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THE UNIVERSITY OF BRITISH COLUMBIA
Peter A. Allard School of Law

MIDTERM EXAMINATION

DECEMBER 2019

LAW 241.003
TORTS

Professor Christie

TOTAL MARKS: 100

TIME ALLOWED:

10 MINUTES TO READ/CONSIDER
1 HOUR TO ANSWER

- NOTE:
1. This is an open book examination. Examinees may have with them any written material they wish. Electronic devices are only to be used with Examsoft.
 2. THIS EXAMINATION CONSISTS OF 1 QUESTION

Question 1

MARKS: 100

Evan and Francis had been classmates at UBC Law a decade ago, colleagues in the same small group. They had not got along that well during their law school careers, practically from the first week of classes in first year. Indeed, over their three years together at UBC Law they often fought, both in classrooms and in the hallways, though it was always verbally and not physically. As chance would have it, they both became personal injury compensation lawyers, though Evan works for a mid-size firm in Surrey while Francis works for a boutique firm in Yaletown.

A few weeks ago, at an alumni event, Evan found himself in the Lew Forum standing with a few other alumnae, some of whom he recognized as lawyers who also practice in this area and one as a judge who he recalls arguing before a year or two earlier. In this group were two other members of the first-year small group of which Evan and Francis had been members.

A few days earlier Evan had overheard a conversation in the halls of the Law Society building, as two benchers involved in disciplinary matters spoke of an upcoming hearing concerning Francis. Evan did not hear much, though the one clear thing he heard was the one person saying to the other: “I wonder if disbarment could come directly from Francis’s contempt of court charge?”

As the conversation in the Lew Forum turned to gossip about lawyer’s activities Evan could not help but add something about Francis, saying to the assembled group “Did you hear about what’s going on with my favourite nemesis? I hear he’ll soon be out of work for unethical behaviour.” This remark was met with gasps of surprise from the assembled group.

It so happens that Francis was at this particular alumni event. Shortly after this discussion in the forum took place, one of those participating, Evangeline, found Francis out in the Hong Kong Student Lounge. She told him of the remark made by Evan, saying she was worried about Francis and asking if there was anything she could do to help. Francis was both amused and infuriated at the same time. “This is silly”, he said to her, “I was arrested at a TMX pipeline protest a few weeks ago, ignoring a court order that had been issued earlier – nothing will come from this, though the judge in that matter is pretty steamed at me for ignoring his earlier order and took this to the Law Society. I can’t believe Evan is going around spreading lies about me still, after all these years!”

Francis just then saw that Evan had picked up his coat and was on his way out of the building. If he hurried he could just catch him at the door, his sudden plan being to give him a piece of his mind. So, he hastily excused himself from Evangeline and began running over to the East Mall exit to cut off Evan. Evan did not see Francis approach as his back was turned, but at the last moment he heard him coming up from behind. He turned quickly, saw it was Francis, and swung his right arm wildly in his direction. While he ended up missing Francis, the wild swing caught Francis off-guard and Francis pulled back so quickly that he fell on Allard’s beautiful marbled floor, fracturing his hip and his head bouncing off the floor on impact.

Barely twenty minutes later Francis was being wheeled into the emergency room at UBC Hospital. Shortly after arrival the initial assessment of his condition indicated the likelihood of internal bleeding in the area between his skull and his brain (subdural hematoma). Further exploratory assessment (that is, entering into the skull) was required, and if that indicated serious bleeding then immediate surgical treatment to relieve the pressure was quite likely called for, and so the attending doctor – Dr. Amish – attempted to converse with Francis. However, as the doctor asked his first question Francis turned to her and said “I thought you would have an angel on one shoulder and

devil on the other, but you seem to just have a devil on each side”. The nurse who was assisting Dr. Amish saw her grunt at this remark. A few seconds later Dr. Amish was ordering an operating room be made available and requesting that someone qualified to do this particular assessment and possible procedure be called in immediately.

Francis woke from the surgery about 36 hours later. It was determined in post-surgical assessments that the action of releasing pressure from the internal bleeding had likely been vital in saving his life, but nevertheless the minutes during which the pressure from the bleeding had built up had deprived areas of his brain of necessary oxygen, resulting in permanent brain damage. While it would take time to determine the extent of the damage, it was likely he would struggle from this point on to remain a practicing lawyer.

You are a junior lawyer working for a firm specializing in tort law. You have been asked to treat the account above as constituting facts as they are known to this point, and to write a memo that explores the extent to which intentional torts and the law of defamation intersect with the narrative as it has been presented. Taking the story as told, how would the law of intentional torts and defamation law apply to these ‘facts’? You can also consider the possibility vicarious liability may arise, should this be suggested or indicated in the narrative.

Avoid bringing into the analysis matters tied up in criminal law, contract law and constitutional law, except to the extent we discussed these in relation to the law of torts this term. Indicate where necessary important facts that are missing, and how the missing facts would assist in working out how the law of intentional torts and the law of defamation would apply.

Good luck!

END OF EXAMINATION