

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

FINAL EXAMINATION – APRIL 2020

LAW 241.001
Torts

Michael Begg

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 100

WRITING TIME ALLOWED: 3 HOURS
PREPARATION TIME ALLOWED: 10 MINUTES

Preparation Time has been given to download/print/set up for your exam once the exam has been made available online through Canvas. This time cannot be used for writing exam answers. All exam answer uploads will be monitored to ensure that typing of answers only occurred for the allotted Writing Time.

This is an open book examination, meaning that you can refer the materials from the course, including the casebook, class notes, or the instructor's commentaries and exercises. The use of library books is not permitted.

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question.

*****PLEASE READ THE BELOW CONFIDENTIALITY REGULATIONS CAREFULLY*****

As this exam is being written off-campus and is unsupervised, any communication whatsoever (including but not limited to in person, telephone, e-mail, text, social media etc.) concerning the contents of this examination with anyone (other than your instructor or staff of the Allard School of Law) is strictly prohibited.

In the event any information comes to your attention regarding a breach of these regulations (by others, or inadvertently by you), please immediately contact Student Academic Services (studentservices@allard.ubc.ca) and make full disclosure.

A breach of these regulations may constitute student misconduct and you may be subject to penalty or discipline under UBC's Academic Misconduct policies.

What Do I Do If:

- **I cannot access the exam questions on Canvas**

If you experience technical difficulties accessing the exam questions on Canvas, email studentservices@allard.ubc.ca and the exam questions will be emailed to you. Please provide your phone number when emailing Student Services.

- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

If you experience technical difficulties with Exemplify at the very beginning or during an exam, we encourage you to spend NO MORE THAN 5 MINUTES attempting to troubleshoot your technical difficulties with Exemplify by restarting your computer. You will NOT BE GIVEN ANY EXTRA TIME to complete the exam if you experience technical difficulties with Exemplify.

If your attempt to solve the technical problem is unsuccessful, or if you choose not to make such an attempt, you MUST immediately begin typing your exam answers in a word processing software (i.e., MS Word, Apple Pages). Only if your computer or word processing software is not working, should you begin hand-writing your exam using paper and pen.

When you have finished writing the exam, you must upload via Exemplify any exam answers that you were able to complete in Exemplify, if possible. See below for technical support contact information if you cannot upload your Exemplify file.

You must also upload to Canvas any exam answers that you completed in a word processing software or via hand-writing. Please convert your word processing software file into PDF format, or take a picture or scan of your handwritten pages putting them into one folder. Upload the answer file/folder into the "Exam Answer File Submission (Word Processor or Hand-written ONLY)" link in the Law Exams – April 2020 course on Canvas. Your answer file/folder should be named, and the coversheet of your answers should be titled with:

Your Exam Code, Course Number, Name of Course, and Instructor Name
i.e., **9999 LAW 100.001 Law of Exam Taking (Galileo)**

- **I'm experiencing technical difficulties EXITING and UPLOADING the exam**

If you experience any difficulty exiting and uploading your Exemplify exam answers, you must wait until the allocated time period specified on the coversheet of the exam has ended, then email Bernie Flinn, flinn@allard.ubc.ca, and he or another IT Support staff person will help you to upload your Exemplify exam file. Please provide your phone number when emailing Bernie.

If you had to type using word-processing software or hand-write some or all of your answers, and experience difficulties uploading your exam answer file/folder to Canvas, email your exam answer file/folder to studentservices@allard.ubc.ca.

- **I fall ill in the middle of an exam, or am otherwise interrupted such that I'm unable to continue writing my exam**

Please stop writing, note the time that you stopped, and email studentservices@allard.ubc.ca immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

Exam Notes:

1. This examination is designed to test material covered in this course only. Do not concern yourself with sources or topics covered in other courses. The examination is on readings and principles from the second semester, but students can draw on cases from the first semester if they find them helpful.
2. There is one case problem with questions on it, and one essay question. Read the questions and instructions on page 6 before you read the facts on pages 4-5, then read them all again, before you write. Make sure you understand what I am asking you to do before you begin your answer.
3. Treat the facts in the case problem as true, and focus on using those facts. If you do assume any facts, state clearly what you are assuming.
4. Full citation of cases is not necessary. Just refer to cases in short form (e.g., "*Taylor*").

THIS EXAM CONSISTS OF TWO QUESTIONS:

A case problem worth 75 marks and an essay question worth 25 marks.

1. Case problem (75 marks) – Read the questions on page 6 before you read the story

In May 2018, June and Johnny Carter held a small afternoon barbecue party at their home in Vancouver. The party was also a chance to celebrate the success this past hockey season of Felix, the seven-year-old son of Fiona and Fallon Delgado, June and Johnny's close friends. Other guests included two families with children, and the Carters' friend Samantha Turner.

A bit about the Delgado family: Fiona is an accountant at the financial consulting firm PwC. Fallon works in a drug rehabilitation centre, and that Saturday he had come straight to the party in his work clothes, after a morning shift. As usual after work, his clothes had the scent of various narcotics on them. Felix, born July 2011, was a lively boy, mentally and physically. He shared his mum's zeal for math and money. Felix often talked with Fiona about her work. He often said he would love to be an accountant, if hockey didn't work out. But hockey was Felix's main passion: he was the top Novice player in his local league. In the 2017/18 hockey season he was already playing with 8-year-olds, and was being recruited by "Atom-league" teams (for kids aged 9 to 10 years). When anyone asked what he wanted to do when he grew up, he always said "play in the National Hockey League" (the professional "big leagues").

Samantha Turner is a Vancouver Police Department (VPD) police officer, in the narcotics squad. She attended the party with Sheena, her 3-year-old German Shepherd police dog partner.

Although Samantha and Sheena were off duty, the VPD had an innovative new rule requiring her to not only live with the dog, but to keep the dog with her whenever possible, even in social settings such as parties. The provincially appointed Vancouver Police Board adopted this rule as a pilot project one year earlier, based on the advice of the expert dog trainer the VPD had hired. The expert claimed that this would ensure the dogs' training and attachment to their officer is as complete as possible. The VPD was the only police department in North America with this policy, which other police departments were watching. The premise was that this would make the dogs and the officers a more effective team, and would also make citizens safer, since the dogs spend more time out in the community. The Police Board and Chief of Police pointed to provincial legislation that requires police departments to make "the safety of citizens the first priority of policing," stating that the more attached police dogs are to their officers, and the more "out there in the community" the dogs are, the better. To that end the VPD also encouraged officers to be socially active, to "maximize interaction and generate better data" from the pilot project. Another VPD rule, in place for many years, is that when narcotics-squad dogs detect drugs, the officers and dogs go "on duty" for purposes of investigating and if necessary arresting. The rule is informally known as "PD24," for "Police Dog 24/7."

Samantha had worked with Sheena a little over two years, since the dog finished training. Sheena was an exemplary police dog. Under her training, she was taught to attack only when (a) Samantha commands, (b) Samantha is being attacked, or (c) the dog detects illegal narcotics on people--*if* those people flee from or threaten the dog. The "attack" method is to jump onto and knock down the wrongdoer and, if the person struggles, to clamp the dog's jaw on the person's arm or leg, hard enough to hold on and quell resistance, but not so hard as to break flesh unless the person continues to resist aggressively. In practice, Sheena had done the knock-down manoeuvre many times while on duty, as trained. She had clamped her jaw on arms a few times,

but had never caused more than bruising. Off duty, the dog had never had a violent altercation. Sheena had also spent some time with kids, in “meet a VPD officer” school visits as part of her duties, and when Samantha took care of her 4-year-old niece. The dog was calm and gentle with the school kids. With her niece, Sheena could be rambunctious, but Samantha always stayed nearby, and calmed Sheena with a command whenever the niece seemed nervous about the dog’s playful growls, or at risk of being knocked over.

When Samantha and Sheena arrived at the party, all guests were in the back yard. Johnny and June greeted Samantha in the house, then invited her to join the others in the back yard. Having had a long run that morning, Sheena laid down on the living room carpet for a nap. Johnny Carter stayed in too, to prepare a salad. “Sheena can keep me company,” he told Samantha.

When June introduced Samantha, the officer said, “I have my German Shepherd here, in the house. She’s 90 pounds, and sheds—I hope that isn’t a problem for anyone?” The guests told her and June that it was fine. Fiona Delgado said to Samantha and to June, “Oh, we love dogs of all kinds. Don’t worry at all about us.” Felix nodded.

Indeed, Felix loved dogs. His family owned a 15-pound Pomeranian. He said, “I want to meet the dog.” June Carter smiled and said, “You’ll find her in the living room.” Waving to his mum, Felix went in and found Sheena snoozing on the carpet. Since his early childhood, Felix’s parents had taught him to be careful with new dogs. He approached Sheena calmly, hand outstretched, using the “sniff my fist” introduction he had learned. She accepted him; he scratched her fur. Felix then began to play with her more and more roughly, the way he did with his small family dog, but even more physically, due to Sheena’s size (25 pounds heavier than Felix). Sheena grew excited. She jumped up at her dog toy when he held it up, and wrestled with the giggling boy, sometimes growling in the way dogs do when they play.

Johnny Carter, concerned about potential damage to furnishings, stepped from the kitchen to the living room and cautioned Felix against being too wild with Sheena. “Careful, she’s a big dog, Felix.” Felix slowed down, but soon the violent play resumed. John returned and saw the boy was having fun. He decided to remove a porcelain sculpture of Wayne Gretzky’s head and a couple of other delicate items from tables in the living room, then went back to the kitchen.

Noticing that Felix was missing from the yard, Fallon asked Fiona about him. She said, “He is in the house with the dog.” Fallon went inside. Hearing the mayhem, he entered the living room. The scent of drugs on his clothes wafted ahead of him and entered the dog’s nostrils.

Sheena’s hair went up. She had been on her back after a push from Felix, and jumped to her feet. Her manner was suddenly tense and aggressive—very different from what it had been so far. Felix rose to his feet, raised his arms, and said, “Calm down.” Sheena, already stirred up by the rough play, took a stride and leaped. It may have been that she was charging at Fallon, but Felix was in her path. Her paws struck the boy on the chest. This knocked him down. As he fell Sheena lunged forward, growling, and her mouth briefly closed on his face, drawing blood. When he landed, she stood on his chest, confused, until Samantha entered.

Felix's initial injuries were some bruises and the cuts to his face. These healed quickly. However, the crash to the floor triggered a degenerative condition in his lower spine that had afflicted some members of his extended family, but not others. The crash activated the condition, and within a year the recurring pain in his back ended his career as a pee-wee hockey player. The pain continues, but does not prevent him from engaging in other activities at a reduced level. And although the pain and loss of hockey has caused him feelings of depression, he continues to do well in school, and to be interested in math and money.

Case problem questions and instructions (75 marks in total)

Read all the questions before you write. The first two questions ask for argument on both sides, and should be the longest part of your answer: allocate about 40 minutes each. Questions 3 & 4 only ask for your assessment, but I want you to use specific facts and case law. Try not to spend more than 20 minutes on either of those. Your answer for question 5 should be brief and to the point, taking a few minutes. For each question, use principles & case law from the spring term.

1. Argue the claim **Felix** would make that **Samantha** is liable in strict liability for Sheena's actions. First argue for Felix, then counter-argue for Samantha. Do not argue separate "defences." Save defences for question 4, below.

2. Argue whether the **VPD** owes Felix a duty of care in negligence for potential injury caused by the dog, due to the pilot project and "PD24" rule. First argue for Felix that the VPD owes a duty, and then for the VPD that it does not. Argue only duty of care, not other elements of negligence.

3. What kind of negligence claim can **Felix** make against the Carters? Assess the strength of the claim, citing facts and law. Do not argue both sides. Omit causation, remoteness, or defences.

4. Which defences could the different defendants raise? Identify and assess the defences on the facts, using case law.

5. Which heads of damage would Felix claim? Just identify the heads—don't estimate quantum. Then, briefly explain—in 2 or 3 sentences—which aspect or aspects of damages are challenging for a court to assess here, using cases to illustrate your point.

END OF CASE PROBLEM

2. Essay question (25 marks) – allocate approximately 40 minutes to this question

A case we read this term commented, after stating the relevant legal rule, that rules are “vacuous vessels” that lack meaning in themselves. And in *Hercules Managements*, Mr Justice LaForest makes a similar point about the legal terms that are at the core of many rules. He wrote, “the term ‘**proximity**’ itself is nothing more than a label expressing a result, judgment or conclusion; it does not, in and of itself, provide a principled basis on which to make a legal determination.”

Based on the torts cases you have read in this course, comment on what these judges mean by these comments. Do you agree or disagree with the characterization of rules as “hollow vessels”? Cite specific torts and cases to explain your answer.

You are welcome to agree or disagree—as long as you state an opinion and explain it with specific reference to some of our readings. There is no limit which areas of tort law or which tort principles you refer to, but I would like to see you use between three and five specific cases as illustrations of your argument.

END OF EXAMINATION