

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

FINAL EXAMINATION – DECEMBER 2020

LAW 241.004
Torts

Professor Christie

EXAM PASSWORD: pm8MJn
RESUME CODE: ABB1B6

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 use all materials associated with the course, including class powerpoints, class readings and your own notes.

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.

END OF COVER PAGES

MARKS: 100

1. Charlie has been a resident of the St. Ives Nursing Home in White Rock, British Columbia, since 2016. Over the last few years, he has suffered increasingly from dementia, and last year staff and other residents of the nursing home noticed he had become aggressive, occasionally threatening those around him. This past spring, Lorna, a resident, confided in Kera, one of the nursing staff, that Charlie seemed to commonly mistake her for someone else, and that seemed to lead to him following her around the common areas and occasionally threatening her with physical abuse. Kera took this information seriously and so both increased Charlie's medication (which led to him often being so sedated that he could not leave his bed) and kept a closer eye on him. On one occasion, this past May, Kera found Charlie berating Lorna in the day-kitchen, and so stepped in and separated the two. She noticed that Charlie seemed to think she was a police officer, so she used that false impression to intimidate Charlie, telling him that if he didn't immediately return to his room and stay there until supper time he would be arrested and would find himself in prison for a very long time. Charlie was visibly upset at this, and did indeed return to his room where he stayed not just for the next few hours, but for the next few days.

Florence, another staff nurse at St. Ives, had seen the last part of this exchange, where Kera had seemed to threaten Charlie, and reported the incident as she had seen it to Stewart, the head nurse. Shortly after, an internal investigation was conducted, the result of which was that a note of reprimand was put into Kera's personnel file and Kera's nursing duties were moved out of the west wing of St. Ives, in which Charlie was housed, to the nursing home's east wing. Kera did not object to this, though she worried about what would happen to Lorna now that she was not there to act as buffer between Lorna and Charlie.

A few weeks ago, Kera noticed a job opening at Happy Trails Senior's Centre, a long-term care facility just a few blocks away from where she lives. She was strongly attracted by the increase in seniority the job offered and the fact her commute would effectively disappear. She approached Wallace, the Executive Director of St. Ives, about receiving a letter of recommendation, and he told her he would be happy to put one together.

Last week Kera followed up on the job – she had been certain she would be a top candidate, given the current shortage of qualified nursing staff at senior’s homes, and was surprised she had not heard from Happy Trails. The Executive Director at Happy Trails, Jerome, initially told her over the phone that while they had been impressed by her resume they just “didn’t think she would be a good fit”. Kera pressed him further, however, and he finally reluctantly admitted that the issue with her had come from her letter of reference from St. Ives. In his letter Stewart had mentioned the reprimand in Kera’s file for ‘abusive behaviour’ toward a resident. Kera had not mentioned this incident in her letter of application to Happy Trails, thinking that if anything the way she had protected Lorna was a good example of proactive care. Jerome said, though, that they could not have anyone on their staff who threatens residents, and regardless the position was now filled.

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.

END OF EXAMINATION