

1. Rob opened the letter from Dan Kiefer, '.....accordingly the Crown has decided not to proceed with a second trial and has entered a Stay of Proceedings. That ends the criminal prosecution. Your conviction has been overturned. The Crown will not try to prosecute you further with respect to this matter.
2. Mr. Kiefer sat across from your desk. I want you to give me a series of memo's on this matter. Sally and Beth are going to have to find different lawyers. In respect of some issues, they are going to have to sue Rob. That is why we would inevitably have a legal conflict and cannot act for them as well as Rob. But it is important that we consider what suits might be brought on their behalf, both to anticipate a suit against Rob and to anticipate any suit in which we are likely to be on the same side, partially or wholly. I have a number of questions for you.

Here they are:-

1. We are going to sue the Prince George car dealership for breach of contract in selling a vehicle that was not fit for purpose as human transportation. I also want to sue the salesman Ralph. Is our cause of action against Ralph for breach of contract or tort? If it is tort, what are we claiming he did or did not do that was tortious?
2. I want to sue the Williams Lake dealership. This claim is clearly in tort. There was no contract between Rob and the Williams Lake dealership. What are we claiming the dealership did or did not do?
3. Is our claim against the Williams Lake dealership too remote. What is the test for remoteness that we should apply to answer that question?
4. There was no sign warning of the corner where the vehicle went off the road. Perhaps more importantly, there was no barrier to prevent the vehicle from going off. I would like to sue the province for this failure to provide a proper barrier at the corner. What case should I be aware of that deal with the question of what the government's power is versus it's duty and how might the law set out in that case find application here? I have attached a report from our private investigator that includes photographs of all the places where the province has placed roadside protective barriers for a hundred kilometres on either side of the corner in question (assume that you have that report from the P.I.).
5. Rob spent 4 months in prison. Who might be sued for malicious prosecution, if anybody? What will we need to show against any such defendant? Is there a case against Crown Counsel for malicious prosecution; if so why? If not, why not?
6. Is there a case for negligent investigation by the police? If so what is the negligence behaviour that we allege and is there precedent in the case law for such a claim?
7. Somebody is going to have to look after Sally's affairs. I do not think that person

ought to be Rob, because Sally's legal representative may have to sue Rob. If we are to join her as a plaintiff in any law suit against the various people that Rob is about to sue, then we will need to ensure that somebody moves to help Sally.

Assuming Sally is not competent to either manage her affairs or hire and instruct a lawyer, what application under which statute should be made on her behalf?

8. I see that both Beth (by way of her legal guardian) and Mildred are suing Rob, among others. What will Mildred need to show in order to succeed in a claim of nervous shock against whoever is found to be responsible for the accident and the moments leading up to that accident? Is Beth's claim easier to make and if so why?

Three years after you wrote your answers to Mr. Kiefer's memo, Rob died. He had surgery for the third time on one of his legs, and a blood clot arising from the surgery stopped his heart. The law firm is now acting for his estate. Again Mr. Kiefer comes into your office. You are by now a lawyer. He asks:-

9. Is Rob's will valid? If so why; if not why not? If you decide that the will is valid, can Sally receive under that will? If not, why not?

10. Presuming Sally can not receive under this will how would you argue on her behalf, supposing that you were her lawyer, for a variation under the Wills Variation Act. If the will is valid but the bequest to her is not, can she utilize the Wills Variation Act to undo damage caused by the defective will.

11. Several months before he died Rob sold his house to his brother Dennis. Today we received a letter from Sally's lawyer enclosing a copy of a letter from Rob to Sally that predates the accident in which he agrees to give her a half interest in the home in exchange for her providing him with the cash to buy the car. The lawyer also sent us a copy of the bank order showing that Sally indeed advanced that money to Rob. What must Sally's lawyer prove about Dennis if Sally is to succeed in a claim for a half interest in the house Rob sold to Dennis?

12. Sally's sister, Rhonda, has publicly said, both at her place of work, and at the neighborhood pub that Dennis is " a crooked bastard who has ripped my sister off!" . If Dennis knew about the agreement between Sally and Rob, before Dennis bought Rob's house, then what defence might Rhonda have to a claim for defamation brought by Dennis? If he only found out about the agreement after he bought the house from Rob, what would that do, if anything to Rhonda's defence?

Approach to the exam. Write enough to fully explain your answer. Some questions can be answered with few but clear words. Others will need more. Don't submit until close to deadline so that you receive the benefit of any questions and answers.

Each question will be worth 7 marks; of which 3 are for writing and 4 are for substance

re writing

Writing is poor and incoherent 0 marks

Writing is poor but coherent 1 mark

Writing is fair and coherent 2 marks

Writing is good and coherent 3 marks

re Substance

Poor understanding 1 mark

Fair understanding 2 marks

Good understanding 3 marks

Excellent understanding 4 marks

I feel very strongly that everyone should understand it all so I am willing to explain and re-explain; anything that does not make sense. If the question does not make complete sense; please ask for explanation.

Good luck

SDMW