

# **TORTS LAW SUMMARY**



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## ***IRAC method of completing exams***

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules that are relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the hard part!).
- Conclusion** - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

### ***Question One***

In 2009, the Council of the Shire of Kelewan ("The Shire") just recently engaged engineers to build a new bridge 'Avenue Bridge' – an access bridge over a gully. The bridge was built to specification as required by statutes. The bridge is 15 meters long and 10m high, and serves a large recreational area that included a skate park, football oval, swimming pool, youth centre and local RSL. On Friday nights, the bridge was a place for local youths to congregate, talk and wait for friends and drink together. The council has been notified that the bridge has become a place for youths to meet and drink alcohol.

Jeff is a 19 year old first year law student. One night, he and a number of friends had just attended a 'battle of the band' competition at the RSL in celebration of end of year exams. At such gatherings, many students would bring their own alcohol to consume.

Jeff was excited after his exams and decided to have a 'big one' – he consumed a large quantity of whiskey during the course of the evening. Jeff became quite intoxicated, having only had a cheese sandwich for lunch.

At 2.30 am Jeff and his friends left the RSL and intended to catch a taxi home. However, since it was a busy night and the taxi rank was congested, Jeff and his friend Matt decided to walk home via the bridge while the others waited for a taxi. They met some fellow law students who were hanging out at the bridge smoking marijuana and drinking. Jeff and Matt sat down to talk with the other students. At this point, Jeff began to feel nauseous, telling Matt 'I think I am going to vomit'. Matt replied 'Make sure you do it over the bridge and not on me'. Jeff runs quickly across the road and leapt up on a concrete step separating the rail and the road, he attempted to grab the railing but instead he fell over the railing and into the river. On that night, there was not much water in the creek. Jeff suffered severe spinal injuries resulting in paraplegia and also other injuries.....

### **Question Two**

Bill is the owner of "Go-go kart Racing Pty Ltd". He has just recently built a large go-kart race track and every month Bill organises a race for local youths where entrants race off against one another. Each team registers a driver and pit crew and pays \$100. The race runs for 6 hours, with each team having a maximum of 4 drivers, with drivers changing every 1 hour. The meetings usually take place on the last Friday of every month and a large number of youth spectators often come to watch.

Go-kart engines usually run on petrol or methanol. But given the rising cost of petrol Bill is finding it hard to keep his current price structure using petrol. Bill's friend Ted, is a mad scientist from the ANU. Ted has just recently developed a new type of fuel that is much more efficient and adds extra power to engines – it is called "Dinamite". Yet to be approved by the Australian Petrol Board, Dinamite is more flammable than fuel and heats up engines more quickly. Thus, engines will require bigger radiators to keep them cool and overheating. Bill considers using Dinamite in his karts, but considers it unnecessary to install bigger radiators in the engines as it might slow the karts down.

On race day, Bill contracts three body guards - Bruno, Franco and Bobo - to take care of the crowd. Bill is responsible for overseeing that the body guards carry out their duties effectively and requires them to wear his uniform and use his equipment. In addition, they are paid with deduction of income tax.

Barriers are installed on most parts of the race track, except for one section on the far side of Bill's property. Bill had ordered less than he expected he would need when he was building the track.

Race day was an extremely hot and dry summer's day. The team in second place, driven by Jed, is racing well and Jed is pushing his kart very hard whilst his engine is running extremely hot. Jed attempts to overtake another kart – approaching a corner he accelerates when all of the sudden his engine explodes and catches fire. Jed's cart spins out of control and slides off the track and hits a tree. This part of the track had no barriers installed.....

### **Question Three**

NSW Roads Act 1965 (NSW) establishes the NSW Road Safety Authority (RSA) as a statutory authority with responsibility for the maintenance, upgrade and repair of roads in the NSW. The Act provides, *inter alia*,:

1. The Authority is to have primary regard to submissions made by the public as to roads considered as dangerous to motorists and road users and which are in need of upgrade, maintenance or repair.
2. The Authority is to investigate and inspect roads for the purposes of determining whether work needs to be done to maintain public safety.
3. The Authority may make orders, where it considers appropriate to fulfill the purposes of the Act, to repair or upgrade roads as necessary.

Until 2009, the RSA was responsible for handling submissions, making investigations and authorising the necessary repair work. The Authority has in recent times found it hard to keep up with the number of complaints made, and its continually shrinking

budget has made it hard to investigate and carry out work in all the claims made. Subsequently, it imposed a quota on the number of investigations carried out per month and prioritised projects according to their risk level. It also began to alert local councils of dangerous roads, leaving them to do all the necessary repair work. The policy states ‘in emergency cases identified as especially problematic, the Authority will carry out the necessary repair work’. At the same time, the RSA embarked on a major advertising campaign alerting the community about taking care on the roads, speeding, and safe driving.

Marie filed a complaint recently to the RSA on behalf of residents in her area about an intersection near her rural property. The two roads run at almost 45 degrees to each other with one road being straight, the other slightly bent. There is a ‘give way’ sign, but it has been smudged and rusted over time. There have been numerous accidents in the past few years. Marie and the other residents think that the intersection is ‘an accident waiting to happen’ as there have been ‘many near fatal misses’ where motorists have failed to give way. Marie herself had a near miss recently and she fears that someone will get seriously injured soon if something is not done. Marie consults other residents in the area and they agree that a roundabout needs to be built. Marie files a submission to the RSA outlining the danger of the intersection and requests that a roundabout is built. The RSA replied with a letter stating that it ‘will look at the appropriate course of action in the near future.....’



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