

**LAWS1061 – Torts****FINAL EXAMINATION - Session 2 2005**

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

Raoul and Marcus have been eagerly awaiting the final one day match in the Lashes Cricket Cup where Australia is playing New Zealand at the Bigbush Stadium in Sydney. In their excitement Raoul and Marcus have obtained a stash of fireworks, which they plan to ignite at an appropriate time during the match to signal their appreciation for the game.

The Bigbush Sports Stadium is run by a private company called 'Big Hit'. The match was identified as a possible terrorist target after a recent series of bomb explosions by unidentified persons at other sports matches around Australia. Although the police recommended that the game be cancelled the players unanimously decided to go ahead because they did not want to lose their pay or the advertising benefits from the

game. A security report was commissioned to assess the security needs for the match and it was recommended that at least ten security staff should be employed to patrol the grounds during the match. 'Big Hit', in order to save costs for a planned upgrade of the members bar and club, decided to install cameras instead and to employ a single person to monitor them. Kwang Wi was subsequently employed by 'Big Hit' to monitor nine cameras, which were strategically installed to survey every angle of the cricket ground, and to respond to any security issues including coordinating rescue services should there be an emergency.

Kwang had been distressed to learn that the game was scheduled on the same night as the grand finale of his favourite television serial, *Desperate Housewives*. Although his wife has agreed to tape the show Kwang does not feel he can wait and the week before the game he arranges for one of the nine cameras to be hooked illegally onto a television cable network so that he can watch the show.

On the night of the match there is a capacity crowd of 90,000. Raoul and Marcus are sitting in the grandstand about half way up. New Zealand is batting and Amrita Cairns is at the crease. Although all players have been advised to wear helmets Amrita has chosen not to wear one because she believes that the visor affects her ability to read the speed and length of the ball. Sinead Warne is fielding at square leg, and Jen McGrath, the team's speed bowler, is beginning her final over before the drinks break. Raoul and Marcus, who cannot contain their excitement, prepare their fireworks for ignition. All of their actions are recorded on the surveillance camera, however Kwang is glued to the television (where in a nail biting climax to the show Mike has just entered Susan's house) and does not look at the monitor where their actions are recorded. If Kwang had been attending to the surveillance cameras he could have alerted the police who would have had time to stop Marcus and Raoul from igniting the fireworks. The emergency services later stated that if they had been notified earlier the severity of the injuries would have been greatly reduced. Just as McGrath bowls the final ball before the drinks break, the fireworks ignite with a huge bang. The crowd roars with panic and a wave of spectators climb the fence and run onto the ground. Jen McGrath, Sinead Warne and Amrita Cairns are knocked to the ground in the stampede and crushed beneath the crowd. It takes fifteen minutes for the panic to subside and a further fifteen minutes before a spectator calls for an ambulance, which rushes to the scene.

Amrita Cairns, who has severe pain in her legs and back is taken to hospital. Dr Swift x-rays her back, hips and legs but fails to scan her head as she states that she is not experiencing any head pain. Unfortunately there is bleeding in her cranial cavity. The next morning she slips into a coma and an x-ray reveals a significant bleed on the right side of her brain. Had the injury been discovered when she was admitted to the hospital there would have been a 45% chance of a successful operation. Dr Swift claims however that it is common practice due to limited funding not to conduct head scans unless there is particular evidence of head injuries. Several other doctors from nearby hospitals have agreed that they would not have conducted a head scan in such circumstances either. She is left with serious brain damage and permanent injuries to her hip and left leg and is unlikely to be able to play cricket again. Dr Swift believes that if she had been wearing a safety helmet the head injuries would have been prevented.

Sinead Warne suffers back injuries and severe injuries to both her hands. Her back injuries would have been less severe if medical attention had reached her more quickly. The doctors say that she will never be able to bend her fingers again. She is extremely distressed as she will no longer be able to bowl and will lose her spot in the team. Although there were rumours that Sinead might be dropped because of off-field misdemeanours she claims she was planning to continue her cricket career for several more years especially as the aborted game meant that New Zealand won the Lashes Cup for the first time in seventeen years. She is a qualified lawyer and although she has no desire to work in the legal field doctors say that there is no reason why she could not. She is also very disappointed that she will no longer be able to send text messages, which was one of her favourite leisure activities.

Amrita Cairns suffers severe bruising and cuts from the incident. Soon afterwards she develops serious bouts of anxiety and develops a fear of crowds. Her father suffers from agoraphobia and her mother suffers from commitment phobia and the psychiatrist believes she may have a genetic propensity to phobias. Although Amrita is declared physically fit to resume her spot in the team she cannot until her fear of crowds subsides. Her psychiatrist thinks that there is a 50% chance that the phobia will continue. Amrita is particularly distressed at her inability to resume her cricketing career because she enjoyed the adoration she received as a cricketing legend. She has joined a spiritual awareness class, which claims to cure phobias that result from childhood trauma.

Assume that a duty of care is established:

1. Advise Jen, Sinead and Amrita whether they can recover damages from 'Big Hit', Kwang, Dr Swift and Raoul and Marcus.
2. Assuming that Jen, Sinead and Amrita 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* (Cth) in your answer.

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

- (a) 'The aim of negligence law is to determine who is personally responsible not to compensate victims.'

OR

- (b) 'The *Civil Liability Act 2002* (NSW) has defined sensible limits to the damages award.'

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.