

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

FINAL EXAMINATION – APRIL 2020

LAW 469.003
Civil Procedure

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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, B.C. Annual Practice (Supreme Court Civil Rules) (the “White Book”) 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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THIS EXAMINATION CONSISTS OF 13 QUESTIONS

Former TV actress Meghan Sparkle and her husband Harry Prince are famous celebrities who have escaped the whirlwind of London to come and reside in Victoria, B.C. Together with their son Archie, they begin to rent a 10 bedroom heritage-designated mansion in Victoria's exclusive "Snob Lane" neighbourhood. The mansion is owned by Cletus and Becky-Sue Merican, a couple from the United States. Cletus and Becky-Sue hold their ownership interest in the mansion in a shell company (0345532 BC Ltd.) for tax and privacy reasons. Cletus and Becky-Sue LOVE their Canadian "cabin", as they call it, but ever since a neighbour spit on Cletus for wearing a MAGA hat at the local grocery store, Becky-Sue forbade the couple from visiting Canada, and instead have had great success renting the furnished mansion out to rich tourists. Both Cletus and Becky-Sue are listed as landlords in the standard lease signed by Meghan and Harry as tenants.

After signing the lease, Meghan and Harry move into the mansion, along with Archie, a host of personal assistants, nannies, a large collection of priceless antiques and tiaras, Harry's collection of military medals, and binders full of Meghan's original scripts from the TV show "Blazers". After Becky-Sue warns Meghan that she might get spit on by the neighbours, Meghan spends most of her days with Archie holed up in the mansion with the blinds drawn, watching old re-runs of "Blazers" and calling Hollywood agents. Meghan is irritated that the lights keep flickering in the house, and lightbulbs seem to burn out daily. Meghan has bought cases of candles from Gwyneth Faltrow's "Poop" website to keep the lights on, and her aura centred.

One cold, dark January evening, all of the bedroom lights burn out at once. Meghan demands that Harry light some candles and go down and inspect the fuse box. Angry for being talked to like a servant, Harry promptly flees the mansion and catches the first float plane to Lesotho.

Later that night, Meghan awakens to discover plumes of smoke pouring into the master bedroom. She crawls on her hands and knees into the nursery, grabs Archie and throws him out the window into the waiting arms of Meghan's trusted assistant, Teena Bobeena. Meghan escapes with minor burns, but the mansion is a complete loss, and everything inside it has been destroyed. Cletus and Becky-Sue are livid. They do not have any insurance. How DARE Meghan burn down their "cabin" with her dozens of smelly candles! A notice of civil claim is filed against Meghan and Harry to hold them liable and to recover the losses.

1. Meghan and Harry are not happy that they have been sued. If anyone is to blame for this situation, it's the crummy Americans and their poorly wired mansion! Prepare a draft of the main document that Harry and Meghan should file to address their claims. Be sure to cite the rule(s) on which you are relying, identify all parties against whom the claim(s) are brought, include the complete style of cause, and confirm the time limit for Harry and Meghan to file this document.

(12 marks)

2. Discuss and describe in detail the difference between a petition and a notice of civil claim, including when you would and not use each, as well as the advantages and disadvantages of each.

(6 marks)

3. Meghan has produced documents to her lawyer. Describe whether Meghan's lawyer would include the following documents in her client's list of documents, under which part she would list the document, and state why:
 - a. Architectural drawings of the mansion;
 - b. A text from actor Gabriel Macht to Meghan confirming that all of the "Blazers" scripts in Meghan's collection are only photocopies of the originals;
 - c. Draft #3 of the lease between the landlord(s) and the tenant(s) of the mansion;
 - d. An invoice for electrical repairs performed in December and paid by the landlords;
 - e. An email from Meghan's lawyer to Meghan providing an opinion about the problems with Cletus and Becky-Sue's position in the lawsuit.

(10 marks)

4. Explain three differences between applications in masters chambers versus a trial. Explain any applicable rules and/or practice directions.

(6 marks)

5. You act for the landlords and you believe that Meghan has refused to produce certain documents. When you call Meghan's lawyer to discuss it, she claims that the documents you want are not relevant. You have obtained instructions to apply to court for the documents.
- a. What step(s) must you take first before proceeding to court? Explain the process and cite the applicable rule(s) leading up to the hearing to order production of the documents.
 - b. Who will hear the court application and what is the authority for your answer?
 - c. In preparing the affidavit in support of the application, you want your client to refer to a statement made by somebody else – assuming the statement is relevant, can you use it in the application? Why or why not?
 - d. You are successful in court and Meghan is ordered to produce documents. Absent an express award, who is entitled to costs of the application and why? If the court invited you to make submissions on costs, would you prefer to seek costs in the cause, or costs in any event of the cause? Why? Absent an order, when are costs payable?

(10 marks)

6. Two weeks after the parties exchange lists of documents, Becky-Sue gives an interview with the Province Newspaper in which she discusses the content of documents produced by Meghan, and provides a few of Meghan's records to the reporter, which records are then published on the front page. In the interview, Becky-Sue further accuses Meghan of building a covert meth lab in the basement, which Becky-Sue claims may have started the fire.
- a. Was it wrong for Becky-Sue to have given Meghan's records to the reporter? Why or why not? Explain your answer.
 - b. Identify a step that Meghan's lawyer can take to stop Becky-Sue from defaming Meghan. Identify the test that would apply and the authority for the test.
 - c. How can this step be accomplished most expeditiously? Cite the rule(s) and the process you would employ to get faster relief.
 - d. Who would Meghan's lawyers seek orders against?

- e. What orders would they seek?

(12 marks)

7. Meghan has an interest in moving the litigation forward and wants to consider options other than a full trial. Discuss and describe two ways Meghan could have the merits of the case adjudicated in an expeditious way and what process her lawyer would follow for each.

(6 marks)

8. You eventually schedule a full trial to adjudicate the dispute between the landlords and the tenants. However, Bill Sparky, the local fire chief who investigated the property after the fire, has moved to India and has indicated that he will be unavailable for trial. Discuss and describe two ways that you could present Chief Sparky's evidence at trial without him physically attending the trial.

(6 marks)

9. Meghan and Harry's lawyers are preparing for trial. Should they submit an expert report in this case? If so, what sort of expert(s) should they retain? What instructions should they give their expert(s) with respect to their duties and how to prepare their report(s)? Describe, in terms of process and timing, what needs to be done in order for the expert(s)' evidence to be presented in court.

(8 marks)

10. Teena Bobeena, now one of many 'former' personal assistants to Meghan, calls Cletus and reports that she has information about what caused the fire. Teena tells Cletus that she was copied on an e-mail from Meghan to her sister-in-law Catherine Middleditch, in which Meghan stated that she had been tinkering with the wiring in the kitchen to create more of a "spotlight" effect for Meghan to stand under. The e-mail is not listed in Meghan's list of documents and Teena no longer has a copy of the e-mail. Meghan refuses to hand it over, and denies that such an email exists. Prepare an affidavit you would rely on in court to support production of this e-mail from Meghan or Catherine.

(8 marks)

11. Counsel for Cletus receives a Notice to Admit from one of the other parties. Describe in detail all of the issues Cletus's lawyer must deal with in responding to the Notice to Admit.

(3 marks)

12. The parties are refusing to be reasonable when it comes to settlement discussions. Identify and discuss in detail three tools you could use to encourage settlement.

(9 marks)

13. Identify and discuss two significant ethical/professional responsibility issues that were raised during this course, and may be relevant to the fact pattern and questions set out above.

(4 marks)

END OF EXAMINATION