

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

FINAL EXAMINATION – APRIL 2021

LAW 241.004
TORTS

PROFESSOR ARBEL

EXAM PASSWORD: eg7Ysh
RESUME CODE: B11633

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 all notes, materials and assigned readings for 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 Examplify 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 Examplify 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.

EXAM WRITING TIPS:

- Full citation of cases is not necessary. You may refer to cases in short form (e.g.: “Cooper”);
- This examination is designed to test material covered in Term 2 of this course only. Do not discuss material or sources not covered by term two of this course. I will grade down for this;
- Questions raise issues that do not have one “right” answer. Identify and discuss fully the points raised by each question, giving some sense of the relative strength of the arguments;
- State clearly any facts you assume in answering the questions. If you need to rely on additional facts that are not in the exam, state so;
- A suggested working time for each question is indicated on the exam paper. Be careful to budget your time.

TIPS FOR WRITING THE ESSAY QUESTION:

- Be sure to focus only on the examinable material assigned in Term 2. Course materials include: required and optional readings; in-class discussions and exercises; guest lectures; and, any other materials covered in the course. Do not draw on any other materials, I will grade down for this;
- You must answer the question;
- You must provide specific examples from the course materials to support your arguments – in the form of case authorities, articles, etc.;
- You may choose to focus on one or two specific topics; you are not expected to canvass the entire course;
- Strong responses will identify one or two discrete topics as this will allow for more detailed, meaningful analysis and discussion of the essay question;
- Strong responses will identify a thesis statement at the outset, develop arguments in support of that thesis, and drive towards a conclusion;
- Please budget your time carefully;
- You may answer the exam questions in whatever order you choose - if you want to start with the essay question, you can.

THIS EXAM CONSISTS OF THREE QUESTIONS. YOU MUST ANSWER ALL THREE**Facts**

You are a judge of the Supreme Court of British Columbia. The following case comes before you.

In 2018, the City of Bright Landing, British Columbia [the City], held a public forum to determine what use to make of a plot of vacant City land. Several residents expressed a desire for more “family-based and child-friendly amenities” in the City and for “outdoor green spaces”. At the time, the City had two small outdoor parks with aging playground equipment. Several residents at the public forum had expressed concern about the safety of the playground equipment in the old parks.

Following the public forum, the City passed a resolution, on 2 April 2018, to build a new park on the vacant land. The design for the new park included an elaborate play structure, as well as a large manicured lawn, several picnic benches and a public washroom. The City hired Let’s Build It! Company [LBI] to install the play structure for the park. The play structure included a wooden slatted bridge, as well as several towers, swings and a slide.

Work on the new park project began in June 2018 and opened for public use in October 2018. LBI installed the play structure in August 2018. The City installed a sign near the play structure that cautioned users not to run, chase, push, pull, or otherwise engage in “rough play” on the play structure. The sign also set out other prohibited activities, including use of BBQs and littering.

Responsibility for maintenance of the new park was allocated to the City Parks Department. The Parks Department is responsible for general maintenance and to keep the parks “in good condition and repair”. The Parks Director is responsible for monitoring and inspecting park grounds regularly, and assigning City Parks employees to complete required maintenance work at parks, including seasonal lawn care and landscaping, cleaning and other tasks as required. When a complaint about a park is received by the City, a record of the complaint is entered into the City’s information system and passed along to the Parks Director for evaluation and follow-up, such as conducting an on-site inspection, clean up and repairs. All City employees have access to the information system to log complaints and are trained on this policy. The Parks Director keeps a list of professional contractors on hand to conduct repairs to park structures and buildings.

On May 4 2020, a City Parks employee, Sam, was working at the new park, planting flowers and cutting the grass. Sam was wearing a Parks Department uniform. A park user approached Sam and stated that two of the slats on the play structure’s wooden bridge were “very loose and wobbly, someone could get hurt!”. Sam did not have any training or expertise in construction or repairs of this sort. It appeared to Sam that the screws holding the slats in place simply needed to be tightened. Sam returned to the new park the next day with a screwdriver, and tightened the loose screws. Sam mentioned this to the Parks

Director, who replied, "It sounds like you took care of it, thanks!". Neither Sam nor the Parks Director entered the complaint into the City information system, or called a professional contractor to assess the condition of, or make repairs to, the bridge. The Parks Director did not attend the new park to assess the complaint or Sam's repair work.

On October 14, 2020, Kennedy (9 years old) and Blake (10 years old) were playing at the new park. Blake and Kennedy were chasing each other on the play structure. During the course of their play, Kennedy and Blake ran across the bridge on the play structure several times. Blake then jumped up and down on the bridge. While Blake was jumping on the bridge, a slat came loose from the bridge and Blake's leg fell through. Kennedy ran to get help and Blake was taken to hospital.

At the hospital, Blake was examined by Dr. Knowles. X-rays revealed that Blake had a complicated leg fracture that would require surgery to fix. Dr. Knowles successfully completed Blake's surgery, and Blake had to stay in hospital for recovery. Dr. Knowles told Blake's parents that it was surprising to see such a serious injury from what sounded like such a minor accident. Dr. Knowles ran further tests and discovered that Blake had an undiagnosed bone condition. Dr. Knowles told Blake's parents that this was likely a "significant factor" in Blake suffering the leg fracture in the accident. Dr. Knowles advised that Blake would have to avoid "rough play" and high contact activities in the future, as these kinds of activities would be likely to cause further fractures and bone breaks in an individual with this bone condition. Dr. Knowles further stated that, while rare, "spontaneous fractures" from ordinary movement, like running and jumping, are known to occur in about 15% of individuals with this bone condition.

While recovering in hospital, Blake developed an infection in the surgical wound. This led to serious complications in Blake's recovery, and Blake will suffer a permanent disability as a result. The cause of the infection is unknown, and there is no evidence to suggest that Blake was negligently treated or cared for in hospital. Dr. Knowles advised Blake's parents that had the infection not developed, the fracture would have fully healed and there is no reason to suspect that Blake would have suffered any permanent disability from this injury, even in light of the underlying bone condition.

The City was notified of Blake's accident and the Parks Director went to the new park to inspect the play structure. The Parks Director roped off the bridge and hung signs prohibiting use of the bridge until further notice. Seeing several loose slats and missing screws, the Parks Director called in a professional contractor to assess the damage. The contractor determined that the screws used to keep the slats in place were defective, and that consistent use of the bridge had caused the slats to loosen and some screws to fall off. The Parks Director asked the contractor whether "rough play" such as jumping up and down on the bridge could have loosened the slat. The contractor stated that this would have sped up the loosening of the slat, but that it would not have come loose if the screws weren't defective. The wooden bridge was fully replaced in February 2021, and was re-opened for use shortly thereafter.

Blake's parents have filed a lawsuit on behalf of Blake against the City in negligence.

QUESTIONS**MARKS**

- 30** 1. Does the City owe Blake a Duty of Care?

For the purposes of this question, assume that the City is liable for any of its employees' conduct (assess the City and its employees as one and the same actor).

DO NOT assess the potential liability of LBI or the manufacturer of the screws.
DO NOT assess the vicarious liability of the City (this is assumed).

Please budget approximately 55 minutes for this question.

- 40** 2. Based on the above fact pattern, assume that the City owed Blake a Duty of Care (this assumption should not influence your answer in #1). Based on this assumption, assess the likelihood of the negligence action against the City being successful.

As above, assess the City and its employees as one and the same actor.

DO NOT assess apportionment of liability or contributory negligence.
DO NOT discuss damages.

Please budget approximately 70 minutes for this question.

- 30** 3. The "reasonable person" standard guides several aspects of the negligence framework in Canadian common law. In your opinion, does the "reasonable person" standard guide the framework effectively? Why or why not?

Please budget approximately 55 minutes for this question.

END OF EXAMINATION.