



LAWS 1061 – TORTS

END OF SESSION EXAMINATION - Session 2, 2008

- Time allowed: Three 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 (Part A and Part B)
- Value of questions: Marks available for each question are shown in the examination paper.
- Questions to be answered: You should answer **both** Part A and Part B

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.
4. You may retain the examination paper.
5. All facts and events take place in New South Wales

Facts

Background

Andrew Danaher had had a bad day. Andrew was a senior manager with Orb, an IT company. He was on track to become a Chief Executive Officer of Orb. He had made an important error in a budget proposal for a project that was valuable for his Orb. He had managed to rectify the error but it had entailed much intensive work. As he sat down with a glass of wine that night after work he was disconcerted to feel pains in his chest. His partner, Freya, was worried and called an ambulance because Andrew appeared to lose focus and was in a dazed state.

The ambulance arrived and the paramedics treated Andrew as if he had had a heart attack. He was taken to the emergency department at Hospital X.

In the Emergency Department he was treated he was subject to a number of tests to determine if he was at risk of having a heart attack. The Emergency Department was very busy that night. The tests showed that Andrew had an in imminent risk of having a heart attack.

The Senior Clinician responsible for treating Andrew advised Andrew of the proposed treatment. It involved treatment with Warfarin, a blood thinning agent, which is known to reduce the risk of heart attack. The Senior Clinician did warn Andrew about the general risks of using this drug but also advised that this drug was very important in reducing the risk for Andrew of having a heart attack. The Senior Clinician did not warn of the risk that there would be errors in prescribing and administering Warfarin.

Andrew agreed to the course of the treatment which included the use of Warfarin.

There were errors in the prescription of Warfarin and as a result Andrew received a dosage that was outside the normal range. This resulted in internal bleeding and Andrew was put into intensive care for three days. He remained in hospital for three weeks.

After the ordeal Andrew recovered but was shocked by the experience. He was unable to return to his work and found that he only wanted to work as an accountant. He had extensive counselling.

He no longer had the capacity or the wish to continue with his former career with Orb.

Doctors now treating Andrew believe that he is exposed to a significant risk of heart failure in the future. They also believe that he has an increased risk of becoming depressed as he contemplates his future.

Prior to this incident Andrew shared household chores and was a good cook. After the experience of his treatment in the hospital he needed extra help with cooking and cleaning. Freya continued with her work but found that she needed to be with Andrew for a greater period of time which made it unlikely that she could get the promotion she had been aiming for.

Andrew seeks damages for breach of the duty of care in negligence

You are Andrew's solicitor and after considering the facts have determined that:

1. The Senior Clinician received incorrect results concerning Andrew on the night of his treatment in the Emergency Department. Although Andrew did have elevated blood pressure there was no risk that he was about to have a heart attack at that time.
2. The Senior Clinician did not check to ensure that the results he received from a senior nurse were Andrew Danaher's test results. The senior nurse and a technician made an error in giving the incorrect test results to the Senior Clinician.
3. The treatment prescribed by the Senior Clinician would not ordinarily have been harmful to Andrew Danaher. Indeed it was a course of treatment which may at a later time have been recommended for Andrew.

4. The Senior Clinician prescribed the wrong amount of Warfarin to Andrew because Andrew's weight was wrongly recorded on admission. In addition the junior registrar who administered the drug did not check whether the dosage was the correct amount.

Part A [This Part is worth 65% of the marks for this exam. This Part will be marked globally]

Answer the following questions in your advice to Andrew. In your answer you must consider the common law as it is modified by the Civil Liability Act 2002 (NSW).

- (i) Orb lost the opportunity to bid for the valuable contract that Andrew had been working on. Assuming a duty of care is owed, can Orb recover damages from the hospital on the basis that the medical treatment caused them to lose this business opportunity?
- (ii) Assume that as Andrew's solicitor you know that experts will testify that it is normal practice for senior clinicians in Australia not to check that the results given to them for a patient were actually the results belonging to that patient. Can Andrew prove that the senior clinician breached his duty of care?
- (iii) Assume that treating Andrew on the basis of incorrect test results, and the subsequent incorrect administration of Warfarin, amounted to breaches of duty by the Senior Clinician, the Junior Registrar and the Senior Nurse. Will Andrew be able to establish that these breaches of duty caused his personal injury?
- (iv) Assume that Andrew is successful in his cause of action. You are now asked to assess the amount of damages that Andrew would receive. What extra facts would you need to assess the amount of damages that Andrew would be entitled to recover? How would these extra facts affect the amount of damages that Andrew may receive?

Part B [This Part is worth 35% of the marks for this exam]

Should the principles of causation be modified to make it easier for the plaintiff to prove a causal connection between the breach and their damage where the defendant's breach of duty increased the chance that the plaintiff would suffer harm? Consider this question in the light of the factual situation in Part A and your understanding of the aims of the law of negligence, and in the light of at least two of the theoretical readings included in the Course Materials.

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