

THE UNIVERSITY OF NEW SOUTH WALES
FACULTY OF LAW

LAWS1061 – Torts

FINAL EXAMINATION - Session 2 2004

- 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

Pierre is a mechanical engineer who works for a company 'Big Thrill' that designs and installs amusement park rides. They have a fantastic reputation as a company that prioritises safety at the same time as designing rides to give the ultimate thrill. Puna Park, an amusement park which has been closed for over a decade, contracts Big Thrill to design and install an array of safety measures on a number of the rides in the Park. Pierre designs an emergency brake and comes up with a mechanism that stops the ride within seconds if activated by an operator or automatically if the ride surpasses a particular speed. It is also fixed with a warning siren which is activated over a certain speed.

Keisha and her boyfriend Mario have been excited all week at the forthcoming opening of Puna Park. They have planned a full day out with friends including a picnic lunch. On opening day they arrive early and rush to queue up for the Megatron ride billed as the 'fastest and craziest ride in the Southern Hemisphere'. Bill is the operator of the ride and he has been working in similar locations for over thirty years. He directs the customers to their seats and starts the ride. The speed of the ride is determined by the operator who adjusts the thrill factor depending on who is on the ride. Keisha, before getting on the ride, asks Bill to make the ride as fast as possible as she loves the thrill of high speeds. Keisha does not fasten her safety belt, despite a warning sign at the entry of the ride that safety belts must be tightly fastened at all times, because she thinks it will make the ride more exciting. Bill turns the switch onto 'increase speed' and turns around to increase the volume of the Kylie Minogue song which is playing in the background. The ride speeds up rapidly and soon exceeds the safe speed. The warning siren goes off but Bill, who is enjoying the song and has his back to the ride, does not hear it. When the ride reaches the designated speed the emergency break is activated. However, Pierre has miscalculated the safe speed for the sudden application of the emergency brake. Keisha is hurtled out of her seat by the sudden stop and crashes to the ground. Mario is restrained by his safety belt but is thrown violently against the side of his seat. After the accident Pierre claimed that mechanical engineers frequently estimate speeds inaccurately and the presence of the warning siren was intended to compensate for that possibility.

Kiesha is severely injured in the accident. She is rushed to hospital with suspected multiple fractures and internal bleeding. Keisha is left with serious permanent injuries to her hip and left leg. She is unable to continue her engineering studies because she cannot concentrate. However, her psychiatrist thinks that there is a 50% chance that she will recover sufficiently to carry on with her studies. She is unable to continue with her Saturday lessons in Bengali dance although she is secretly relieved since she was only pursuing them to please her mother. Keisha was living at home at the time of the accident and although her mother had always done most of the household chores she gives up her part-time job at the local school so she can give Keisha her full attention.

Mario suffers severe bruising and cuts from the accident. Soon after the accident he develops serious bouts of anxiety and refuses to fly. He has long suffered from an intense fear of heights which he had not previously told anyone about and his psychologist believes that this has been severely exacerbated by the accident. At the time of the accident Mario was a trainee travel consultant. Mario's employer continues to employ him as junior office worker but says he will not be promoted unless he overcomes his fear of flying. Mario embarks on a series of hypnotic treatments to cure his fear of flying and is hopeful that in time he will be able to fly again.

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

Assume that a duty of care is established:

1. Advise Mario and Keisha whether they can recover damages from Big Thrill (assuming they are vicariously liable for Pierre) and Bill.

2. Assuming that Mario and Keisha 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) in your answer.

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

- (a) 'The fault principle is in accordance with community expectations'

OR

- (b) 'The damages award appropriately maintains the status quo'

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.