imprisonment
- (iv) Infliction of Mental Distress"

Select two of these and define the conditions for liability in each. Illustrate your answer by referring to the case law. Note the defences available in each tort.

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4. Fred, the farmer, discovers one day that some deer that he keeps on his land have got into John's cornfield where they have caused serious damage to the crop. From there, two of the deer break through John's fence onto the highway and that night Dan drives into the deer and suffers serious injuries. On the same day Fred's seventeen year old daughter, Mary, takes Shep, Fred's sheepdog, to the railway station to meet a school friend. As Mary watches the descending passengers on the crowded platform Nancy, an elderly short-sighted lady, trips over Shep's lead and breaks her arm. When Mary brings her school friend, Anne, home to the farm she brings her out to the stable to show her Shep's pups. As Anne is about to pick up one of the pups Shep bites Anne. Anne later learns that Shep has on previous occasions bitten the postman. To crown a miserable day for Fred, Sam a neighbour who keeps sheep, arrives at Fred's farm and says he has shot Shep as he was worrying Sam's lambs. Advise John, Dan, Anne, Nancy and Sam as to any rights they may have against Fred.
5. Describe the circumstances which give rise to liability under the Rule in *Rylands - V - Fletcher*. What defences are available to the defendant in such an action?

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- "There is perhaps no more impenetrable jungle in the entire law than that which surrounds the word Nuisance". Describe the instances when liability will be imposed for Nuisance in the law of torts adverting to the distinction between Public and Private Nuisances. When is the character of the neighbourhood in which the conduct in question occurs relevant to the Court's deliberations? What defences are available?
6. Advise Peter, the Parish Priest, who consults you about the following matters:-
- (i) Joan, an eleven year old school girl, visited her local church on her way home from school. She has great devotion to Our Lady of Lourdes and having prayed in front of Our Lady's Shrine she went to light a candle in the candleholder in front of the Shrine. As all the holders in the front row had lighted candles in them, Joan had to stretch to place her candle in the back row. While doing so the loose sleeve of her cardigan caught fire and she was badly burned. Afterwards Joan says that she was encouraged at school by the nuns to visit the church and she says that she put 20p in the offering box when she took the candle. A notice near the box said "Recommended Offering 50p". No 20p was found in the box when it was emptied afterwards.
  - (ii) In recent times, especially on Friday nights, groups of young people have congregated at the back of the church for what locals call "noisy cider parties". The Parish Priest, as a result of these complaints, now locks the gates at night and has put up a notice which reads as follows.

*"Trespassers will be prosecuted. The occupiers accept no responsibility for any injury to or damage suffered by unauthorised visitors".*

Last Saturday some youths climbed the gates and were heard singing and partying late into the night. Pat, one such youth, wandered around the back and fell into a deep excavation left there by a contractor hired by the Parish Priest. Pat suffered serious injuries and now wishes to sue.

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7.

You are consulted by Sid Philips, a school friend, who shows you a copy of the Dublin Enquirer ( a newspaper which circulates mainly in Dublin and which is principally concerned with the entertainment and social scene in the capital) in which the following excerpts occur.

*"PAD And U2's Kitchen Night Club Among Twelve Dublin Night Clubs Stung By Undercover Gardai Buying Illegal Drugs. So Far, Up To 30 People Arrested In Various Clubs And Pubs. Queer Bachelor Sid Philips is feeling far from gay these days. The face synonymous with what was once one of Dublin's top night clubs, the PAD, is in big trouble. The Dublin Enquirer can exclusively reveal that the PAD Night Club has been visited by undercover Gardai who have bought drugs there not once but on several occasions.*

*This is not Philips' first brush with the Law, but the difficulties he faces now are far more serious. Should the Gardai proceed with the prosecution, Philips, if convicted, could be imprisoned for three years and face a fine of £10,000 for allowing drugs to be sold on his premises."*

Mr. Philips says that when he learned that there might be a drug problem on his premises he improved security on the premises and he has been very vigilant in this regard in recent times. Mr. Philips wants to know if he has been defamed and, if so, who he may sue. He says that the paper is sold mainly on street corners in Dublin and there is one particular fellow who sells the paper in Grafton Street, and who had harassed and cat-called Philips in the past and whom Philips would now like very much to sue. What defences might Philips face?

8.

Discuss the liability of "the producer" of goods under the Liability for Defective Products Act, 1991. What is the relationship between liability under the Act and liability at common law for defective products? In what way has the Act improved the consumer's lot?