



NUI MAYNOOTH  
Ollscoil na hÉireann Má Nuad

**OLLSCOIL NA hÉIREANN MÁ NUAD**  
**THE NATIONAL UNIVERSITY OF IRELAND MAYNOOTH**

**SEMESTER 1**  
**2012-2013**

**LW102**  
**Torts**

Professor Thomas D. Russell

Time allowed: 2 hours

Answer *one* question

**There is only one question**

**INSTRUCTIONS:**

1. **LENGTH:** This is a two-hour examination. You must stop writing your answer when the invigilator says to stop.
2. **TURNING IN YOUR ANSWERS:** Turn in your answer as instructed at the conclusion of the exam.
3. **LENGTH:** This examination consists of one question. There is no minimum or maximum word limit. There is also no reward for writing more words rather than fewer words. If two answers have identical content and one has fewer words, the shorter answer will earn a higher mark.
4. **FORMATTING:** You may format your answer however you wish. Be sure to maximize readability.
5. **HOW TO ANSWER:** Answer the question Professor Russell has posed not some other question of your own invention. In answering, use judgment and common sense. Be organized. Emphasize the issues that are most important. Do not spend too much time on easy or trivial issues at the expense of harder ones. If you do not know relevant facts or relevant legal doctrine, indicate what you do not know and why you need to know it. You must connect your knowledge of law with the facts before you. Avoid wasting time with lengthy and abstract summaries of general legal doctrine. Discuss all plausible lines of analysis. Do not ignore lines of analysis simply because you think that a court would resolve an ambiguous question one way rather than another.
6. **JURISDICTION:** The law of the Republic of Ireland applies to all the issues in this examination.
7. **CONCISION:** Quality, not quantity is desired. Think through your answer before you begin to write. You will earn a better grade by being thorough and concise.

And, of course, well-organized answers will be the best answers that earn the highest grades.

8. **CHEATING:** If, in preparing for this examination you have violated the Examination Regulations or the Code of Discipline for Students, or if, during this examination, you violate the Examination Regulations or the Code of Discipline for Students, the best course of action is for you to report to the Chair of the Academic Discipline Board immediately after this examination ends.

9. **SIGNATURE:** On the front cover of your answer, please write the following “No unpermitted aid given or received.” Sign your name following that sentence.

10. **GOOD LUCK.**

Róisín walked home from the shop on the 1st of September, 2012, a pleasant late-summer afternoon. Róisín was returning from the shop with a bottle of wine that she intended to share over dinner with the love of her life, her husband Liam. Róisín and Liam had been married just two months, and they lived together in a detached house that they leased in an estate called Griffin Rath Manor in Maynooth, Co. Kildare. They were both 24 years old and had each graduated university. They had no children although they planned to start a family soon. That plan ended on the day of the accident.

Declán was driving. He was listening to Gangnam Style, an irresistibly catchy pop song by PSY, that was the number one song in the world at the time. He had downloaded the song from iTunes onto his iPhone. The iPhone--a stylish smartphone--did everything. Declán used it to play music just as he had previously used his iPod. And, of course, he used the iPhone as his mobile phone and for sending text messages.

Declán was a professional driver. He held a Category D driving license, which meant that he was entitled to drive passenger vehicles (including buses) with accommodation for more than 8 people. He had the driving license in his wallet, although he had never taken the time to sign it.

When driving, Declán was careful not to make or receive telephone calls. He also did not read or send text messages unless he was stopped at a stop light. Declán understood and took seriously information from Ireland's Road Safety Authority that a mobile phone makes a driver four times more likely to crash.

When Declán ran his 1999 BMW 316i over Róisín, he had his iPhone in his left hand. Using his thumb, he had just pushed the setting on the phone to make Gangnam Style repeat over and over again. He simply could not get enough of hearing the song. The BMW had an automatic transmission. Declán was listening using his Bose Quiet Comfort noise canceling headphones, which he had purchased in order to drown out background noise when he rode the bus or train and when he flew on airplanes. The headphones covered each of his ears, and special electronics in the headphones eliminated or greatly reduced outside noise. Declán did not hear Róisín's shrill scream just before he crashed into her, and after the front and rear left wheels of his car ran over Róisín, he did not hear her screaming until he took the headphones off when he brought his car to a stop part way down the street.

As was the custom in his estate, city, county, and native Ireland, Declán rolled through the stop sign when he made the left turn out of his estate. He drove through

the intersection dozens of times each week. He saw the stop sign, slowed--or maybe just stopped accelerating without really slowing, and turned left. This is how everyone in the neighborhood treated the stop sign.

Róisín was just beginning to cross the street. She had stepped off the curb and had taken three steps away from the curb when the left front bumper of the BMW hit her. There were curb ramps for prams or wheelchairs on both sides of the street where she crossed. She had no chance to avoid Declán's vehicle.



Declán saw her jacket in a flash just as his front bumper hit Róisín. He felt the bump as first his left front wheel and then left rear wheel crossed her body. Confused and horrified, he stopped his car after deciding against trying to flee. A neighbor witnessed the crash and called 999 from her mobile.

Róisín lost the baby before she even had learned that she was pregnant. Her pelvis fractured in six places when the BMW rolled over her. Surgeons removed her spleen, uterus, ovaries, and one of her crushed kidneys during the emergency surgery to save her life. During that surgery, the doctors discovered that she had been pregnant for no more than a few weeks.

The doctors could not, however, repair the damage to her spinal cord. Barring a miracle or medical advances with stem cells, Róisín will never have any sensation below her chest. She cannot walk or move her hips or legs. She is incontinent as to bowel and bladder and has no sexual sensation. She will be confined to a wheelchair for the remainder of her now-shortened life. Her cognitive functions--thinking--are intact. She has post-traumatic stress disorder.

Róisín had health insurance with an American insurance company through her husband Liam's employment with an American company. This means that the insurance company paid the doctors, hospital, and other medical providers for the medical treatment that she received in Ireland. As part of an austerity measure, the HSE insisted that the insurance company pay for the full cost of treatment. To date, the cost of her treatment has been as follows:

Provider	Cost	Treatment
Pridemark Paramedic	€ 2,000.00	Ambulance to Hospital
Hospital A & E	€ 15,000.00	Emergency care
Apex Emergency Group	€ 17,000.00	Emergency physicians
Radiology	€ 5,000.00	Radiologists
Surgery Group	€ 54,000.00	Emergency Surgery
Hospital	€115,000.00	Inpatient stay
Family physician	€ 4,500.00	Follow-up with GP
Psychologist	€ 7,000.00	
Physical Therapy	€ 14,000.00	
Medication	€ 9,500.00	
Insurance Premiums	€ 2,700.00	Three months
<b>Total Medical Bills</b>	<b>€245,700.00</b>	

Róisín, Liam, and their families are devastated by her injuries. Since she was a young teenager, Róisín had been a highly skilled camogie player, tri-athlete, and all-around active person. She had been a competitive camogie player while in university, but she stopped playing when doctors warned her that she had a congenital problem in her spinal vertebrae that caused the opening for the spinal cord to be smaller than is normal. This condition--called stenosis--was a major reason that her spinal cord was damaged beyond repair in the accident.

She had completed her undergraduate training in law with an eye toward becoming a solicitor specializing in the representation of athletes. Róisín hoped eventually to become a judge. She no longer has any hope of attaining these goals.

She and her husband also planned on having two or perhaps three children at some point during the first ten years of their marriage.

**YOUR JOB** is to analyze the claims that Róisín and her husband may be able to make against Declán. Ignore any other possible defendants. You should analyze Róisín's and Liam's prime facie case. Include in your analysis any weaknesses that may exist in the claims that they must make. Analyze Liam's and Róisín's claims for purposes of litigation; that is, assume that the matter will not be settled at the Injuries Board, which formerly was known as the PIAB. **DO NOT** analyze possible affirmative defenses or other defenses that Declán or his lawyers may raise. In your analysis, be sure to discuss each of the sections of statutes that are set out below, that is, Sections 24, 38, and 52 of the Road Traffic Act, 1961; Section 6 and 24 of the Road Traffic General Bye-Laws, 1964; and Section 3 of the Road Traffic Act, 2006. You should discuss other applicable statutes as necessary.

## ROAD TRAFFIC ACT, 1961

### --Sec. 24.

Where a driving licence which is expressed as not having effect until it is signed by the grantee is granted—

- (a) it shall be the duty of the grantee forthwith to sign his name on the licence in the place indicated in that behalf therein,
- (b) if the grantee fails so to sign the licence, he shall not, for the purposes of this Part of this Act, be regarded as not being the holder of the licence merely by reason of such failure.

### --Sec. 38.

(1) A person shall not drive a mechanically propelled vehicle in a public place unless he holds a driving licence for the time being having effect and licensing him to drive the vehicle.

(2) (a) A person who contravenes subsection (1) of this section shall be guilty of an offence.

(b) In a prosecution for an offence under this subsection, it shall be presumed, until the contrary is shown by the defendant, that he did not, at the time he drove the vehicle, hold a driving licence then having effect and licensing him to drive the vehicle.

(3) The owner of a mechanically propelled vehicle shall not employ a person to drive the vehicle in a public place unless the person holds a driving licence for the time being having effect and licensing him to drive the vehicle. . . .

### --Sec. 52.

(1) A person shall not drive a vehicle in a public place without due care and attention, or without reasonable consideration for other persons using the place.

(2) A person who contravenes subsection (1) of this section shall be guilty of an offence.

**ROAD TRAFFIC GENERAL BYE-LAWS, 1964.**

**--Sec. 6.**

- (1) A Stop sign shall indicate that the next road ahead is a major road.
- (2) A Yield Right of Way sign shall indicate that the next road ahead is a major road.
- (3) A stop line on a road shall indicate that a driver approaching the stop line by that road shall halt at the stop line.

**--Sec. 22. When right of way to be yielded**

- (1) When starting from a stationary position a driver shall yield the right of way to other traffic and pedestrians.
- (2) A driver approaching a road junction shall yield the right of way to another vehicle which has commenced to turn or cross at the junction in accordance with these bye-laws, and to a pedestrian who has commenced to cross at the junction in accordance with these bye-laws.
- (3) A driver entering a public road from a place which is not a public road shall yield the right of way to all vehicles proceeding in either direction along the public road.
- (4) (a) A driver shall, before entering a major road by a road on which a Stop sign has been erected, halt the vehicle on the roadway at or near the Stop sign and yield the right of way to traffic on the major road.
  - (b) A driver halting the vehicle in compliance with this bye-law shall, where a stop line has been provided at or near a Stop sign, halt the vehicle at the stop line and shall ensure that, when the vehicle is halted, its front wheels (or wheel) have (or has) not crossed the stop line.
- (5) A driver shall, before entering a major road by a road on which a Yield Right of Way sign has been erected, yield the right of way to traffic on the major road. . . .

## ROAD TRAFFIC ACT 2006

### --Sec. 3.

(1) A person shall not while driving a mechanically propelled vehicle in a public place hold a mobile phone.

(2) Subsection (1) does not apply to a member of the Garda Síochána, an ambulance service or a fire brigade of a fire authority (within the meaning of the Fire Services Act 1981 ) who is acting in the course of his or her duties and holding a mobile phone in relation to the performance of his or her duties.

(3) A person who contravenes subsection (1) is guilty of an offence.

(4) The Minister may, to avoid the impairment or interference with the driving capacity or capabilities of the driver of a mechanically propelled vehicle, make regulations in relation to the restriction or prohibition in mechanically propelled vehicles in public places of the use of—

- (a) a mobile phone (other than in the circumstances referred to in subsection (1)),
- (b) an in-vehicle communication device,
- (c) information equipment, or
- (d) entertainment equipment.

(5) Different regulations may be made under subsection (4) for different classes of cases coming within the same class of equipment or for different classes of vehicles in relation to such equipment or different classes of persons.

(6) A person who contravenes or fails to comply with regulations made under subsection (4) is guilty of an offence.

(7) It is a defence for a person charged with an offence under subsection (3), in relation to holding a mobile phone while driving a mechanically propelled vehicle, or under subsection (6), in relation to the use of a mobile phone or an in-vehicle communication device, to show that he or she was—

(b) using it to call the Garda Síochána, an ambulance, fire or other emergency service on numbers prescribed for such service, or

(c) involved in or acting in response to a genuine emergency.

(8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding €2,000.

(9) In this section—

“ hands-free device ” means a device designed so that when used in conjunction with a mobile phone there is no need for the user to hold the phone by hand;

“ hold ”, in relation to a mobile phone, means holding the phone by hand or supporting or cradling it with another part of the body;

“ interactive communication function ” includes—

- (a) sending or receiving oral or written messages,
- (b) sending or receiving facsimile documents,
- (c) sending or receiving still or moving images, or
- (d) providing access to the internet;

“ in-vehicle communication device ” means a communication device designed or adapted to be attached to or integrated into a mechanically propelled vehicle or which may be used in or on such a vehicle and with which a person is capable of making or receiving a call or performing an interactive communication function and includes a two-way radio;

“ mobile phone ” means a portable communication device, other than a two-way radio, with which a person is capable of making or receiving a call or performing an interactive communication function, but for the purposes of subsection (1) does not include a hands-free device;

“ portable ” in relation to a mobile phone, means the phone is designed or adapted to be carried by a person;

“ two-way radio ” means an apparatus for wireless telegraphy which is designed or adapted for the purpose of transmitting or receiving spoken words or messages between a person and another, using a frequency other than a frequency used by a mobile phone.

**END OF EXAMINATION**

**Torts, Fall 2012**  
**National University of Ireland, Maynooth**  
**Prof. Thomas D. Russell**

**Student Sample Answer, Jan 2013 exam.**

**Roísín. v. Declán**

**Duty:**

In accordance with Heaven v. Pender, when a person is active they have a duty to be reasonable.

This duty is owed to those who are close in time, relation, or proximity according to the neighbour principle.

Declán owed a duty to Roísín to drive safely and not put the life of her and her unborn child at risk.

**Standard of care:**

The standard of care required to discharge this duty is not one of strict liability but one of reasonableness. Declán should pay attention to his surroundings and to the sounds which accompany them. He should act according to the rules of the road.

Declán may be held to a higher standard because he is a professional driver, but I would have to research more on this. I would think not as he wasn't driving in a professional capacity.

**Breach of the standard of care:**

Declán breached the standard of care in two ways. Firstly, he was not giving full attention to the road. Secondly, he was using the noise cancelling headphones which did not allow him to hear the noise of the road/Roísín's screams.

**Breach of statutory duty:**

**Statutory duty:**

1. Declán breached part 1, section 52 of the '61 road traffic act.
2. Part 3, section 6 of the bye laws in 1964 and part 1, 2, 4(b) of section 22 of the same bye laws.
3. Part 1 of section 3 of the road traffic act of 2006.

## **How were they breached?**

1. He was not giving “due care and attention” to the road if he had “reasonable consideration for others using the place,” Roísín wouldn’t have been hit.
2. Declán did not halt at the stop sign but continued through the intersection, nor did he give Roísín right of way although this is what the law requires.
3. Declán was holding his mobile in his hand while driving. Although he was not using it for communication purposes, it was nonetheless in his hand.
4. Declán also breached section 24 of the road traffic act of 1961 but is still held to be holder of the license. This means he has not contravened section 38 of the same act.

The intentions of these acts are to keep road users safe. Although there is no specified protected class or action which can be taken (apart from a fine for driving with a mobile), it is still important to note that Declán has done wrong in the eyes of the law. Roísín may have problems using this in court because she is not under any protected class. It will make Declán look more guilty in the eyes of the jury which is helpful with the preponderance of evidence.

## **Causation:**

### **Factual Causation:**

In order to find the factual cause, one must use the “but for” or “videotape” test. But for Declán’s negligent driving, i.e. running intersections with reduced sensory awareness, Roísín would be fine. If we rewind time and make Declán slow to a halt before the stop sign, then he would have a) had time to see her [and] b) been able to give way.

### **Proximate cause/legal causation:**

It is foreseeable that in the middle of the day in a neighbourhood that someone would try to cross the road at the intersection. It is foreseeable that if you don’t halt at a stop sign while someone is crossing that they will get injured.

Although the damage done was worsened by Roísín’s stenosis, according to the eggshell doctrine, the extent of the damage need not be foreseeable only that the damage would occur.

Declán drove negligently and was not prepared for a foreseeable accident. Roísín’s life has been obliterated because of this cause.

## **Damages:**

## **Injuries:**

1. Removal of spleen, uterus, ovaries, and kidney.
2. Fractured pelvis.
3. Damaged spinal cord.

**Special:**

1. Roísín's medical bills amounted to € 245,700, which will have to be paid. As Roísín would have gone private if the accident was her fault, she is entitled to this treatment.
2. Rehabilitation will be needed to help Roísín adjust to her life in a wheelchair.
3. Unless Liam plans become her carer, the couple will have to hire home help to take care of Roísín until she has she adjusted to her new life. They will always need help in some capacity, down to toileting and keeping the house clean.
4. The house will have to be renovated and made wheelchair accessible.
5. There will have to be an allowance made for future medical expenses along with toileting things such as adult diapers/nappies which the couple wouldn't have needed but for this accident.
6. The loss of Roísín's income is quite considerable. A solicitor recieves [sic] a decent income and a judge even better. Roísín had a law degree so it is not unimaginable that she would have achieved her goals. Reduced because of reduced life span.
7. New clothes. Roísín won't be wearing any of her old outfits which are difficult to put on/take off. Clothes and shoes which are easy to wear are suitable for someone with serious injuries (Shoes with velcro straps, loose tracksuit bottoms, etc.) will have to be bought.
8. Counseling or therapy for both her miscarriage and her post traumatic stress disorders.
9. Wheelchair and future wheelchairs.

**General:**

1. Pain experienced during the accident.
2. Pain over loss of child and the ability to have a family.
3. Reduced independence. This will be both an embarrassing and frustrating experience for Roísín. She will not be able to anywhere on her own as she'll need

help with hygiene. She will have to depend on others to mind her which is bound to be upsetting to a once independent woman.

4. Loss of goals: Roísín can never become a solicitor or a judge. This deprivation of her chosen future could have serious ramifications.
5. Reduced life span: Roísín's life expectancy is much shorter after the accident due to only having one kidney. Investigate MRSA levels in the hospital she was sent to if she contracts it from there and dies then Declán is liable. (no novus actus interveniens.)
6. Loss of hedonistic pleasure: while Roísín can't and shouldn't claim for other things. Investigate what Roísín is missing out on.
7. Loss of consortium. She has no sexual sensation whatsoever, which will have a negative impact on her marital relationship.

### **Liam v. Declán**

#### **Duty:**

Same as Roísín.

#### **Standard of Care:**

Same as Roísín.

#### **Breach of the S.O.C.:**

Same as Roísín.

#### **Causation:**

Same as Roísín.

#### **Damages:**

#### **Special:**

1. Loss of income if Liam stays home and becomes Roísín's carer.
2. If Liam does become her carer, he will have to go through some kind of training which will cost.

#### **General:**

1. Grief and pain because his wife has been injured.
2. Grief and pain that his baby died and he will never have a family.
3. Loss of consortium.
4. Loss of services such as cleaning the house or cooking dinner. (Whatever Roísín did at home.)
5. Guilt. Liam will never be able to leave Roísín without feeling bad about her. This will create resentment on his behalf. He won't be able to have as much freedom.
6. If he stays married to her (likely) and still loves her (unknown because of stress which the marriage is under) then her shortened life expectancy will affect him.
7. They will never be able to act like a true married couple again. There will be no equality because he will have to mind her and Romance and spontaneity will be crushed under the logistics of practicality (he would have to find restaurants which are wheelchair friendly, traveling is more difficult, etc.)!

I am not sure if Liam and Roísín could bring a case on behalf of their baby. I would have to investigate how the state views the death of an unborn child. As those left are not dependents nor did the baby have an estate, it is difficult to know if these could be a case. It is possible but it might not be.

END