

THIS EXAMINATION CONSISTS OF 8 PAGES  
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA  
FACULTY OF LAW

FINAL EXAMINATION – APRIL 2022

**LAW 241.003**  
**Torts**

**GEE**  
**Professor Beswick**

TOTAL MARKS: 100

TIME ALLOWED: 15 minutes reading time  
and 180 minutes writing time

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**NOTE:**

1. This is an open book examination. You may have with you any written material you wish, including casebooks, textbooks, dictionaries, and your own notes. Laptops are only permitted for the use of Exemplify/Examssoft.
2. During the 15-minute reading time, you may not type or hand-write on an answer page, but you may write/highlight on these question pages or on scrap paper. You should use this time to read through the exam and plan your answers.
3. Full case citations are not needed; short-form case names are fine (e.g. "*Bette!*").
4. For candidates writing by hand, please write legibly, and preferably on every second line of your exam paper. Be sure to identify your exam code.
5. Communication devices such as mobile phones are not permitted. Ensure that your phone is turned off and out of sight.

**THIS EXAMINATION CONSISTS OF THE FOLLOWING QUESTIONS:**

**QUESTION 1** is a problem question on the tort of negligence. It has four parts. You must answer **all** of 1A and 1B and 1C and 1D:

1A. is worth **30 marks** (*equivalent to 54 minutes of exam time*).

1B. is worth **15 marks** (*equivalent to 27 minutes of exam time*).

1C. is worth **10 marks** (*equivalent to 18 minutes of exam time*).

1D. is worth **10 marks** (*equivalent to 18 minutes of exam time*).

Answers to Question 1 will be assessed having regard to Professor Beswick's *Torts Problem Question Answer Rubric* (see page 3).

**QUESTION 2** is an essay question with three options. It is worth **35 marks** (*equivalent to 63 minutes of exam time*). You must answer only **one** of question 2A or 2B or 2C, drawing upon any of the Torts course materials you have studied over the past year.

Answers to Question 2 will be assessed having regard to Professor Beswick's *Torts Essay Question Answer Rubric* (see page 4).

**Torts Problem Question Answer Rubric**

**Preparation resources:**

- JD Advising, [How do I answer law school exam questions?](#)
- Touro Law Center, [Working with IRAC](#).
- B. Friedman & J.C.P. Goldberg, *Open Book: The Inside Track to Law School Success* (2nd ed, [New York: Wolters Kluwer](#), 2016).
- Problem Question exercises: <https://blogs.ubc.ca/beswick/torts-quizzes/>.

Expectation	Skill
<b>Planning and Organisation:</b>	
<ul style="list-style-type: none"> <li>• Spot and sort relevant issues.</li> <li>• Side-line irrelevant issues: don't throw in the kitchen sink.</li> <li>• Use appropriate headings or signposting.</li> <li>• <i>Apply IRAC analysis below to each issue.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Is your answer clearly structured?</li> <li>• Is it comprehensive?</li> <li>• Is it persuasive?</li> </ul>
<b>Issue:</b>	
<ul style="list-style-type: none"> <li>• Identify the relevant issue with respect to the material facts.</li> </ul>	<ul style="list-style-type: none"> <li>• Can you identify an important issue from the facts?</li> <li>• Do you understand the problem that needs to be solved?</li> </ul>
<b>Rule:</b>	
<ul style="list-style-type: none"> <li>• Identify and cite relevant authority/authorities.</li> </ul>	<ul style="list-style-type: none"> <li>• Do you know the law that bears upon the issue?</li> </ul>
<b>Application:</b>	
<ul style="list-style-type: none"> <li>• Apply relevant authorities to the facts in a considered and balanced way.</li> <li>• Reason with respect to relevant facts.</li> <li>• Cite, and apply or distinguish, relevant authorities. Are they binding or dicta?</li> <li>• Consider arguments on both sides.</li> <li>• Allocate time/detail according to importance/complexity of issues.</li> <li>• Identify and analyse any sub-issues before moving on to the next substantive issue. E.g. a defence will be a sub-issue of the larger issue of whether Δ is liable for a particular tort.</li> </ul>	<ul style="list-style-type: none"> <li>• Is your answer persuasive? Is it appropriately detailed?</li> <li>• Have you adequately addressed any ambiguities in the law or facts?</li> <li>• Have you considered relevant doctrines, principles and policies in the law?</li> <li>• Have you considered both sides of the argument?</li> <li>• Can you corral the facts and law that Π would argue? Can you corral the facts and law that Δ would argue?</li> </ul>
<b>Conclusion:</b>	
<ul style="list-style-type: none"> <li>• Reach conclusions that are supported by your analysis.</li> </ul>	<ul style="list-style-type: none"> <li>• Have you persuaded me as to which side has the more compelling argument?</li> <li>• Is your conclusion supported by your analysis?</li> </ul>

**Torts Essay Question Answer Rubric**

**Preparation resources:**

- [Mark Elliott, 'Writing a Law Essay? Remember to Argue!' \(Feb. 16, 2022\).](#)
- Essay Question exercise – [Why Care about Fault?](#).
- [Types of Legal Scholarship](#) slide #8.

Expectation	Skill
<b>Introduction:</b>	
<ul style="list-style-type: none"> <li>• Restate the question in your own words, clarifying legal terms/jargon as necessary.</li> <li>• Briefly identify the different possible positions on this issue and key commentators/judges you've encountered in the course who align with each position.</li> <li>• State your thesis and a three-pronged argument you will make in support of your position; present the strongest arguments, rather than trying to cover every possible point.</li> </ul>	<ul style="list-style-type: none"> <li>• Do you understand the question?</li> <li>• Do you understand the debate and relevant course material?</li> <li>• Can you identify strong arguments to address?</li> </ul>
<b>Argument prong 1:</b>	
<ul style="list-style-type: none"> <li>• Use appropriate headings or signposting.</li> <li>• <i>State your point of argument; what kind of analysis does it engage?</i></li> <li>• <i>Use authorities from the coursebook or class to reinforce your argument; use specific cases and examples to illustrate.</i></li> <li>• <i>Identify and respond to the weaknesses/criticisms of your argument; why are they ultimately not convincing?</i></li> </ul>	<ul style="list-style-type: none"> <li>• Can you persuasively present arguments invoking issues and materials from the course?</li> <li>• Do you understand the different types of legal argumentation (e.g. doctrinal arguments, policy arguments)?</li> <li>• Can you identify relevant authorities and examples and demonstrate how they help your argument?</li> <li>• Can you identify and respond to relevant authorities and arguments that seem to run against your argument?</li> </ul>
<b>Argument prong 2:</b>	
<ul style="list-style-type: none"> <li>• <i>Ibid.</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Ibid.</i></li> </ul>
<b>Argument prong 3:</b>	
<ul style="list-style-type: none"> <li>• <i>Ibid.</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Ibid.</i></li> </ul>
<b>Conclusion</b>	
<ul style="list-style-type: none"> <li>• Draw together your argument.</li> </ul>	<ul style="list-style-type: none"> <li>• Have you answered the question persuasively?</li> <li>• Was your answer organised and comprehensible? Did you get to the point?</li> </ul>

**QUESTION 1:**

**MARKS: 65 marks in total (equivalent to 117 minutes of exam time in total)**

Shortly after midnight on 22 May 2021, Ms Tahani Al-Jamil woke to discover that there was a fire in the premises which she occupied in Marpole, Vancouver. Al-Jamil succeeded in getting out of the premises. Part of the premises was a frozen yogurt shop and part was a residence. The entire premises were destroyed by the fire. The fire also spread to the circus décor shop next door owned by Ms Eleanor Shellstrop.

Ms Al-Jamil had leased the premises since January 2021 from its owner, Mr Jason Mendoza. The fire which destroyed the premises and damaged Shellstrop's shop escaped from a fireplace in which Ms Al-Jamil had lit a wood fire before she went to bed. Ms Al-Jamil had previously lit fires in the fireplace to warm the residential section of the premises during winter nights. The fireplace had a glass screen to prevent the escape of sparks. But the chimney of the fireplace was defective. The fire escaped because of defects in the chimney that had been found there in August 2019.

The defects had been found in August 2019 as the result of the summoning of the Vancouver Fire Department to the premises on 9 August when Mr Mendoza's assistant Janet became alarmed by what she thought was a fire in the chimney. The fire or smoke was quickly doused by the Fire Department. The Fire Department officer who attended saw that there was some mortar missing from the bricks in the back and bottom of the fireplace. He advised Janet that the fireplace was unsafe to use. The Fire Department notified the Vancouver City Council ("the Council") of the occurrence. The City Engineer, Mr Chidi Anagonye, then requested Mr Michael, a recently appointed building and scaffolding inspector, to inspect the premises. Both Mr Anagonye and Mr Michael were local public officials employed by the Council.

On the morning of 11 August 2019, Mr Michael inspected the premises and found that the back wall of the fireplace in the residence and the back wall of the fireplace in the shop were parallel, with a space between them. There was a hole connecting the two fireplaces within the premises, which allowed flame to enter the space between the two back walls. This defect created a substantial risk of fire. Mr Michael pointed out the defect to Mr Mendoza and told him he should not use the fireplace unless it was repaired.

This advice was followed by a letter written by Mr Michael on the instructions of the City Engineer to "J. Mendoza" at the address shown in the Council's records. The letter read as follows:

"At the request of the Vancouver City Council, I inspected two open fire places at the above location on 11th August, 2019 at 10.15 a.m.

During the inspection I noted a possible fire hazard and unsafe structural condition has occurred on both fire places that are constructed back to back. The products of combustion can now enter the front fire place in the shop as well as enter into the wall cavity that is part of the dividing partition wall. It is therefore imperative that the abovementioned fireplaces not be used under any circumstances unless:

- (a) Structurally sound repairs are made to make the chimneys and fireplaces safe.
- (b) General repairs are made to mortar and brickwork to make the walls heat resistant and prevent smoke leakage.
- (c) Alternatively, repair the fireplaces structurally and seal both fireplace openings permanently and discontinue use.”

Mr Mendoza received the letter. When negotiating Ms Al-Jamil’s lease of the premises in January 2021, Mr Mendoza did not inform Ms Al-Jamil of either the contents of the letter or the warning which Mr Michael had earlier given him not to use the fireplace. Consequently, when Ms Al-Jamil lit the fire on 22 May, she had no knowledge of the defects in the fireplace. She would not have used it had she known it was defective.

Ms Al-Jamil and Ms Shellstrop both suffered property damage. Ms Al-Jamil lost plant, equipment and stock and, in consequence, loss of profits of her business, all totalling \$220,000. Ms Shellstrop calculated the physical and financial loss she suffered in consequence of the damage to her whimsical shop as \$80,000.

When confronted by Ms Al-Jamil, Mr Mendoza broke down with remorse. He apologised and confessed that he knew the fireplace was defective and that he had been negligent in failing to warn Ms Al-Jamil about it. He said he had thought the City inspector had been overreacting; he did not realise how dangerous the fireplace was. He told Ms Al-Jamil he would not dispute any legal claim she bought. However, he also told her that he had money problems and it would be difficult for him to pay her full compensation.

The *Safe BC Buildings Act*, RSBC 1958 (“the Act”) contains provisions on taking action to prevent the risk of fires that might cause damage. Section 65(1) provides:

“For the purpose of preventing fires the owner or occupier of any land upon which is erected any chimney or fireplace which is constructed of inflammable material or which is not adequately protected so as to prevent the ignition of other adjacent material of an inflammable nature may by notice in writing be directed by the council

of the city of which such land is situated to alter the fireplace or chimney so as to make it safe for use as a fireplace or chimney, as the case may be.”

When a notice is given under s. 65(1), the Act requires the person to whom it is given to comply with it. The Act provides that it is a criminal offence, punishable by a fine, to fail to comply with such a notice. If neither the owner nor the occupier complies with the notice requiring work to be done to prevent fire, s. 64(1) of the Act provides:

“The council of any city may carry out or cause to be carried out any works or take any other measures for the prevention of fires.”

Mr Anagonye’s department was downsized in 2020 due to budget cuts. Mr Michael left for a private sector job. The Council did not enquire whether Mr Mendoza had received Mr Michael’s letter of notice. The Council did not send a follow up notice requiring remedial work to be done. No further inspection of the premises was made. Nothing was done to check whether the directions contained in Mr Michael’s letter were carried out. No work on the premises for the prevention of fire was carried out or authorised to be carried out by the Council. The Council did not bring the defect which Mr Michael had discovered to the attention of Ms Al-Jamil after she began to occupy the premises.

You are an associate at Wesbick & Associates. Ms Eleanor Shellstrop has come to you asking whether she can sue the City of Vancouver for her losses under the common law tort of negligence.

**Answer all of questions 1A and 1B and 1C and 1D:**

- 1A. 30 marks (equivalent to 54 minutes of exam time):** Did the City of Vancouver owe Ms Shellstrop a duty of care that could found the basis of a claim in negligence?
- 1B. 15 marks (equivalent to 27 minutes of exam time):** Regardless of the conclusion you reached on Question 1A, supposing that Ms Shellstrop was owed a duty of care: did the City of Vancouver’s conduct fall below the common law standard of reasonableness?
- 1C. 10 marks (equivalent to 18 minutes of exam time):** Regardless of the conclusion you reached on Questions 1A and 1B, supposing that the City of Vancouver *did* breach a duty of care owed to Ms Shellstrop: what damage did the City of Vancouver cause to Ms Shellstrop in fact and law?
- 1D. 10 marks (equivalent to 18 minutes of exam time):** Assume that both Ms Shellstrop’s and Ms Al-Jamil’s conduct was reasonable and not negligent. If Ms

Shellstrop brings an action in negligence against both the City of Vancouver and Mr Mendoza as co-defendants, how should damages be apportioned between the three parties under the *Negligence Act*, RSBC 1996, c 333? (You can express your answer in terms of which party should bear the greater amount of damages, and which party should bear the lesser amount. You do not need to express your answer as a percentage or dollar figure.)

**QUESTION 2: Answer only one of question 2A or 2B or 2C, drawing upon any of the Torts course materials you have studied over the past year.**

**MARKS: 35 marks (equivalent to 63 minutes of exam time)**

**2A.** In *Jones v. Tsige* [2012] ONCA 32, [25], Justice Sharpe observed that “[i]n Canada, there has been no definitive statement from an appellate court on the issue of whether there is a common law right of action corresponding to the intrusion on seclusion,” and he turned to American, English, New Zealand, and Australian jurisprudence to find a tort of invasion of privacy in Ontario (§4.1.2). When, if at all, should Canadian judges treat foreign case law as persuasive in elucidating principles of provincial tort law?

**OR**

**2B.** Do you agree with Professor John Gardner’s suggestion that public officials in Commonwealth common law systems are “citizens in uniform” (§5.6.1)?

**OR**

**2C.** Do you agree with Professor (later, Justice) Allen Linden’s claim that *Donoghue v. Stevenson* [1932] UKHL 100 “furnishes a continuing invitation to tort courts to innovate if they are so inclined” and that “judicial lawmaking based on the neighbour principle ... never should end” (§13.1.2)?

**END OF EXAMINATION**