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THE UNIVERSITY OF
NEW SOUTH WALES



FACULTY OF LAW

LAWS1061 – Torts 2006

FINAL EXAMINATION - Session 2 2006

- 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: All questions are not of equal value
- Questions to be answered: You should answer 1 and 2

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 CLASS DAYS AND TIME should be written at the top right hand corner of each exam booklet you use.
3. Answers must be written in ink. Except where they are expressly required, pencils may be used only for drawing, sketching or graphical work. Leave a whole blank page between questions.
4. Answer each question in a separate booklet.
5. You may retain the examination paper.

FACTS

All facts and events take place in New South Wales

Heath Suburban, a well known country and western singer and Carole Kidman, an Australian acting celebrity have been planning their wedding for 6 months. They settle upon a secret resort location in Outhouse Bay on the NSW south coast. They hire Katherine Lopez, known in wedding circles as KayLo, as the wedding planner to take care of everything including entertainment, catering and security. KayLo started her own company 'KayLo's Nuptials' six years ago. She believes that her 'first class' university degrees in management and hospitality coupled with three weddings of her own have given her the skill base to run a very successful and professional business. Heath has engaged a 'Heath Suburban look alike' to perform at the reception and it is KayLo's responsibility to organise the erection of a stage. Although the independent contractor she hires to construct the stage advises her to use reinforced steel to support the stage she opts for a wooden frame for a third the price since there will only be a solo singer on stage rather than a full band. KayLo is conscious of Heath and Carole's desire to keep the paparazzi and other 'nosey parkers' out of the wedding area however she is horrified by the price quoted to her by the contractors for a high solid picket surround for the reception area. KayLo instead instructs the contractors to drape a shiny white fabric, which she believes will be much more attractive than a fence, to completely enclose the reception area. Although all the wedding workers have signed confidentiality agreements, the night before the wedding the son of one of the contractors logs onto a celebrity spotting website called 'SPOTACEL' and for a large fee reveals the location of the wedding.

Russell Frow, a well known Australian actor and Jennifer Dawkins, a world famous model, are two of a large crowd of celebrities at the wedding, which everyone later agreed was a beautiful ceremony. At the reception Russell and Jennifer are seated close to the stage enjoying the performance of the 'Heath Suburban look alike'. After the first interval, the tempo of the music speeds up and Russell who is enjoying himself immensely, runs onto the stage and begins belting out tunes and jumping up and down on the stage. Although KayLo tells him to stop and warns him that the stage is not built to withstand the pressure Russell is very excited and does not stop. Instead, he encourages Jennifer to join him and although her talents lie elsewhere she cannot resist the invitation. At the same time a crowd of reporters and onlookers who had gathered outside the cloth perimeter over the past hour, surge forward breaking the barrier and rushing onto the stage. The stage collapses and both Russell and Jennifer are caught underneath. After the accident KayLo claims that it is standard practice in the 'wedding planning' industry to use wooden supports for temporary stages and successfully locates a number of wedding planners who agree. She also claims

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that it would be impractical to fence the reception area off with picket fencing for a temporary event such as a wedding.

Heath, who is dancing with his wife at the time of the accident, rushes to the stage. Russell is groaning and complaining that his back hurts. Heath is very concerned about the negative publicity and orders his minders to move Russell inside the resort. Jennifer is dazed, cut and bruised but is able to walk inside herself. Russell has multiple fractures, internal bleeding and a spinal injury. Doctors claim that it is likely that moving him worsened the spinal injuries and the internal bleeding. Russell is unable to work for the next five months and loses his spot in a forthcoming movie *Mad Rex II*. The movie is a blockbuster and he claims as lost earnings the full amount of the movie's earnings. A number of reviewers have claimed however that the movie's success was due to the popularity of his replacement, the up and coming Lou Hackman. Russell's back is permanently damaged and he is advised to discontinue playing in his band 'Five Hot Feet of Grunt'. He also becomes very depressed because he is no longer receiving the public adoration that he was accustomed to enjoying prior to the accident. His wife, who is a singer, puts her upcoming CD 'Songs for Russ' on hold and cares for him for the five months after the accident during which time he is bedridden.

Jennifer suffers bruising and severe cuts from the accident. Although she considers herself fully fit for work modeling contracts have plummeted since the accident. She believes it is because of long red scar across her face which doctors say will never completely heal. Jennifer consults a healer who she met on *Jetaway*, a TV show she used to host. The healer claims that he can heal her scars with soothing hot stone massage and music therapy. Jennifer, who was prone to anxiety prior to the accident, develops Cotards Syndrome (a very rare panic disorder) from the trauma of the scarring and has to cancel a forthcoming engagement at a school formal, which she was eagerly anticipating.

Part 1: (This part is worth 65% of the mark for the exam).

Assume that a duty of care is established:

1. Advise Russell and Jennifer whether they can recover damages from KayLo's Nuptials.
2. Assuming that Russell and Jennifer 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.

Part 2. (This part is worth 35% of the marks for this exam).

- (a) 'The Civil Liability Act appropriately emphasises personal responsibility for accidents'.

OR

- (b) 'Tort law is unjust either to victims or injurers, probably to both'.

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.