

THIS EXAMINATION CONSISTS OF 7 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

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

FINAL EXAMINATION – APRIL 2022

LAW 435C.001/496B.005
Personal Injury Law

Professors Marc A. Kazimirski / Sandra L. Kovacs

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS plus 20 MINUTES for reading time
(students can begin writing during the reading time)

This is an OPEN BOOK examination, meaning that you can and should refer to class notes, cases, statutes, and other class readings.

THIS EXAM CONSISTS OF 2 SECTIONS

SECTION 1 – HYPOTHETICAL – 13 QUESTIONS

80 Marks

QUESTIONS IN SECTION 1 RELATE TO THE FOLLOWING HYPOTHETICAL FACT PATTERN.

On February 24, 2019, Javier Bardem and Penelope Cruz are on their way to the Oscars, which for the first time are hosted at the Queen Elizabeth Theatre in Vancouver, British Columbia, to showcase the City and 'Hollywood North'.

Javier is driving a vintage red Chevrolet Corvette, one of many collector vehicles from his ten-car garage at home. Penelope is in the passenger seat but she is not wearing her seatbelt because it does not fit over her formal gown. Javier is facing northbound, waiting to turn left onto the Dunsmuir Viaduct from Main Street. The traffic light turns yellow. He sees a southbound transit bus approaching. He assumes the transit bus is going to stop, and he initiates his left-turn. While the bus is not travelling too quickly, it does not stop, because its driver, Gus Leadfoot, has suffered a heart attack.

The bus collides with the passenger side of the Corvette where Penelope is sitting.

A bystander pedestrian, Ima Sooperfan, calls 9-1-1. She is panicked in her phone call, disturbed by the collision she has just witnessed. She thinks the occupants of the Corvette are dead.

On impact, Leonardo DiCaprio, who is riding in the bus to demonstrate that celebrities are concerned about climate change, too, hits his head hard on the pole adjacent to his seat. He is dazed at first and has a bump on his forehead, but he does not lose consciousness. He exits the bus and declines any assistance from the attending paramedics. When Ima sees Leo DiCaprio, she hangs up with 9-1-1 and starts taking selfies with him with her cell phone. Leo obliges Ima, and signs an autograph for her, but he then starts walking up the viaduct to the theatre. Ima decides to walk with him. As she is walking, she is feeling faint; her adrenaline is crashing, and she starts to cry about what she has just witnessed.

Javier and Penelope are not dead. They are able to self-extricate from the Corvette. While both are shaken up and sore, Javier and Penelope do not want to miss the big night and so after paramedics assess them at the scene, they decline to be taken to hospital and they hop in an Uber and continue on to the Queen Elizabeth Theatre. They arrive fashionably late, but they walk the red carpet and put on smiles for the paparazzi, masking their discomfort, as much as possible – but Penelope is limping, her neck is sore, and she has a severe headache.

Will Smith and Jada Pinket-Smith are also attending the Oscars. As they walk the red carpet laid down by Queen Elizabeth Theatre's employees, Jada's stiletto heel catches on a wrinkle in the red carpet and her other heel then catches on her long, flowing dress, and she falls – hard – right in front of the paparazzi's cameras. She falls forward, and she is able to reach out her right hand to break her fall, but she hears her right wrist snap: she suffers a scaphoid (navicular) fracture. She is also humiliated to the extreme. Jada has a pre-existing history of depression due to her history of Alopecia (hair loss), but her depression has recently been well-controlled with anti-depressants and regular counselling. Will helps his wife up and, despite her wrist being broken, they go into the theatre and seat themselves, because this is Will's big night: he is expected to win the Oscar for Best Male Actor. Jada takes some Extra Strength Tylenol and ices her wrist while they sit.

The show starts.

Chris Rock, age 57, is presenting the award for Best Documentary. He is excited to do so because he is nearing the end of his career, and this is an opportunity for him to seriously boost his profile. He wants to use the next five years or so to bank some cash: while he has a busy schedule with stand-up comedy touring, he really wants to land some big roles in the movies. While he works hard, he also likes to play hard, usually in the form of drinking and gambling, and he knows he will need a lot of money put away if he wants to retire in style.

While on stage, Chris Rock makes an awkward joke about Jada Pinkett-Smith starring in the next GI Jane, because she is bald. Jada was humiliated by her fall in front of the cameras, now she is further humiliated: this night has been a disaster.

Her husband Will Smith, who has severe anger management issues, walks up on stage and slaps Chris across the face, and then continues to yell and swear at Chris after he sits back down in his seat.

Chris, trembling, manages to carry on with the award introduction, but when he goes backstage, he immediately goes to his dressing room and drinks the entire bottle of Champagne that was sitting there. Drunk, he feels some relief from the traumatic experience he has just endured. In the coming days, weeks, and months, as the media circus still swirls around him, he keeps chasing that feeling of relief from the bottle. Soon, he is drinking a full 26-er of Vodka every day. He starts getting fired from jobs because when he does show up, which is increasingly infrequent, he is either drunk or hung over. Twelve months later, Chris is diagnosed with Alcohol Use Disorder – Severe (AUD), with a comorbid diagnosis of posttraumatic stress disorder (PTSD), and he is admitted to a private – and expensive – residential rehabilitation facility.

You should assume all court actions are filed in British Columbia and that the actions are subject to the BCSC Civil Rules of Court and BC legislation; please assume that a full tort system still exists for motor vehicle accidents in British Columbia (i.e. “no fault” is not yet in effect, until May 1, 2021). If you need to make any additional factual assumptions in answering a question, clearly state what those assumptions are.

Value/Time

5 Marks

QUESTION 1

(10 minutes)

One week before the collision, Gus Leadfoot visits his family doctor, Dr. Lézi, complaining of chest discomfort, shortness of breath, and arm pain and weakness. Gus says he is concerned because he has recently experienced some dizzy spells while driving. Dr. Lézi knows that Gus is a transit bus driver, but he is dismissive of Gus' complaints, and tells him to start eating healthier. He sends him home without any further investigations.

Ima Sooperfan is diagnosed with Post-Traumatic Stress Disorder six months after witnessing the collision. She hires a lawyer and brings a civil action as against Gus Leadfoot, Dr. Lézi, and Javier Bardem, for her psychological injury.

Discuss whether Dr. Lézi owes Ima Sooperfan a duty of care for her purely psychological injury.

3 Marks

QUESTION 2

(5 minutes)

Is Gus Leadfoot able to successfully argue an 'inevitable accident' or 'no negligence' defence to Ima Sooperfan's claim?

10 Marks

QUESTION 3

(18 minutes)

You are the trial judge deciding liability only for the collision in Penelope Cruz's civil action for her soft tissue injuries. Write your reasons for judgment. In closing your reasons, comment on whether liability amongst the defendants is joint and several.

8 Marks

QUESTION 4

(14 minutes)

Does Jada Pinkett-Smith have a viable action against Queen Elizabeth Theatre and/or its employees under the *Occupier's Liability Act*? (4 Marks)

What damages rule impacts Jada's quantum award, and how? (4 Marks)

8 Marks

QUESTION 5

(14 minutes)

You are Chris Rock's lawyer. What kind of evidence will you need, and what case law will you reference, to prove that Will Smith's Assault and Battery *caused* Chris Rock's severe alcohol use disorder?

2 Marks

QUESTION 6

(4 Minutes)

Can Chris Rock recover the cost of his private rehab in a legal action against Will Smith as part of his claim for special damages?

3 Marks

QUESTION 7

(5 minutes)

In Chris Rock's action against Will Smith for assault and battery, should he claim for aggravated and/or punitive damages and, if so, why?

10 Marks

QUESTION 8

(18 minutes)

Comedian Amy Schumer, who was one of the hosts at the Oscars, witnessed Will Smith's slap of Chris Rock. She is a good friend of Chris Rock's through AA and, because of her own experience, she believes herself to be an expert on substance use disorder. As a fellow comedian, she is also terrified to do her own shows now, for fear that someone will come up on stage and strike her if she tells an off-side joke.

Chris Rock's lawyer, Gloria Allred, hires Amy Schumer to prepare an expert report for trial, for the purposes of commenting on the causation of his substance use disorder and also the possible future career opportunities he might have pursued, had the assault never happened. It takes Amy forever to draft the expert report, Gloria ends up helping her work through multiple drafts, and when it is finalized, it is served just 38 days before trial.

Below is the report.

Qualifications

I am a recovering alcoholic and a member in good standing of Alcoholics Anonymous (AA). I am also an actress and comedian and have been working professionally in these fields for over 20 years. I have been a friend of Chris Rock since 2007 and have a unique and expert perspective on Mr. Rock's injuries from my personal understanding of alcoholism, comedy, and my friendship with him.

Certification

I will do my best to give this Court an unbiased expert opinion on issues within my sphere of expertise and to help the judge or jury understand Chris Rock as person, actor, comedian, and alcoholic.

Factual Assumptions

I am instructed to assume the following facts are true:

- 1. Chris Rock was physically and verbally assaulted at the Academy Awards show in Vancouver.*
- 2. Chris Rock used to be very funny.*
- 3. Chris Rock used to drink every once in a while.*
- 4. Chris Rock drank a lot in the 12 months following the Oscars.*
- 5. Chris Rock is less funny since the Oscars.*
- 6. Chris Rock fails to show up for a lot of his comedy shows because he is always too drunk or hungover.*

Opinion

In my capacity as an alcoholic and a member of AA, I know that when it comes to alcoholics, "it takes one to know one". In my expert opinion, Chris Rock is an alcoholic. I have known Chris Rock for years before the assault and based on my prior observations and expertise on the disease of alcoholism, Chris Rock was not an alcoholic before the Awards night. The assault was the cause of Mr. Rock becoming an alcoholic.

Chris Rock used to be a funny comedian. As a comedian myself, I understand that timing is the most important thing in telling a funny joke. Chris Rock's comedic timing has been negatively affected by his alcoholism. The result is that he just not as funny as he used to be.

Because Mr. Rock is less funny now and because he is now unreliable and frequently fails to show up for his gigs on time (or at all), Mr. Rock will lose a lot of money. In my respectful opinion, the judge or jury should award Mr. Rock \$10,000,000 for his loss of future income. As we all know, Will Smith is super rich. According to Google, Mr. Smith is worth \$350 million. Mr. Smith can afford to pay Mr. Rock what he deserves.

You are the junior lawyer assisting Will Smith's lawyer, Chris Gardner. You are delegated the task of drafting the outline of the argument objecting to the admissibility of Ms. Schumer's expert report.

6 Marks

QUESTION 9

(11 minutes)

You are Chris Gardner, the senior lawyer and lead counsel for Will Smith at trial. How are you going to cross-examine Amy Schumer?

13 Marks

QUESTION 10

(24 minutes)

After the Assault and Battery, Chris Rock loses many stand-up gigs and movie parts because of his active alcoholism. After his stint in rehab, he suffers repeated relapses. While he eventually achieves sustained recovery, he never returns to paid work again, because when he tries doing stand-up comedy, it triggers his PTSD, putting his sobriety at risk. Instead, he decides to devote his remaining years in service to his new community, through volunteerism with Alcoholics Anonymous. In fact, he becomes the District Representative for AA, an unpaid administrative volunteer role. He doesn't party anymore, and he has changed his entire circle of friends, but he is happy with this lifestyle change.

You are Chris Rock's trial lawyer.

Prepare your written argument for his claim for non-pecuniary damages.
(5 marks / 9 mins)

Prepare your written argument for his claim for lost future earning capacity.
(8 marks/ 14 mins)

5 Marks

QUESTION 11

(9 minutes)

Penelope has always been humble despite her riches. Prior to the collision, she never engaged housekeepers to clean her 7,000 square foot home: she even cleaned her own toilets, all ten of them! She was also an avid gardener and took great pride in being able to manage her extensive landscaped yard. Since the collision, her neck and low back pain, now chronic and unremitting, severely limits her capacity to clean the house and garden. While she can still clean the toilets (while swearing in Spanish), she can no longer do any tasks that require sustained overhead postures, or stooping, bending, or kneeling. She has hired three housekeepers and two landscapers to replace the work she used to do before the collision.

Can Penelope be compensated for her lost housekeeping capacity and, if so, how should she be compensated?

3 Marks

QUESTION 12

(5 minutes)

You are a prominent and in-demand downtown Vancouver insurance defence lawyer. Javier Bardem's motor vehicle insurer, Hollywood

Insurance Company, retains you to defend him in the action by his wife, Penelope Cruz. Javier's policy limits are just \$200,000 (he has always been cheap and didn't want to spend a lot of money on insurance premiums).

Can you give advice to Javier about his policy limits exposure?

4 Marks

QUESTION 13

(7 minutes)

Penelope Cruz is an excellent actress. As the defence lawyer hired by Hollywood Insurance Company defending Javier's case, you are suspicious of the sincerity of her complaints, or at least the extent thereof.

What evidence might you gather to challenge her credibility and how do you challenge her credibility with that evidence at trial?

SECTION 2 – ESSAYS 20 Marks

10 Marks Each (18 minutes each)

Answer only TWO of the following three:

- A. In the *Grabovac* decision, Chief Justice Hinkson found the plaintiff's injuries were divisible as between the two motor vehicle collisions. Please explain why, and comment on how such a finding could impact a plaintiff's recovery of compensation. Lastly, how might a finding of indivisible injuries caused by consecutive tortfeasors benefit a plaintiff?
- B. Was the award for past lost earning capacity fair and just in *Anderson v. Molon*? What evidence would have been helpful in securing a more significant award? How might the award have been different if Crossin, J. had the Court of Appeal's most recent commentary on the capital asset approach to valuation in *Rab v. Prescott*, 2021 BCCA 345, which follows on *Pallos*?
- C. Why would a party elect a trial by jury? Do you think 'real' evidence, like the 9-1-1 audio in the *Crawford* case, is more influential on jury members versus trial judges, and is it fair that this kind of evidence go before a jury? Should the Attorney-General eliminate a party's right to have access to a jury in a civil trial?

END OF EXAM