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**THIS EXAMINATION CONSISTS OF THREE (3) PAGES (INCLUDING THIS PAGE)
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**THE UNIVERSITY OF BRITISH COLUMBIA
PETER A ALLARD SCHOOL OF LAW**

**FALL EXAMINATION
DECEMBER 2019**

**LAW 241.002 Torts
Professor Hastie**

TOTAL MARKS: 100

YOU HAVE ONE (1) HOUR AND FIFTEEN (15) MINUTES TO COMPLETE THIS EXAM

NOTES:

1. This is a **closed book** examination. Students may have one 8.5 x 11 sheet of paper (double-sided) of notes. No other materials are permitted. Laptops are only permitted for the use of ExamSoft.
2. If you are handwriting, please write legibly on alternate lines and on only one side of each page.
3. Communication devices such as mobile phones, tablets, etc., are not permitted. Candidates are asked to ensure that their phones are turned off and put away.
4. This examination is designed to test material covered in this course only. Do not concern yourself with sources or topics covered in other courses.
5. Read the questions carefully. Be sure you understand what you are being asked to do before you begin your answer.
6. State clearly any facts you assume in answering the questions.
7. Full citation of cases is not necessary. You may refer to cases in short form (e.g., "Cooper").

THIS EXAM CONSISTS OF TWO (2) QUESTIONS

Question 1 (75 marks)

You work for the law firm of Abernathy & Snoot LLP. Your firm represents Kit Mathers, and intends to bring an action against the Starlight Casino in negligence.

You have been asked to analyze the likelihood of establishing a duty of care based on the Starlight's failure to prevent Kit from entering the casino and failure to refuse services on April 22 2019. Your preliminary research has identified that this duty of care has not yet been recognized in Canadian jurisprudence.

In responding to this question, do not assess the standard of care. Assume that the Starlight is directly liable for its employees' conduct. Assume that the economic loss, anxiety and depression are compensable injuries under tort law. Do not assess quantum of damages.

The Starlight Casino [Starlight] is a licensed casino operating in Vancouver, BC. Starlight operates pursuant to the *Casinos Act*, SBC 2000, c1. The Casinos Commission [the Commission], a government body that regulates casinos pursuant to the *Casinos Act*, published a report on problem gambling in 2015, which included the following statements:

[...] for some people the temptation to gamble to excess is very hard or in practice impossible for them to control. While the law should be morally neutral to gambling, it should, as the review body recommended, also provide proper controls and protections for those who may be or already have been damaged financially and emotionally.

[...]

It is impossible to do away with problem gambling; and excessive controls could make matters worse by encouraging the growth of illegal gambling. But it is clear that the law should provide assurance that all parts of the industry will operate to the highest standards of social responsibility, recognizing, that the strength of the controls embodied in the law will need to be kept under careful review and adjusted if necessary.

In this report, the Commission recommended that all casinos “put in place procedures for self-exclusion and take all reasonable steps to refuse service or to otherwise prevent an individual who has entered a self-exclusion agreement from participating in gambling.”

In response to the report and recommendations of the Commission, Starlight decided to set up a self-exclusion list in January 2019. Clients and members of the general public could voluntarily place their name on the list through an online submission form. The self-exclusion list was publicized at Starlight and through its social media channels. In its communications, Starlight stated that individuals who put their name on the list “may be asked if they are on the self-exclusion list, or asked to provide identification if a staff member had reason to suspect that they may be on the self-exclusion list.” Exclusion would take effect for a six (6) month period from the date on which the client placed their name on the list. Starlight created a process and instructions for the removal of any client identified as on the self-exclusion list who attended the premises. All staff were trained on the process and provided with a written copy of the instructions.

Kit Mathers entered his name on the list in February 2019. Kit self-identifies as a problem gambler and has received treatment in the past for this. Kit had previously been a regular client at Starlight, and was well known to the staff. Kit had incurred previous debts as a result of his gambling, which several staff at Starlight knew about.

On April 10, 2019, Kit attended Starlight. On this occasion, he was recognized and denied entry as a client on the self-exclusion list. On April 22, Kit again attended Starlight. He was not denied entry at the door. Kit entered the casino, and proceeded to engage in gambling for 10 hours during that visit. During that time, Kit was attended to by several staff members, including waiters, bar servers, and staff on the casino floor. Security camera footage verifies Kit's length of stay and regular interaction with casino staff.

As a result of Kit's visit to Starlight on April 22 2019, he lost approximately \$10,000. This was the entirety of Kit's savings. His financial losses have also caused him to experience heightened anxiety and depression.

Question 2 (25 marks)

Madison Smith is a casino floor attendant at the Starlight Casino. She served Kit Mathers during his visit on April 22 2019. Ms. Smith was a new employee of Starlight and had not met Kit before April 22 2019.

During examination for discovery, Ms. Smith stated that she inquired with Kit about whether he was on the self-exclusion list on April 22 2019. She stated that he denied being on this list, but that she "wasn't sure if he was telling the truth".

The lawyer in charge this file at your firm plans to advance an argument that Ms. Smith ought to have made further inquiry about whether Kit was on the self-exclusion list. In assessing whether Ms. Smith breached her standard of care, the lawyer plans to argue that an "ordinary, reasonable and prudent woman" in Ms. Smith's position would have made further inquiry, given the cautious, diligent and detail-oriented nature of women, and the "women's intuition" that Ms. Smith displayed in expressing doubt about whether Kit was telling the truth during her initial inquiry.

Advise the lawyer on the merits of their intended argument and explain the risks of their intended approach.

Focus your response on the critical perspectives materials discussed in relation to the ordinary reasonable person. You may also comment on the relevant foundational concepts of tort law, as they relate to this question. Do not complete a doctrinal analysis of the standard of care.

END OF EXAMINATION