

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

FINAL EXAMINATION – APRIL 20, 2020

LAW 435C.001
Topics in Tort Law: Personal Injury Law

Professors Marc A. Kazimirski / Sandra L. Kovacs

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 100

WRITING TIME ALLOWED: 3 HOURS 20 MINUTES
PREPARATION TIME ALLOWED: 10 MINUTES

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This is an open book examination, meaning that you can and should refer to class notes, cases, statutes, and other class readings.

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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SECTION 1 - HYPOTHETICAL 80 Marks

QUESTIONS IN SECTION 1 RELATE TO THE FOLLOWING HYPOTHETICAL FACT PATTERN.

Joe Exotic lives on a rural property in Abbotsford, British Columbia, together with 213 tigers, 69 lions, 11 bears, and 6 alligators. He is the owner-operator of the “G.W. Zoo”.

Joe dreams of being a politician, a reality TV star, and a country music star. He once ran as an independent in the local municipal election in Abbotsford, but lost, although not by much. Joe is adorned in tattoos. He has an eyebrow ring and multiple earrings. He sports a platinum blonde mullet. He likes to wear Wrangler Jeans and cowboy boots, with flashy tiger-print western dress shirts. He swears (a lot). He has a filthy temper and a massive ego. Joe likes to upload rants and cheesy music videos to YouTube; surprisingly, he gets a lot of views. His YouTube channel has afforded him some modest income generated by advertisements.

Joe has two husbands: John “Three Tooth” Finlay and Travis Maldonado. Both reside with him on the property in Abbotsford and work at the Zoo.

Jeff Lowe is Joe’s co-investor in the G.W. Zoo. He loves riding his Harley Davidson on the open road, as fast as he can go. He loves the thrill of the con and taking risks, so he has never bought insurance for the Harley. He is married to Lauren, 25 years his junior. While she does clean and cook, she does not work outside the home and, like Jeff, she spends a lot of their money on lavish purchases.

Bhagavan "Doc" Antle is a competitor zookeeper. He has a large animal park in Vernon, British Columbia, where he keeps and breeds large cats. Doc is the spiritual leader of his cult-like group of devotees who believe he is a messiah. He exploits his vulnerable devotees into sexual relationships, including Moksha, who has lived with him at his property since she was 16 years old. She is now 26. She provides 24/7 labour at Doc Antle’s zoo for only \$100 per week. She suffers from longstanding depression and anxiety.

Carole Baskin is an animal rights activist and an environmentalist. She owns and operates a not-for-profit refuge, Big Cat Rescue, in Nelson, British Columbia. She likes to wear flowers in her hair and she, too, wears a lot of leopard print clothing. Every morning at 9:00 a.m., Carole rides her bicycle up and down the quiet country lane outside her refuge in Nelson. Carole does not drive or own a car, in keeping with her environmental activism.

Carole is Joe’s arch nemesis. He hates her with a passion. He has threatened to harm her in several of his You Tube videos. He is well aware of her morning routine of riding up and down her laneway on her bicycle.

Collision A

On April 20, 2017, Joe’s husband Travis is on the Coquihalla Highway driving the G.W. Zoo’s tractor-trailer combination. He is transporting baby tigers to Kelowna for a petting event at the Orchard Park Mall.

Jeff and Lauren Lowe are following behind on Jeff’s Harley Davidson motorcycle. Lauren is wearing only her bikini. They are going to Kelowna for pleasure; Joe has arranged to rent a houseboat and he plans to host a party on it. On the ascent to the highway summit, Travis’ tractor-

trailer combination is in the far right lane, travelling slowly because of its heavy load. Jeff decides to overtake the tractor-trailer. He signals and moves into the middle lane. He picks up speed quickly, to an estimated 155 km/h. The speed limit is 110 km/h.

Travis sees another Super B tractor-trailer unit ahead of him, so he decides to overtake it, too. He changes lanes suddenly, without signaling or looking in his side view mirrors. He collides with Jeff and Lauren, who are already alongside the trailer by two car-lengths.

On impact, Jeff and Lauren are thrown from the motorcycle. Jeff walks away seemingly without a scratch. Tragically, Lauren suffers fatal injuries.

Moksha, driving a Hummer owned by Doc Antle, is on her way back to Vernon from a zoological conference in Vancouver. She is travelling slightly below the speed limit a few car lengths behind Jeff Lowe's motorcycle at the moment of its impact with Travis' tractor-trailer unit. The Hummer is equipped with a dash cam.

Instinctually, instead of slamming on her brakes, Moksha steers the Hummer aggressively to the right and crashes into the concrete curb stanchions. Her air bags deploy. She suffers Whiplash Associated Disorder Type II (WAD II) and an aggravation of her depression and anxiety. She starts attending active rehabilitation and physiotherapy as recommended by her GP, but she quits after a few sessions because her depression gets the best of her motivation. She refuses to take anti-depressants. Her neck pain does not resolve, and at two years post-accident she is diagnosed with Somatic Symptom Disorder with Predominant Pain (Chronic Pain), Major Depressive Disorder, and Post-Traumatic Stress Disorder. She cannot work. No longer of use to him, Doc demands that Moksha leave his Zoo compound.

Collision B

At 9:00 a.m. on a sunny spring morning on April 2, 2019, Carole is riding her bicycle on the laneway outside her refuge in Nelson. She is travelling at a safe speed, but she is not wearing her helmet and her bicycle's tires are not fully inflated.

Joe, driving his convertible Chevy Camaro, platinum mullet flowing, is driving down the laneway. He is feeling depressed because, tragically and suddenly, Travis passed away and John left him for a woman. While he has recently found a new partner, Dillon Passage, Joe is angry at the world. He wants to kill Carole. He has travelled to Nelson to carry out his plan.

Joe roars up behind Carole and revs his engine to scare her. At the very same moment, Carole's rear tire travels over a sharp rock and explodes. She loses control of the bicycle and crashes.

Joe's heart grows three-times larger in that moment; he slams on his brakes to avoid running over Carole. There is no physical contact between Carole or her bicycle and Joe's car.

Joe drives Carole to a local walk-in clinic. He holds Carole's hand and sings to her while they drive. The walk-in doctor diagnoses Carole with a mild concussion, soft tissue injuries, and road rash. She is back to work the next day, but with residual complaints of pain and headaches making her less efficient with her work. She hires a part-time employee to help her manage the cats for a few weeks. With some physiotherapy, her symptoms completely resolve within three months.

Collision C

On April 3, 2019, Joe Exotic is leaving Nelson. He is feeling remorseful about Carole's accident. He decides he is going to sell the G.W. Zoo to focus on his other career goals. He is driving southbound on Ward Street in Nelson, his platinum blonde locks flowing in the soft breeze as he listens to his own music. He picks up his phone to text Jeff to tell him of his decision. He is approaching the controlled intersection of Baker Street. The intersection is equipped with traffic cameras. Just as Joe sends his text, about two car lengths before the intersection, the traffic light turns amber. Joe doesn't see the light change and he proceeds straight through the intersection at 40 km/h. The light is a stale amber as he crosses through the intersection.

Tim Stark, a visiting American from Washington State, is driving his Jeep northbound on Ward Street. Tim has only \$50,000 in liability insurance with Geico and no assets. He's had a few too many beers at the local Nelson Bar and Grill. Tim is not used to Canadian beers, which have a stronger alcohol content than Budweiser. He wants to turn left to go westbound on Baker Street.

As Tim approaches at roughly 60 mph in his American Jeep, the traffic light changes to amber. He sees Joe approaching in the opposite direction, but he thinks that Joe is going to stop for the changing light, since he doesn't appear to be going very fast. Tim does not yield or stop, he guns it to make his left-hand turn.

Tim's Jeep collides with Joe's Camaro. Air bags are deployed; the airbags in each vehicle are equipped with airbag control modules (ACMs) that record data in the event of a crash, including crash severity, and pre-crash speed, brake, throttle, RPM, and seatbelt status. A bystander calls 9-1-1. The paramedics arrive within 3 minutes. Joe is still unconscious when they take him to hospital. The Nelson RCMP remain on scene and have closed the intersection to allow them to take measurements and photographs before the vehicles are towed away.

Tragically, Joe suffers a severe head injury and multiple orthopaedic injuries. Joe's partner, Dillon, is left to provide 24/7 care to Joe. Joe's only income is CPP Disability benefits and ICBC Part 7 TTD benefits. He has given up on his career dreams. Jeff Lowe has assumed full responsibility for the G.W. Zoo, which is barely breaking even now (because of Jeff's lingering psychological issues from his own accident), whereas when Joe ran it, it was turning a profit of \$100,000 annually.

You should assume all court actions are filed in British Columbia and that the actions are subject to the BCSC Civil Rules of Court and BC legislation. If you need to make any additional factual assumptions in answering a question, clearly state what those assumptions are.

Value/Time

10 Marks

QUESTION 1

(18 minutes)

You act for Moksha in her claim against all available defendants for her personal injuries arising from Collision A. Draft your opening statement.

4 Marks

QUESTION 2

(7 minutes)

Do Travis and the G.W. Zoo have a complete defence available as against Moksha's claim? If so, what is the procedure for advancing that defence, and what factors are considered?

2 Marks

QUESTION 3

(3.5 minutes)

Jeff is devastated by the loss of his wife, Lauren. Does he, as the surviving spouse, have a cause of action against Travis for her wrongful death and, if so, is the claim economically viable?

4 Marks

QUESTION 4

(7 minutes)

Six years before Collision A, Moksha was already quietly going to a psychologist in Vernon, Dr. Icara Lott, to address her depression and anxiety arising from the sexually exploitative relationship she was trapped in with Doc Antle. You are Moksha's lawyer in her motor vehicle accident injury claim arising from Collision A. The defendant has filed and served a Notice of Application seeking an order for production of Moksha's records directly from Dr. Lott, dating back to 2011. The basis for the application is sparse: the defendant says the records are simply "relevant". How do you respond to that Notice of Application?

4 Marks

QUESTION 5

(7 minutes)

You are Moksha's lawyer. You serve a Notice to Mediate, but only Travis and Joe, on behalf of the G.W. Zoo, show up. Jeff Lowe does not show up. Travis and the G.W. Zoo, defended by ICBC, are interested in settlement.

What remedy do you have against Jeff Lowe for not attending mediation?

What steps can you take to settle with Travis and the G.W. Zoo, while continuing with the action against Jeff Lowe as a remaining defendant?

6 Marks

QUESTION 6

(11 minutes)

You are the trial judge in Moksha's civil action for Collision A. Liability is not in issue. Draft a brief trial judgment addressing the defendants' pled partial defences in response to her claim for damages only.

10 Marks

QUESTION 7

(18 minutes)

Despite walking away from the accident without any physical injuries, Jeff suffered emotional trauma as a result of the accident. He experiences nightmares on a near nightly basis, mostly concerned with motor vehicle crashes and the death of loved ones. He is grief stricken over the death of Lauren. Jeff experiences anxiety with even the thought of riding a motorcycle. He has not ridden a motorcycle since the accident. Whereas he was previously a confident, some might say arrogant, man, after the

accident he experiences a profound sense of self-doubt. His motivation to work on businesses, both legal and illegal, is absent since the accident.

A year after the accident, with his life in disarray, Jeff hires a lawyer and sues Travis and G.W. Zoo for damages. The lawyer defending Travis and the G.W. Zoo retains a psychiatrist, Dr. Quack, to perform an independent medical examination, which Jeff duly attends. Dr. Quack has not engaged in any clinical practice for ten years: he works consistently for ICBC only performing forensic psychiatric medical examinations. Dr. Quack's report is served 30 days before trial, and reads as follows:

"Jeff attended for his independent medical examination dressed casually. He wore a bandana and baseball cap throughout the interview. When asked to remove the baseball cap, Jeff refused, claiming insecurity about his receding hairline. Jeff boasted about being an extremely wealthy man. He claimed to be operating a successful wildlife zoo.

I diagnose Jeff with Antisocial Personality Disorder (APD). This is a condition that pre-existed the accident in question. APD is a diagnosis recognized in the medical literature and is defined by a pervasive and persistent disregard for morals, social norms, and the rights and feelings of others.

Based on my diagnosis of APD, I found that Jeff is not a credible person. I strongly believe in the old saying, "never trust a person who wears a hat indoors". I have therefore not relied upon the facts Jeff reported to me during my interview. I have also not relied on any clinical records containing Jeff's complaints to his treating physicians as those would also be unreliable. I have placed considerable reliance on the Tiger King documentary series in which Jeff plays a prominent role.

I also diagnose Criminal Propensity Disorder (CPD). This is also a condition that would have pre-existed the accident. While CPD is not a diagnosis recognized in the medical literature, I recently published an article in support of recognizing CPD as an official psychiatric diagnosis. The article was published in Entertainment Weekly, along with my review of the documentary series, Tiger King.

In short, Jeff's legal claim for damages is another in a long line of cons and scams that Jeff has perpetrated over the course of his life. Were I the judge or jury in this case, I would dismiss his claim."

You represent Jeff. How would you deal with Dr. Quack's report before trial and at trial?

2 Marks

(3.5 Minutes)

QUESTION 8

Does Carole qualify for Part 7 treatment benefits?

4 Marks

QUESTION 9

(7 minutes)

Carole Baskin wants to retain you to pursue a claim for her injuries. What advice do you give her about the value of her claim and next steps, if any?

4 Marks

QUESTION 10

(7 minutes)

If Carole sues Joe, can she prove his actions caused her injuries?

5 Marks

QUESTION 11

(9 minutes)

You are Joe's lawyer in his action against Tim Stark. You have served a jury notice. What evidence do you need to run a compelling jury trial on liability and damages?

5 Marks

QUESTION 12

(9 Minutes)

Will Joe be able to make a claim for lost future earnings as a zoo keeper, politician, country music star, and/or reality TV star?

2 Marks

QUESTION 13

(3.5 minutes)

You are Joe's lawyer. Since Tim Stark has only \$50,000 in liability insurance with Geico, is there any other party potentially at fault for the accident that you can name as a defendant? Explain.

4 Marks

QUESTION 14

(7 minutes)

You are Joe's lawyer. If there is no viable claim against anyone but Tim Stark, what protection coverage is available to Joe since Tim is underinsured for Joe's losses? How do you access that coverage and how does this affect Joe's recovery?

10 Marks

QUESTION 15

(18 minutes)

You are Joe's lawyer at a judge-alone damages-only trial. Joe is claiming that but for his accident injuries, he would have become (a) Premier of British Columbia; (b) a successful country music rock star; and/or (c) a reality TV star. Draft your closing submission to the judge.

2 Marks

QUESTION 16

(3.5 minutes)

Can Dillon Passage be compensated for the care he provides to Joe? If so, how?

2 Marks

QUESTION 17

(3.5 minutes)

Moksha hires you to sue Doc Antle for her injuries arising from his sexual exploitation of her. What advice do you give her about the value of her claim for non-pecuniary damages?

SECTION 2 – ESSAY 20 Marks

10 Marks Each (18 minutes each)

Answer only TWO of the three following policy questions:

- A.** Is the “Trilogy Cap” on non-pecuniary damages fair?

- B.** Do you agree or disagree with the Attorney-General’s unilateral efforts to limit the number of expert reports and recoverable disbursements? How do these proposed limits impact access to justice and the burden of proof?

- C.** If a “No Fault” system of motor vehicle insurance is passed by our provincial legislature, will it fairly compensate British Columbians who are injured in motor vehicle collisions through no fault of their own?

END OF EXAMINATION