

LAWS1061 – Torts**FINAL EXAMINATION - Session 2 2003**

- 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

Seema and Taj run a large cattle station in Central New South Wales. Over the past few years due to drought the profits from the farm have been considerably reduced. In response to the drop in income Seema and Taj have reduced their staff levels and the level of maintenance to the farm and the farm equipment in favour of keeping the cattle well-fed and healthy.

One weekend, one of the live-in station hands, Carl invites his sister and a friend from the city out to stay on the station. Sally and Susan have never been onto an outback station before and are very excited. Early on Saturday morning, the three friends climb onto two



trail bikes that are used on the farm as transport for workers to get around the station to different locations as needed. Neither of the bikes had been serviced for several years but neither of them had shown any sign of wear and tear. Although they do not ask permission to ride the bikes, Reema sees them depart and waves to them as they climb onto them. Sally climbs on behind Carl on the first bike and Susan rides the second. None of the three put on safety helmets although there are safety helmets in the shed. They set out over a large stretch of flat field and turn down a steep path onto a dried up creek bed.

On the other side of the creek bed some half finished repairs to a broken fence have left it with a number of exposed and jagged wires. The fence had been erected to keep cattle out of the farm garden, which was lovingly tended by Seema. A contractor, employed by Seema and Taj to repair the fences on the property, had begun the job some weeks earlier but turned her attention to other fences that were required to keep cattle contained within the outer boundary of the property. There are repairs required to fences on almost all boundaries of the station.

Susan and Carl speed up simultaneously trying to race each other to the gap in the fence. Susan gets there first and as she accelerates through the gap the rear wheel of the bike comes adrift. She flies from the bike and lands face down on the series of broken and jagged edges of the partially repaired fence. Carl and Sally, who are close behind, run into the back of Susan's bike and are thrown from their bike. Carl misses the broken fence but hits his head on a rock in the creek bed and lands heavily on his back. Sally lands on top of Carl.

All three are rushed to hospital. Carl suffers from concussion and is given a head scan, which reveals that he does not have serious head injuries. Dr Sly asks Carl if he has any other areas of pain and Carl says that he does not. Dr Sly discharges Carl the next day and advises him to take it easy for a few days. Carl returns to work however the next day but collapses in the late afternoon after complaining about sharp back pain. He is rushed to hospital and given a spinal x-ray which reveals that a vertebrae has been dislodged and broken and is cutting into his spinal cord. By the next day Carl cannot walk and he is diagnosed as paraplegic although there is a 50% chance that he might recover from the injury and walk again. If he had been x-rayed the day before there was a 40% chance that the injury might have been prevented as it is possible the broken vertebrae had not worked its way into the spinal cord until Carl was walking around the following day. The doctor says that it is standard practice these days, due to limited resources, to only conduct spinal x-ray's if the patient complains of back pain.

Carl has worked as a station hand for the past three years, although he has a degree in architecture and has previously worked for two years in a large architectural firm. He gave up that job because he wanted to work in the outdoors but he always thought that he would go back to it one day. Carl loves rock and roll dancing and is very upset that he will no longer be able to participate. Carl's mother wants to care for him at home rather than have him cared for in a hospital and she has given up her job as a computer engineer in order to do so. The doctor, however, says that he has a better chance of recovery if he is cared for in an institution.

Susan loses her sight in one eye. She is extremely depressed by this as she has for a number of years supplemented her income by playing piano in small concerts. The loss of sight in her eye does not prevent her from playing for pleasure but she can no longer play at the standard required for the concerts. Susan continues her job as a librarian although she finds it tiring with her reduced eyesight. She believes that she will no longer get the promotions she had expected because of her diminished capacity.

Sally suffers from bruises and cuts. She is otherwise uninjured, however, after the accident she suffers from bouts of severe depression which she puts down to the trauma of the accident and the injuries suffered by her friends. She finds herself unable to enjoy any of the things she used to love such as shipwatching and cardplaying. She starts seeing an astrologer who tells her that she will recover from her depression by 2005. She continues her studies in law although she finds it hard to concentrate on the readings.

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

Assuming that duty is established:

1. Advise Carl, Sally and Susan as to whether they can recover damages from Seema and Taj and Dr Sly.
2. Assuming that Carl, Susan and Sally 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.

Consider the *Civil Liability Act 2002 (NSW)* and the common law. Do not discuss the *Trade Practices Act 1974 (Cmth)*.

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

- (a) 'Fault is an essential part of any compensation system'

OR

- (b) 'Tort law is congruent with ordinary social ideas about personal responsibility'

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