

Write Your Exam Code Here: _____

Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

*****REVISED EXAM*****

**THIS EXAMINATION CONSISTS OF 5 PAGES (INCLUDING THIS PAGE)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**PETER A. ALLARD SCHOOL OF LAW
UNIVERSITY OF BRITISH COLUMBIA**

APRIL 2019

**LAW 241.004
Torts**

Professor Arbel

TOTAL MARKS: 100

TIME ALLOWED: 120 minutes (plus 15 minutes reading time)

- (1) THIS IS AN OPEN BOOK EXAMINATION. Candidates may bring notes, books, or any other written material into the examination room. Communication devices such as mobile phones are not permitted.
- (2) THE READING TIME MAY NOT BE USED TO WRITE THE EXAM. You may use this time to take notes on scrap paper or on your exam paper. You are advised to use this time to read through the exam and think about your answers.
- (3) Full citation of cases is not necessary. You may refer to cases in short form, eg "Childs".
- (4) This examination is designed to test material covered in this course only. Do not discuss sources not covered in the course materials, discussions, or lectures.
- (5) Questions raise issues that do not have one "right" answer. Identify and discuss fully the points raised by each question, giving some sense of the relative strength of the arguments.
- (6) State clearly any facts you assume in answering the questions. If you need to rely on additional facts that are not in the exam, state so.
- (7) A suggested working time for each question is indicated on the exam paper. Be careful to budget your time.

THIS EXAMINATION CONSISTS OF TWO QUESTIONS.

QUESTION ONE: 50 marks (recommended time: 60 minutes)

You are a judge of the British Columbia Supreme Court. The following case comes before you. The case involves a claim in negligence brought by Simon, the plaintiff, against Joe, the defendant. Joe concedes that he owes Simon a duty of care.

Simon is 20 years of age. On the night in question, he attended a house party in Surrey. Simon had been drinking, and did not want to drive. He met up with a group of four friends to find a safe way home. Together, the group walked up to the main road and called a taxi at the nearest intersection. The intersection was dark, as there was only one street light. There was no marked crosswalk at the intersection.

The taxi arrived shortly after. The driver was named Joe Smith. Upon seeing the group, Joe stopped his taxi in the middle of the road. The intersection was dark, so he put his high beams on for greater visibility. When he saw that there were five people assembled, he rolled down his window and told the group that he could not lawfully drive five people, as he had only four seatbelts. He told the group that he would call a larger vehicle for them. He then closed his window, and began to drive off, calling his dispatcher to order a larger vehicle. He did not realize that his high beams were still on.

Meanwhile, Nicole was driving home on that same road, heading in the opposite direction. Nicole was sober and was driving at the speed limit. As she approached the intersection, she saw a taxi stopped in the middle of the road with its high beams on. She dimmed her own lights, and then flashed them, hoping to prompt the other driver to dim his, but the lights remained on bright. She did not honk her horn. She had her eyes on the road, trying to see past the taxi's lights.

Simon was upset at being refused service by the taxi. When he saw that Joe was preparing to drive off, he ran into the street to try and persuade Joe to drive the group home. Simon was wearing dark clothing and a dark coat. He ran out behind the taxi, and, not noticing Nicole's car driving towards him, stepped into her lane.

Simon was not visible to Joe. Joe saw Nicole driving towards him, but did not see that Simon had run into the road behind his vehicle.

Simon was also not visible to Nicole. As she passed the taxi, she only saw a dark shadow. She immediately stopped the car, but it was too late. Nicole hit Simon head on. Simon suffered significant injuries.

Simon settled his action against Nicole. The action before you concerns the extent of Joe's liability for Simon's injuries. Recall that Joe admits he owes Simon a duty of care.

Joe is employed by White Rock South Surrey Taxi. He is an experienced taxi driver, has worked with the same company for over 20 years. Joe completed annual safe driving courses as required by his employer.

Simon suffered a broken leg, ligament damage in his left knee, and nerve damage to his spine. Simon had been in a car accident the previous year. As a result of the previous accident, he had suffered nerve damage to his spine and post-traumatic stress disorder. He had taken time off of work, and had returned to his job just two months before the night in question. Over the past year, Simon had been working on his recovery and had been showing significant progress, particularly in treating his PTSD. Following his accident, the full symptoms of Simon's PTSD returned. He could not ride his bicycle, had difficulty concentrating, high anxiety levels, and found it stressful to leave his home. Simon previously worked as a bicycle courier and has been unable to return to work since the accident.

The relevant portions of the *Motor Vehicle Act, RSBC 1996*, c. 318, provide:

s. 179 Rights of Way between vehicle and pedestrian

- (1) ... [t]he driver of a vehicle must yield the right of way to a pedestrian where traffic control signals are not in place or not in operation when the pedestrian is crossing the highway in a crosswalk and the pedestrian is on the half of the highway on which the vehicle is travelling, or is approaching so closely from the other half of the highway that he or she is in danger.
- (2) A pedestrian must not leave a curb or other place of safety and walk or run into the path of a vehicle that is so close that it is impracticable for the driver to yield the right of way.

s. 181 Duty of Driver

- (1) A driver of a vehicle must exercise due care to avoid colliding with a pedestrian who is on the highway.
- (2) A driver of a vehicle must not illuminate the upper beam of a headlamp if another motor vehicle is within a distance of 150 m from that vehicle, or whenever a motor vehicle is parked or standing on a highway.

The issue before you is: **given that Joe admits that he owes Simon a duty of care, can Joe be found liable in negligence for Simon's injuries?**

Do not discuss the duty of care. Do not assess any other legal claims arising from the *Motor Vehicle Act*.

State clearly any facts you assume in answering the question. If you need to rely on additional facts, state so. If you think damages may be appropriate in this case, state so. You do not need to quantify damages.

[EXAM CONTINUES ON NEXT PAGE]

QUESTION TWO: 50 marks (recommended time: 60 minutes)

You are a lawyer working in Vancouver. Alex, your client, seeks your counsel on the following matter.

June is a 20-year-old student at UBC studying fashion design. She decided to hold an end-of-term party at her parents' house in Kitsilano, while her parents were away on holiday. June saw this as a great opportunity to both celebrate the end of term, and also promote her new handbag collection.

June invited 50 friends to the party. She also promoted the party through her Instagram account. June had a large Instagram following, and was known as a bit of a trendsetter. She planned to launch a new line of handbags available for sale at the party, and promoted this on Instagram. Upon viewing her post, a local micro-distillery called Ginny's Gin – which specialized in the production of small batch Gin – contacted her with interest in the party. They offered to provide June with twenty free bottles of Gin for consumption at the party if she promoted their distillery on Instagram. June happily accepted.

On the night in question, June got the house ready. In addition to the 20 bottles of Gin provided by Ginny's Gin, she bought a large quantity of alcohol (including both spirits and beer) for consumption. She was very invested in the party being a success, and hoped the party would help promote her handbag collection. Roughly 100 people attended the party throughout the course of the night. At least thirty people arrived due to June's Instagram posts promoting Ginny's Gin, with an interest in sampling the product.

June invited guests to turn over their car keys and stay the night if they planned on consuming alcohol. This offer was communicated to guests via text message in advance of the party and also posted on Instagram. Guests who chose to do so put their keys into a bucket at the front door, which was not monitored. June taped a small, hand-written note to the key bucket that said, "Don't Drink and Drive, Leave your Keys Behind!" The alcohol June purchased – in addition to the Gin provided by Ginny's Gin - was set out on the kitchen counter. Guests helped themselves to drinks.

June invited her close friend May to attend the party. May also had a large Instagram following, and June thought that May could help her promote both the launch of her handbag line and Ginny's Gin. May did not drink alcohol very often. She arrived at the party around 8pm. June greeted May but they did not remain together throughout the evening. May helped herself to a few servings of Ginny's Gin at the start of the evening.

At approximately 9 pm, May and June met up in the kitchen. June encouraged May to have a few more servings of Ginny's Gin, so that she could post pictures of the two of them drinking the Gin together on Instagram, to help promote the product. May consumed three mixed drinks relatively quickly at June's encouragement, posting pictures each time. Throughout the night, May consumed 8 alcoholic drinks, which would put her blood-alcohol level at approximately twice the legal limit.

May found June at the party around 10pm to advise her that she was leaving. June noticed that May seemed “off” and asked if she was OK. May stated she was just tired. June told May that she “seemed kind of drunk” and offered for May to stay overnight. May declined. May had not placed her keys in the bucket, nor did June ask her to. June knew that May did not drink alcohol often. June did not press the issue. May took out her car keys and told June she would call her tomorrow. May then left the party.

May lived only 8 blocks from June’s house. She drove on a quiet side street that had little car traffic. Approximately 3 blocks from June’s house, May collided with a cyclist on the road. That cyclist is your client, Alex. On the night in question, Alex did not have any reflective gear nor a bike light, and, given his dark clothing, was not very visible. The road on which Alex and May were travelling was well lit. Alex was riding lawfully in the same direction as May was driving. May crashed into the rear of Alex’s bike. Alex suffered a broken left leg and a sprained arm.

May has agreed to settle the action that your firm has brought against her. Do not discuss May’s liability in this case.

Your law firm represents Alex, and intends to file a claim in negligence against June. The question before you is: does June owe Alex a duty of care?

Please restrict your discussion to the duty of care. Do not discuss the other elements of the negligence analysis.

Do not assess any other aspect of the negligence analysis, or any other legal claims Alex could bring against June or any other party arising from the *Motor Vehicle Act* or any area of law outside of negligence. Do not discuss damages.

State clearly any facts you assume in answering the question. If you rely on additional facts, state so.

END OF EXAMINATION.