

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

FINAL EXAMINATION – APRIL 2020

LAW 241.003
Torts

Prof. Blom

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 to class notes, casebooks and other class readings. 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.

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

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MARKS

- 40 1. Scott and Zelda live in one of the more expensive neighbourhoods in Vancouver, where the houses sit on big lots and the trees in the front and rear gardens are old and large. They have an ongoing dispute with their next-door neighbours, Ernest and Hadley, because of the behaviour of the Ernest and Hadley's twelve-year-old son, Pablo. He is very bright but in Scott and Zelda's opinion he is overly fond of setting fires.

Every time that the neighbours put out paper in bins in the back lane to be picked up by the city's recycling service, Pablo goes out before the recycling truck gets there, collects a large amount of paper, and stacks it in his family's back garden. Later on, he sets fire to it. He always does this at night because he likes to record each fire on video, which he posts on the internet. He regards his fires, and the videos of them, as art works. He sometimes invites friends to come and watch. Ernest and Hadley sometimes watch as well, but usually are in bed by the time Pablo lights the fire.

Scott and Zelda are very worried that Pablo's fires are getting ever more elaborate, and therefore larger. Aside from the smell of smoke drifting through the neighbourhood, they fear that sparks and bits of paper will carry the fire onto the neighbours' properties, including theirs. They have consulted City Hall and are told that the fires appear to contravene city bylaws about open fires. However, city officials are not prepared to intervene, since nobody else has complained and there appears to be no risk to property.

Scott and Zelda have repeatedly begged Ernest and Hadley to stop their son from setting these fires, but Ernest and Hadley say that the fires do no harm — which, fortunately, at the time of these discussions they had not done. But Ernest and Hadley were privately concerned about their son's fondness for fires and, not long after Scott and Zelda's most recent complaint to them, they consulted a Dr. Toklas, a private child psychiatrist whom they know through mutual friends. They described to her how and where Pablo sets his fires. Dr. Toklas assures them that Pablo is "making profound creative experiences for himself", which is a good thing and should not be discouraged. Ernest and Hadley, reassured, take her advice.

At about 2:00 a.m. on a Wednesday last fall, Pablo lit his biggest and (according to him) best fire yet. He moved the location from the spot he'd used until then to a new place close to a large tree, whose brightly coloured autumn leaves he thought would look wonderful in the flickering light of the flames. While he was making his video of the spectacle, the flames leapt up in a gust of wind, setting fire to the tree. Pablo kept recording, loving the effect. Four friends of Pablo's, whom he'd invited over to watch, also loudly cheered at what they were seeing. Unfortunately, the fire raged out of control and burning leaves from the tree blew onto Scott and Zelda's property, setting fire to their garage. Before the fire department was called and had extinguished the fire, the garage and the two very expensive cars in it were total losses.

MARKS

(Question 1, continued)

Ernest and Hadley were chagrined at this turn of events, especially after they learn that Dr. Toklas, whose advice on child-rearing they were following, was in fact unlicensed to practise as a psychiatrist, although she did have a medical degree.

Discuss the potential tort claims that arise on these facts. (Please do not discuss the *Parental Liability Act*. The parents' liability under that act only extends to damage to the plaintiffs' property that is intentionally done by the child, which is not this case.)

- 30 2. One day, when driving from a side street onto Burrard Street in downtown Vancouver, Fiona Ferrari struck a woman on a bicycle, Patricia Pedal, whom she hadn't noticed coming towards her down Burrard in the bicycle lane. Patricia was also at fault because she was looking at some people across the street instead of paying attention to what was happening ahead of her. Patricia was knocked from the bicycle and was flung some distance along the ground, where she initially lay unconscious.

The accident was witnessed by Mike Mello, who was cycling in the same bicycle lane along Burrard straight towards where the collision took place. He was well out of range of harm himself but close enough to see every detail of the accident. Mike was certain that Patricia must have been killed by the force of the collision. Happily, this was not so, but Mike suffered for months afterwards from nightmares and anxiety, repeatedly replaying the scene in his mind. He had never had such difficulties before.

Mike was a bicycle delivery person for two companies that did deliveries for restaurants and so were very busy during the pandemic. For an extended time, Mike could not bring himself to get back on his bicycle and so he lost a considerable amount of income.

After the accident, an ambulance arrived from a nearby hospital and took Patricia to emergency. Patricia had already regained consciousness when they attended to her and, in the end, Patricia sustained only a simple broken arm. It was properly treated and healed well but, unfortunately, Patricia was infected with Covid-19 while in the emergency ward. It cannot be established exactly how she got infected, but a few minutes before Patricia arrived, supervisors had criticized certain members of staff for failing to thoroughly sanitize surfaces in the emergency room.

Patricia suffered badly from the illness, and was prevented by it from working for six weeks — she was still working during the pandemic, and could have done so

MARKS

(Question 2, continued)

even while her broken arm healed — but she eventually made a full recovery from the Covid-19 as well as the broken arm.

Discuss the tort claims that could arise from this situation.

- 30 3. Last year, the Upper Lakes Water District (the District), an agency of the Province of British Columbia, invited bids on a contract to construct a major new water distribution system in an agricultural area in the interior of the province where the weather is dry and irrigation is therefore essential for most types of agriculture. The push for this project came from BioMega Inc, an agri-business multinational, which saw huge potential for high-value crops to be grown in that area once irrigation could be introduced. It had already acquired property in the area. BioMega had constructed a similar project in Chile with great success. The land to be serviced was currently scrubland, some of which was used for livestock grazing.

The project would be paid for over 25 years by tax assessments allocated among the users of the water system. Initially the only user would be BioMega but the users were expected, before long, to include additional businesses that would be attracted to the area by the newly available irrigation.

The District awarded the contract to build the water system to Crack Construction Ltd. (Crack). Although Crack was the lowest bidder on the project, the consulting engineers retained by the District had strongly recommended against using Crack and in favour of awarding the work to the next lowest bidder. (The District had the right to choose a bidder other than the lowest one.) The engineers said that Crack had a consistent record of cutting corners and finishing projects late. However, the District's officials decided not to follow the engineers' advice, partly because Crack was based in British Columbia whereas the three next lowest bidders were all from Alberta, and the officials preferred to see a local business get the work.

The project, which included water pipelines, pumping installations, and other infrastructure, was to be completed in 18 months. A representative of BioMega approached Crack's president, Sam Shovel, about six months into the project and asked, "Are you really going to finish this project a year from now? If you are, we'll have to get going on building our own installations to start growing crops as soon as possible." Shovel replied, "You bet we are. There's no reason to expect delays." That statement was true when Shovel made it.

A few days later, Crack employees involved in the construction encountered soil conditions that meant excavation would be much more difficult than expected

MARKS

(Question 3, continued)

over a considerable portion of the system. The contract with the District put the risk of such conditions on the contractor.

Shovel, who was in effect the controlling mind of Crack, decided he could not commit more labour and equipment to the project. That meant that, given the soil problem, progress would very probably be a lot slower than planned. It was true that his company would be liable under its contract with the District if the work was finished late, but Shovel's attitude was that he had very smart lawyers who had always got him out of trouble before.

Meanwhile, on the faith of Shovel's assurance, BioMega began work on its own installations. If it had known that completion of the work might be substantially delayed, it would have held off on that construction for a year in order to be on time for the next crop cycle. Shovel was aware of BioMega's activities on its (BioMega's) property but took no step to warn BioMega that Crack was likely to be late in completing the water project on which the new business would depend.

Crack's work slowed down. Demands by the District that Crack bring in more resources were ignored, and the District was unwilling to litigate the matter. In the end, Crack finished the water distribution system a year late. BioMega's new infrastructure was completed as planned but could not be used without water, so it sat idle for that year. BioMega estimates that, if it had delayed its own construction by a year, it would have saved \$500,000.

Discuss BioMega's tort rights, if any, in respect of the delays.

END OF EXAMINATION