

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

FINAL EXAMINATION – APRIL 2020

LAW 241.004
Torts

Professor Efrat Arbel

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.

*****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.

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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.

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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)**

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EXAM WRITING TIPS:

- Full citation of cases is not necessary. You may refer to cases in short form (e.g.: “Cooper”)
 - This examination is designed to test material covered in this course only. Do not concern yourself with sources not covered in the course materials, class discussions, or lectures
 - 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
 - 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
 - A suggested working time for each question is indicated on the exam paper. Be careful to budget your time
 - **THIS EXAMINATION HAS THREE QUESTIONS. YOU MUST ANSWER ALL THREE QUESTIONS.**
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TIPS FOR WRITING THE ESSAY QUESTION:

- Be sure to focus only on the examinable material assigned in Term 2. Do not draw on any materials outside of your Torts course, material assigned in Term 1, or material that was assigned in previous years. I will grade down for this
- Course materials include: required and optional readings; in-class discussions and exercises; guest lectures; and, any other materials covered in the course
- You must answer the question
- You must provide specific examples from the course materials to support your arguments – in the form of case authorities, articles, etc.
- You may choose to focus on one or two specific topics; you are not expected to canvass the entirety of the course
- Strong responses will identify one or two discrete topics as this will allow for more detailed, meaningful analysis and discussion of the essay question
- Strong responses will identify a thesis statement at the outset, develop arguments in support of that thesis, and drive towards a conclusion
- Please budget your time carefully - you should make sure to dedicate the full one hour for the essay question
- You may answer the exam questions in whatever order you choose - if you want to start with the essay question, you can.

FACTS:

Questions #1 and #2 are based on the fact pattern below. You must answer both questions.

You are a lawyer working in Vancouver, B.C. 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 Vinyl Records to her complaints. Jaime would like to bring an action in negligence against Vinyl Records, based on its failure to properly 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 tired and unwell, had difficulty concentrating, 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 upset.

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.

QUESTION #1: 35 marks (recommended time: 60 minutes):

Based on the above fact pattern, *does Vinyl Records owe Jamie a Duty of Care?*

Please explain, using specific examples from the course materials.

QUESTION #2: 35 marks (recommended time: 60 minutes):

Based on the above fact pattern, assume that Vinyl Records owed Jamie a duty of care (this assumption should not influence your answer in #1). Assume further that Vinyl record breached the standard of care by not conducting a thorough and fair investigation. Based on these assumptions, *can causation and remoteness be established?*

Please explain, using specific examples from the course materials. Please conclude whether you think liability would be owing. If you think damages would be owing, state so. Do not assess the quantum of damages.

QUESTION #3: 30 marks (recommended time: 60 minutes):

The primary goal of tort law is to restore the plaintiff to their original position, through the award of damages. *In your opinion, does tort law effectively achieve this goal?*

Please support your answer using specific examples from the examinable material in term two only.

****END OF EXAM****