

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

FINAL EXAMINATION – APRIL 2021

LAW 241.003
Torts

Prof. Emeritus Blom

EXAM PASSWORD: 69M93k
RESUME CODE: B1149A

TOTAL MARKS: 100

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

(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS**

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 the casebook, any materials provided to you during the course, and any notes prepared by you.

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@allard.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.

MARKS

- 10 1. Assuming that D's driving was negligent and the victim, P, was not negligent, explain when D will be liable for (a) mental injury suffered by P, who was driving a car that D crashed into; (b) mental injury suffered by P who, while crossing the street on foot, was narrowly missed by D's car; and (c) mental injury suffered by P, who witnessed a crash caused by D but was not involved in it.
- 30 2. Sam Spark has been employed for some years as a computing engineer. Until two years ago he worked for Circuit Solutions (Circuit), and since then he has worked for Dynamic Data. He believes he has a knack for business management as well as computer engineering, and recently applied for a junior executive position at Imperator Inc. (Imperator), a major player in the industry, that was ideal for his combination of talents. It would also have put him into a significantly higher salary range. Sam was short-listed for the position, and was asked by the person in charge of recruitment at Imperator to provide within two weeks the names of three potential references that Imperator could interview about him. The references were the last step in the hiring process.

He was very busy both at work and with his active social life, and did not get around to contacting the references to ask for their permission until just before the two week deadline. One of his references was Gail Goodhart, who had been his immediate supervisor at Circuit. She had left Circuit not long after Sam did. She was now working for Fountain Finance Ltd., a credit union. She had not seen Sam since he left Circuit and had not done a previous reference for him. She agreed to have Sam provide her name to Imperator.

Gail was contacted the next day by Imperator and asked about Sam. She had nothing but good things to say about him, with one exception. Towards the end of the interview she was asked if she could recall any problem at all during her time with Sam. She said that, on one occasion, she had got the impression that Sam could be a little impatient with others. She told about an incident where, she said, Sam had been "a little abrupt" in dealing with another person in the organization.

Two days later, Gail suddenly realized she had made a terrible mistake. The negative incident she had told about — which had happened three years earlier and she hadn't thought about for a long time — had involved another employee at Circuit, not Sam. She immediately contacted Imperator and corrected what she had said. Unfortunately, she was told, Imperator had decided to hire another person for the position. She got the impression from the way it was said that her negative story about Sam's impatience had, indeed, played a role in their decision.

She contacted Sam and told him what had happened, and apologized repeatedly for her mistake. He was already quite upset at having lost out on the position. Learning about what Gail had done made him angry at her for making a mistake that "torpedoes my future".

MARKS

(Question 2, continued)

Sam has consulted you about any rights he may have in respect of his not getting the position. He figures that, if Imperator had hired him for the position, he would have been on a new upward career trajectory that would have meant much higher lifetime earnings than what he currently expects to have.

While you have been considering what to advise Sam, he emailed you to let you know that he feels much more cheerful now because he has learned that an elderly relative who recently died has left him a lot of money. But he still wants to “pursue his rights”.

Advise Sam on his rights in tort. (Note: Please ignore the law of defamation.)

- 30 3. You are consulted by a group of residents from a rural area in the interior of the province. They were seriously affected by the recent failure of the containment dam around a tailings pond at mine operated by Tumbling Creek Mine Inc. (the Mine).

The tailings pond contained a large quantity of water containing tailings that were the by-product of mining operations. The tailings included various minerals that could not be legally discharged into Tumbling Creek (a substantial nearby stream after which the mine was named) under provincial environmental regulations. Some of these minerals, if they were deposited in substantial amounts on land, would contaminate the soil as well as crops grown on it.

The breach of the dam around the tailings pond occurred when unusually heavy spring rains, for several days, raised the level of the pond. This put additional pressure on the earthen containment dam, which gave way, releasing most of the water in the pond, which then flowed into Tumbling Creek. (The creek, like all surface water and groundwater in British Columbia, is owned by the province.)

Some of the residents that consult you were owners of properties that were near Tumbling Creek and were flooded when the breach of the tailings pond suddenly raised the already high level of the creek by several metres. Although the level fell again within hours, a lot of damage was done to homes, farm buildings, and the contents of each.

The remaining members of the group were not flooded, but they were unable to irrigate their crops for the first part of the summer. Tumbling Creek, from which they drew the irrigation water under provincial permits, was for a time so polluted from the tailings pond that the water would have harmed the soil for years to come if irrigation had not been stopped. Because the summers in that area are very dry, there was no point in planting the crops if they could not be irrigated. A year’s worth of very valuable crops was therefore not grown.

MARKS

(Question 3, continued)

In the months after the accident, it has come to light that there may have been a number of causes of the failure of the dam. Only a full investigation will clarify which causes played a role, and to what extent.

One potential cause was that the Mine, which was in financial difficulties because of low prices for its principal product, had skimmed on maintenance and inspection of the dam.

A second potential cause was that the firm of engineers who designed the dam when the mine was constructed, some eight years ago, may not have taken enough account of the geological and climatic conditions in the area. If so, the resulting design would have posed an enhanced risk of the kind of failure that occurred.

A third potential cause was that the government of British Columbia, specifically the Ministry of Energy, Mines and Resources, may have failed to require the Mine to take appropriate remedial action in respect of deficiencies in the state of the dam. Those deficiencies were arguably apparent from certain details in the last two annual Dam Safety Inspections that the Mine filed, as it was required to do, with the Ministry under regulations entitled *Health, Safety and Reclamation Code for Mines in British Columbia*. (The text of the regulations is irrelevant.)

Analyze the possible tort claims that members of the residents' group may have, including the evidentiary and legal issues that would have to be addressed for each claim. (Note: Please assume that the immunity granted to municipalities, regional districts, etc., by the *Local Government Act*, s. 744, in relation to the breakdown or malfunction of (*inter alia*) a water or drainage facility or system, a dike, or a road, does not apply to this problem.)

- 30 4. Cassandra recently bought a fancy, high-powered sports car from Matchless Motors. She bought it new. After some weeks, it developed a disconcerting and potentially dangerous problem. Through some electrical fault, the power-assisted steering would unexpectedly lose its power assist, which made the steering much heavier. If it occurred in a high-speed manoeuvre, the sudden change in steering effort could lead to a loss of control. So far, Cassandra has experienced the problem four times in a week. Each time the problem fortunately caused no accident, and it righted itself after a few minutes.

The car was still under warranty and Cassandra brought it to Matchless for correction of the problem. Matchless had not encountered this defect before, so they promised to inspect the electrical system and the steering thoroughly and consult the manufacturer, Schneller, if necessary. Cassandra left the car with Matchless and received a loan car from them.

MARKS

(Question 4, continued)

The next day, Matchless determined that the problem was due to a manufacturing defect, and they confirmed this with Schneller. Some new components were needed to repair the defect, and obtaining and installing them would take a couple of days. The next night, when Cassandra's car was still parked on their lot, a career car thief, Lyfft, broke into the offices at Matchless and used a crowbar to open a locked metal wall box containing the keys for the cars on the premises. Matchless knew that the box was vulnerable to being forced open in this way and had planned for a long time to replace the box with a proper safe, but had not got around to it. Lyfft took the key to Cassandra's car along with several other keys, found her car on the lot first, and drove off in it at high speed.

Lyfft liked putting a newly stolen car through its paces, and took it onto a twisting mountain road that, at this time of night, was largely empty. He was enjoying himself, and was on the wrong side of the road, when another car came around the next corner. Lyfft had to turn the steering wheel sharply to regain his side of the road and, just as he began to do so, the power assist unexpectedly went off and he lost control of the car. It collided with the oncoming car. Both Lyfft and the driver of the oncoming car, Jessica, were seriously injured.

Discuss the tort rights of Lyfft and Jessica against all possibly negligent parties.

END OF EXAMINATION