

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

DECEMBER EXAMINATION- 2020

LAW 241.002

Torts

Professor Hastie

EXAM PASSWORD: A8bD9e

RESUME CODE: ABB18A

TOTAL MARKS: 100

(8:50 AM PST) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 75 MINUTES**

8:50-9:00 AM Preparation Time (Exam writing not permitted) – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

9:00 AM Exam Writing Time – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

This is an open book examination, meaning that you can refer to all materials used in this course, including:

- Assigned and optional readings,
- Cases and materials discussed in lectures, and
- Your lecture notes.

You **may not** refer to the following materials:

- Materials from other torts sections or previous iterations of this course;
- Materials from other courses;
- Textbooks and other texts not assigned or discussed in this course;
- Dictionaries; and,
- Any other materials available to you that have not been used in this course.

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. Do not email your professor or anyone else about this while the exam is in progress.

ACADEMIC INTEGRITY

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. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

CONFIDENTIALITY REGULATIONS – READ 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 the Student Services 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.

A breach of these regulations may constitute student misconduct, and you may be subject to penalty or discipline under UBC's Academic Misconduct policies.

What Do I Do If:

- **I cannot access the exam questions on Canvas**

If you experience technical difficulties accessing the exam questions on Canvas, email studentservices@allard.ubc.ca and the exam questions will be emailed to you. Please provide your phone number when emailing Student Services.

- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

If you experience technical difficulties with Exemplify at the very beginning or during an exam, you may attempt to solve your problem/reboot your computer **BY YOURSELF**. You are **STRONGLY** encouraged to spend **NO MORE THAN 5 minutes** attempting to do so. You will **NOT BE GIVEN ANY EXTRA TIME** to complete the exam. **If your attempt to solve the problem is unsuccessful**, or if you choose not to make such an attempt, you **MUST** immediately **begin hand-writing** your exam answers with pen on lined paper. **You may NOT type your exam answer in word-processing software.**

When you have finished writing the exam, you must upload the exam answers that you completed in Exemplify (if you are prompted for a Resume Code, it is on the coversheet of the exam questions). Email Bernie Flinn, flinn@allard.ubc.ca, for help with this. Please provide your phone number in the email. Bernie or another IT Support staff person will then help you to upload any answers that you typed in Exemplify.

You must also upload to Canvas your hand-written exam answers into the "Exam Answer File Upload (Word Processor or Hand-written ONLY)" folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file 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**

- **I'm experiencing technical difficulties EXITING and UPLOADING the exam**

If you experience any difficulty exiting and uploading your Exemplify exam answers, you must wait until the allocated time period specified on the coversheet of the exam has ended, then email Bernie Flinn, flinn@allard.ubc.ca, and he or another IT Support staff person will help you to upload your Exemplify exam file. Please provide your phone number in the email.

If you have approved accommodations to type your answers using Word Processing Software, and experience difficulties uploading your exam answer file to Canvas, email your exam answer file to studentservices@ubc.ca.

- **I fall ill in the middle of an exam, or am otherwise interrupted such that I'm unable to continue writing my exam**

Please stop writing, note the time that you stopped, and email studentservices@allard.ubc.ca immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

Question 1 (100 marks)**Facts**

Alex and Sandy are neighbours in Vancouver, BC. They live side-by-side, each in a detached house, in a residential neighbourhood. They used to be friends but had become enemies since joining the same softball league last year. Alex can be very competitive in sports. According to Sandy, it was Alex's competitiveness that created animosity between them during the previous softball season, and which had carried on after it. As a result, Sandy and Alex are no longer friends. In fact, they strongly dislike each other.

Sandy and Alex continue to play in the same recreational softball league, for different teams. Alex is a catcher (the player that crouches behind home plate and receives the ball from the pitcher; the catcher is also responsible for 'tagging out' a player who is running towards the home plate). Sandy's real talent is as a batter (the player who attempts to hit the ball thrown by the pitcher, and make their way around the bases to score a point by crossing home plate).

On May 20, Alex and Sandy's teams played each other in a softball game. When Sandy was up to bat, Sandy hit the ball far into the outfield. Knowing how competitive Alex can be, Sandy raced around the bases to try and score a home run against Alex. While Sandy was running towards the home plate, Alex's teammate threw Alex the softball, and Alex then crouched in front of the home plate to try to tag Sandy and prevent the home run being scored. In an effort to score the home run, Sandy ran straight into Alex at high speed (in violation of a recent rule change that prohibits home base collisions). Alex and Sandy both fell to the ground during the collision, and the softball fell out of Alex's hand.

The umpire called a home run in Sandy's favour. Alex was furious about the umpire's call. As Sandy was walking off the field, Alex called out "that was a dirty play!" Sandy turned around and yelled to Alex, "don't be a sore loser!"

Alex was still fuming about the softball game the next day. Alex decided to "get back at" Sandy.

Two years ago, Sandy had installed a "locate my phone" app and given Alex access in case of an emergency. Sandy had since forgotten all about this. Alex had never accessed Sandy's "locate my phone" app before May 23.

On May 23, Alex checked the app history, and determined that Sandy was working a night shift, arriving home and going to bed around 6:00am each day. Alex started playing music very loudly in the morning, from 8:00am until 12:00pm. A noise by-law prohibiting loud music in Alex and Sandy's neighbourhood operates from 11:00pm until 7:00am daily. Sandy tried to ignore Alex and was aware that Alex was still "sore" about the softball game. Sandy wore earplugs to sleep and this seemed to be fairly effective in response to Alex's loud music.

When Alex realized that the music did not seem to be upsetting Sandy, Alex decided to make the music even louder. Sandy woke up the next day startled from the sudden increase in volume and couldn't get back to sleep. Sandy tried sleeping in the basement, but could still hear the loud music. Sandy later purchased a white noise machine to try and drown out Alex's music but this did not work either. Alex continued playing the loud music every morning for the next week. Despite this, Sandy hoped Alex would "get over it" and did not confront Alex.

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The lack of any response from Sandy only made Alex angrier. Alex decided to “step it up”. Sandy is an avid gardener and has a lovely backyard garden. On June 2, Alex checked the “locate my phone” app to determine that Sandy was not home. The app indicated that Sandy was not at home, so Alex grabbed a long garden hose and, from Alex’s own backyard, threw the hose over the fence into Sandy’s yard. Alex turned the hose on and flooded Sandy’s garden, ruining Sandy’s beautiful flowers.

In fact, Sandy was at home. Sandy heard a commotion in the backyard and stepped out onto the deck to see what was happening. From the deck, Sandy could see the flooded garden. Sandy became very upset and yelled at Alex over the fence. Caught off-guard, Alex said “your phone says you’re not at home” to which Sandy replied, “how do you know that?” Sandy then remembered that Alex had the “locate my phone” app access. Sandy berated Alex for being petty and vindictive. Alex yelled at Sandy about being such a terrible softball player. Sandy and Alex started shouting loudly at each other, and the whole neighbourhood could hear them. The yelling match continued for over 30 minutes.

One of the neighbours called the police to report a noise complaint, and the police showed up at Sandy’s door. Sandy felt embarrassed, and furious at Alex for causing such a scene. Sandy is worried that this kind of conflict will keep happening if Alex isn’t forced to take some personal responsibility. Sandy decides to seek legal advice.

Instructions

You represent Sandy.

Advise Sandy about the likelihood successfully raising a defence of consent should Alex bring a battery claim against Sandy for the conduct during the softball. For this purpose, assume that Alex would be able to establish a *prima facie* claim in battery against Sandy.

Advise Sandy about the tort claims that can be brought against Alex regarding Alex’s conduct after the softball game, and any defences or mitigating factors Alex might raise in response.

Do not discuss damages.

END OF EXAMINATION