

LAWS1061 – Torts

FINAL EXAMINATION - Session 2 2002

- Time allowed: 3 hours, plus 10 minutes reading time
- Examination condition: THIS IS AN OPEN BOOK EXAMINATION.
You are permitted to bring any printed or handwritten materials into the examination room.
- Total number of questions: 2
- Value of questions: Part A is worth 65%: Part B is worth 35%
- Questions to be answered: You should answer **both** Parts

OTHER INSTRUCTIONS:

1. Your NAME and STUDENT ID should be written on the front of each exam booklet you use.
2. Your TEACHER'S NAME and your GROUP NUMBER should be written at the top right hand corner of each exam booklet you use.
3. Write legibly in ink and leave a whole blank page between questions.
4. Answer each question in a separate booklet.
5. You may retain the examination paper.

All facts and events take place in New South Wales

FACTS

Kwang and Meena are invited by Penny to join her for a daytrip on Sydney Harbour on a yacht owned by Penny. Penny is an experienced yachtsperson and has sailed in a number of competitive events. After stopping at a secluded bay for lunch and consuming a bottle of vintage red, Meena takes over control of the yacht. She has never sailed before and steers the yacht into a large rock that protrudes above the water. None of the three are wearing life jackets. Kwang and Meena are both thrown into the water. Kwang hits his head on the rock. He suffers severe head injuries and aggravates an old back injury from his childhood. Meena hits her head suffering



concussion and losing consciousness. She is swept under the water and by the time she is pulled to the surface she is in a coma.

Kwang and Meena are rescued by a passing fishing boat but on the way back to shore a speeding motor-boat in the wrong boat-lane collides with the fishing boat. It turns out the driver of the motor boat, Mohun, had just received an urgent call on his mobile phone informing him that one of his children had been in a car accident. In the second accident Kwang, who is very distressed, suffers spinal injuries. Meena is severely cut and bruised but does not suffer any other further injuries. She does not regain consciousness.

Kwang and Meena are taken to the local hospital and examined by Dr Hassan. Meena is treated for her cuts and bruises and placed on a drip feed. Dr Hassan x-rays Kwang's spine and detects the spinal injuries but fails to give Kwang a head scan until the next day when Kwang complains of severe headaches. He is rushed to surgery after bleeding is detected in the cranial area and the operation that is carried out with all due care does stop the bleeding but not before Kwang has suffered considerable brain damage. There is a 45-49% chance that if Kwang had been given a brain scan in the first five hours of admittance the surgery could have prevented permanent brain damage.

Kwang is left with permanent brain injuries. He is unable to read or write although there is a 50% chance that he will recover those abilities. In the meantime he has deferred his university studies in bio-computing. Doctors think it is unlikely he will recover sufficiently to resume studies even if his literacy skills return because of the extent of the brain damage. Kwang partially recovers from the spinal injuries but he is left with a weakness in his back and legs that mean he can no longer continue his passion for canyoning and caving. He spends a lot of time watching Bruce Lee videos and reading, activities he never enjoyed prior to the accident. Kwang's mother, who was working as a psychiatric nurse at the Prince of Wales hospital, resigns to look after Kwang. The reduction in family income has meant that Kwang's sister Sally, who is studying for HSC, has had to take up a part-time job at the local MacDonalds.

Meena is in a coma for 6 months. When she comes out of the coma she suffers from partial amnesia and cannot remember the accident and has other substantial memory gaps. Otherwise she makes a full recovery. She does not want to resume her old job as a self-defence teacher. She is also no longer interested in rock and roll dancing or her herb garden. Meena's partner is very worried about her and encourages her to see a spiritual healer who convinces Meena that her amnesia will be cured after a year of meditation.

Part A: (This part is worth 65% of the mark for the exam).

Assuming that duty is established:

1. Advise Kwang as to whether he can recover damages from Penny, Meena, Mohun and Dr Hassan
2. Advise Meena as to whether she can recover damages from Penny, Mohun and Dr Hassan

3. Assuming that Meena and Kwang can recover damages assess the damages that will be payable explaining the common-law principles by which damages are assessed as you go and the effect of the *Civil Liability Act 2002* (NSW) on the damages.

Do not discuss the *Trade Practices Act 1974* (Cmth).

Part B. (This part is worth 35% of the marks for this exam).

- (a) 'The legal requirements of breach and causation are essential 'control mechanisms' in determining personal injury liability'.

OR

- (b) 'Negligence law's function is to compensate not to make moral judgements'.

Critically discuss **one** of the above statements in the light of the facts above and at least one of the theoretical articles you have read in this course.