

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

FINAL EXAMINATION – APRIL 2020

LAW 241.002
Torts

Professor Hastie

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 100

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

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This is an open book examination, meaning that you can refer to class notes, class readings, PowerPoints, handouts, and other materials introduced in this course. The use of library books and any other materials not introduced in this course 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.

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Facts

You represent Jaime. Jaime worked as a part-time sales associate at Vinyl Records, a retail music store, in Vancouver, BC from January 7 2018 until August 15 2019. Jaime alleges that she was harassed by a fellow employee, Taylor, from May 2019 until August 2019, when she quit her job at Vinyl Records. Jaime states that she quit because of the on-going harassment and the insufficient response from her employer, Vinyl Records to her complaints regarding the harassment. Jaime would like to bring an action in negligence against Vinyl Records, based on its failure to adequately investigate and respond to allegations of harassment.

Taylor joined Vinyl Records in late April 2019. Jaime states that when Taylor learned that she liked folk music, he began to “tease her”. Jaime states that Taylor made several “inappropriate” and “derogatory” comments about her taste in music, which made her feel uncomfortable. Jaime spoke to her manager on June 7 2019 about the comments Taylor was making. The manager said it sounded like Jaime was “over-reacting” and that she should “toughen up”. Taylor continued to make rude remarks to Jaime, and she complained again to the manager on June 29 2019 that Taylor was “harassing” her. The manager stated that they would speak to Taylor about his behaviour. The manager mentioned Jaime’s complaint to Taylor the next day and told him to “cool it”.

All workplaces in British Columbia are required to have a workplace harassment policy pursuant to the *Workers Compensation Act*. The policy must include procedures to conduct a “fair and reasonable investigation”, which requires an employer to interview all parties involved in the complaint, to weigh the evidence and testimony of each party fairly, and to come to a determination on the complaint within a reasonable timeframe. The *Act* allows for the imposition of monetary penalties on an employer where they do not have a workplace harassment policy in place.

Work Safe BC describes harassment and bullying as: “Bullying and harassment in the workplace can take many forms, including verbal aggression, personal attacks, and other intimidating or humiliating behaviours. If workplace bullying and harassment is not addressed, it can lead to lost productivity, anxiety, and depression.” A worker may take temporary leave from their job and seek compensation for their lost wages from Work Safe BC where the harassment or bullying results in a workplace injury. A recent poll in British Columbia found that 37% of employees reported experiencing workplace harassment, and 64% of those who reported experiencing workplace harassment also reported taking a leave from work due to anxiety and/or depression.

Vinyl Records has a Workplace Harassment Policy (the “Policy”) that conforms to the requirements of the *Act*. The Policy provides examples of harassing conduct as including: repeated derogatory, hostile or demeaning remarks about a person’s gender, race, religion, political opinion, age, or ability; unwanted physical touching; and, threatening language or gestures. The Policy states that any employee found in violation of the policy may be subject to the following disciplinary measures: a written warning; completion of sensitivity training; suspension without pay; and, in cases of serious or repeated misconduct, termination.

On July 2 2019, Jaime alleges that Taylor approached her in the workplace in an “aggressive manner” and threatened to “shut her up” if she didn’t stop complaining to the manager about him. The confrontation left Jaime very shaken. She told the manager she wasn’t feeling well and went home. The next day, Jaime called the manager and told them about the incident, and stated that

she did not feel comfortable working with Taylor anymore. She asked the manager to schedule her for different shifts than Taylor.

Following the July 2 2019 incident, the manager of Vinyl Records agreed to investigate Jaime's complaints of harassment against Taylor. The manager set a meeting with Taylor for July 5 2019. At the meeting, the manager relayed the complaint that Jaime made against Taylor. Taylor admitted the conduct that Jaime alleges occurred on July 2 2019. Taylor stated that he didn't like that she "went behind his back" and complained to the manager. After the meeting, the manager closed the investigation. The manager wrote a short letter to Jaime on July 6 2019 stating that they met with Taylor, and found that this incident did not constitute "harassment" under the Policy. The letter stated that no formal disciplinary action would be taken against Taylor. Following receipt of the letter, Jaime became very upset.

Jaime continued to report to work at Vinyl Records. Jaime and Taylor were scheduled for overlapping shifts several times a week. Jaime alleges that Taylor continued to harass her verbally, but she stopped reporting this to her manager because she felt that they would not do anything to stop it. Throughout the month of July, Jaime reported feeling increasingly lethargic, had a lack of concentration, difficulty sleeping at night, loss of appetite, and loss of interest in her daily activities. Jaime has a history of depression, and had received treatment for this in the past. In addition to her ongoing harassment from Taylor at work, Jaime had a falling out with her closest friend at the end of June, and the incident had left her very despondent.

During a shift on July 21 2019, Jaime stated that Taylor was again harassing her. On this occasion, she "snapped back" at him and told him to "shove it". Jaime says that, in response, Taylor threatened her again. He told her not to "cause any trouble with the manager, or else I'll have to shut you up for good". Jaime states that he raised his fist at her when he made this statement. After this incident, Jaime no longer felt safe working at Vinyl Records. She worried that the manager would never take her complaints seriously and that Taylor could do her "real harm" if she stayed any longer. Jaime submitted her notice of resignation, effectively immediately, on August 2 2019.

Jaime undertook counselling after she quit Vinyl Records. Her counsellor determined that Jaime was likely suffering from an episode of reactive depression, due to the combined stress and effects of the incidents at her work, and the personal difficulties with her friend. With regular therapy, and following the advice of her counsellor, Jaime made significant strides in her recovery over the next two months. By early October 2019, Jaime had regained her energy and appetite, was sleeping well, and reported feeling happy most of the time. Jaime and her friend also made peace with each other in mid-September.

In late September, Jaime began looking for a new job. She was determined to find a better working environment and sought the assistance of a career counsellor. Jaime had a passion for music, and began looking for jobs in that field that would provide her with better career options in that field. Jaime had some difficulty finding new work, and remained unemployed until November 15 2019, when she began a job as an administrative assistant at a small record label in Vancouver. She hoped this job would act as an entry-point for a career as a music producer. Her new job came with increased pay and benefits, compared to her prior position at Vinyl Records.

Question 1

A. Assess the strength of Jaime's claim against the employer, Vinyl Records, in negligence. Assume that the employer is directly liable for the conduct of the manager. Do not consider contributory negligence or apportionment of liability. (60 marks)

B. Explain the damages that Jaime may claim and any difficulties she may have in establishing her damage claims. Do not assess the quantum of damages. (15 marks)

Question 2

Corrective justice theory remains a dominant normative account of tort law in Canada. It supposes a pre-existing equality between parties, and imposes a duty to repair wrongful losses brought about by one party's misconduct, in order to restore the parties' pre-existing positions. In our course, we encountered many examples where tort law functions in a way that creates, entrenches, and/or ignores inequalities. Drawing on specific examples from our course materials, discuss how corrective justice theory is or is not realized in the practice of the law of torts, and the implications of this. (25 marks)

****END OF EXAM****