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THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – DECEMBER 2021

LAW 241.004
TORTS

Professor Christie

TOTAL MARKS: 100

TIME ALLOWED: 65 minutes to write the exam
and 10 minutes reading time
[Total time: 1:15]

- NOTE:
1. This is an open book examination, and candidates may use any materials used in the course
 2. THIS EXAMINATION CONSISTS OF 1 QUESTION

LAW 241.004

Question 1, worth 100 points:

Barry is a Certified Public Accountant [CPA], and works for Pegasus Accounting, a firm providing accountancy services to a range of clients. One of Barry's clients is Phillipa, a lawyer who operates her own small practice out of offices in White Rock. Barry generally works to keep Phillipa's financial affairs in order, which requires that he have access to all the relevant financial information tied to her work. Over the last year or so Barry came to suspect that Phillipa had been siphoning off small amounts of money from many of the trust accounts that she oversaw. Nothing very much was out of line for each affected account, but Barry could see that it totaled up to several thousand dollars that were unaccounted for over the last year. Barry then looked more carefully into the records from previous years and could see the same pattern – small, innocuous amounts slipping out of dozens of trust accounts, adding up to several thousand dollars missing each year.

Barry sent Phillipa an email from an anonymous account he set up in an internet café in Surrey, saying simply "I know what you have been doing – send \$2000 to the bank account below and no one need ever know." Below this sentence in the email was information about a special off-the-records and anonymous bank account that Barry kept for just such purposes.

Phillipa worked out that it must be Barry who was (in her mind) trying to blackmail her. She was pretty sure that only Barry would be in a position to know that her trust accounts were occasionally not in perfect form, as she sometimes moved money around to cover pressing bills. She saw the small amounts she occasionally took as extra fees she was charging to the parties for whom she held the accounts. She wrote an email directly to Barry saying "I know it is you. You are trying to blackmail me. You are no longer my CPA, and if you say anything to anyone about this whole matter, I will let the Chartered Public Accountants of BC know about your activities and I'll let the police know about this. If I ever see you in person again you can be sure to come away bloodied." [The CPABC is the body that governs, regulates and disciplines CPAs in province]

Barry was quite angry after receiving this email. He went to the website for the Law Society of British Columbia and found information about making a complaint about the activities of a lawyer. He could see that this process was really set up for those who have a lawyer working for them, where that lawyer is perceived as not acting as they should in that relationship. Still, he proceeded to fill out the complaint form, doing so again from the internet café in Surrey, using an anonymous email account. He did not fill out the identification part of the complaint form, so those at the Law Society had no way of knowing who had complained. The only section he filled in was the part that allowed for the complainant to detail their concerns about the lawyer in question, where Barry set out the allegations about Phillipa, including clear and complete details about one of the trust accounts that he alleged had been improperly dealt with by her, expressing wonder about whether the problem-gambler, Mrs. Smith, who Phillipa managed the monies of would like to know that some of her money had been improperly and unethically taken by Phillipa.

LAW 241.004

Question 1, continued

A few days after Barry submitted this complaint Phillipa was approached by someone from the Law Society, who let her know that a complaint had been made about her activities in relation to her trust accounts, and that this was being looked into. Phillipa was incensed about this, and (after drinking heavily) went to Barry's home late that evening. Unbeknownst to her Barry was away on a work-trip, and when she banged on the front door all she succeeded in doing was waking up Barry's partner and Barry's 10-year-old daughter. Barry's partner yelled through the closed door that Barry was not home, and after a few minutes Phillipa finally left.

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 certain intentional torts (those of assault, battery, false imprisonment, invasion of privacy, and intentional infliction of mental suffering) and the law of defamation may 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. You should also note that economic torts (such as, for example, fraud) are not for you to examine. Indicate where necessary important facts that are missing, and how the missing facts would assist in working out how the law of intentional torts, the law of defamation, and the law of vicarious liability would apply.

END OF EXAMINATION