EXAM CODE: \_\_\_\_\_\_\_\_\_\_

THIS EXAMINATION CONSISTS OF **5** PAGES

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

WINTER EXAMINATION – APRIL 2023

**LAW 241.002**

**Torts**

**SCOW**

**Professor Thomasen**

TOTAL MARKS: 100

TIME ALLOWED: THREE HOURS (180 minutes)

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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 Examplify/Examsoft.
2. Full case citations are not necessary; short-form case names are fine (e.g. “*Mustapha*”).
3. 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.
4. Communication devices such as mobile phones and Internet-connected watches are not permitted. Ensure that your phone/watch/other devices are turned off and out of sight.

THIS EXAMINATION CONSISTS OF 1 QUESTION

**MEMORANDUM**

**TO: Student Intern**

**FROM: Kristen Thomasen, Senior Partner, Big Law LLP**

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We have a new government client – **the Town of Dawson’s Creek** in BC (named for a popular 2000’s TV show, but in no other way affiliated with the show. We can refer to our client as “the Town”). Their employee, also named Dawson, was involved in an incident with his friend Pacey in which Pacey was injured at a local fair. The Town has received word that Pacey is initiating a lawsuit for alleged negligence by the Town/Dawson. Dawson has provided the below summary of events leading to Pacey’s injury. For now, assume that all of these facts are true and can be proven in court. You can also assume this is a complete summary of the pertinent facts, but feel free to note any questions you want to ask our client. Also, you do not need to treat Dawson as a separate defendant, Pacey has indicated he is exclusively suing the Town. **Treat Dawson’s conduct as that of the Town** for the purpose of your analysis.

I need you to review these facts and tell me what you think – could Pacey have a successful negligence claim against our client? If so, could our client raise any defences? Could you also please briefly comment on what kind of damages Pacey might seek from our client so we can prepare.

When assessing the strength of the negligence claim, for now please assume that any duty of care that Pacey might raise will be a **novel** one. Please review **all** of the elements of Pacey’s potential negligence claim, regardless of whether you believe he will fail to establish any of them, and tell me what you think Pacey’s strongest argument will be for each element. Please be sure to consider all viable counter-arguments and defences that our client can raise.

I am confident that your analysis will be clear, concise, and convincing.

Many thanks,

Kristen

The town of Dawson’s Creek, British Columbia holds an annual fall fair. There is no cost for admission, and all rides and amusements are free. The Town rents roller coasters and bumper cars from a festival company based in Vancouver. The Town also pays this company to train Town employees to run the machines. Running the machines is fairly simple and straight-forward. Employees just have to make sure that only the appropriate number of people are in each seat, that riders are buckled in properly, and that each rider meets the required minimum height to ride. The Town’s employees are taught how to administer these rules, how to correctly buckle seatbelts, and how to check to ensure the seatbelt safety clips are properly latched. Dawson attended the training and has provided the relevant excerpt from the training manual dealing with the buckling of seatbelts, included below. He has informed us that the training also included opportunities to practice buckling riders into their seats.

In October, 2022 at the fall fair Pacey and his friend Joey decided to ride in the bumper cars. Riders can control their car using a steering wheel to drive around a small arena. The cars otherwise run by themselves at a low speed, and they are designed so they cannot leave the arena. These designs ensure the safety of the riders. The bumper cars are typically quite safe. Dawson was working the fair that day as a Town employee. He was managing the bumper cars when Pacey and Joey arrived. Dawson’s assigned responsibilities were to ensure that only one adult person rode in each car, and that riders were properly buckled up before starting to drive. Joey and Pacey are both adults and meet the minimum height requirement, so Dawson let them each get into their own car.

The fun of bumper cars is to try to bump into other cars. Dawson helped Joey into her car first and she set out into the arena prepared to bump Pacey as soon as he was ready. This made Pacey feel extra competitive and eager to start driving. Dawson was instructed in his training to buckle each rider into their seat, and to check to make sure the buckle and safety clip are properly done up. As Dawson was pulling the seatbelt over Pacey’s chest to insert the prong into the buckle, Pacey started to complain that Dawson was moving too slowly. Pacey grabbed the belt from Dawson and shooed away Dawson’s hands, insisting he knew how to buckle the belt as he’d been in the bumper cars at the fall fair previously. Dawson was tired from a long day at work, and trusted his friend’s confidence that he could do it himself, so Dawson didn’t resist or protest. Dawson has seen Pacey ride the bumper cars in previous years, but to Dawson’s recollection, an employee always buckled Pacey’s seatbelt. Dawson now suspects that Pacey was intentionally overstating his understanding of the seatbelt so he could get into the arena faster.

Dawson also assures us that it is common practice among employees to let adults buckle their own seatbelts because it feels paternalistic for employees to make sure an adult is properly buckled in. Dawson let Pacey drive into the arena without checking if the buckle was properly attached. The buckles look a lot like a car seat buckle but they have a discreet safety clip that needs to be done up to ensure the buckle doesn’t come undone on impact with another car. Pacey didn’t appear to know about the additional clip, and Dawson didn’t check if it was done up. Dawson is now quite certain it was not done up. Dawson did learn about the importance of checking the safety clip in his training. However, the training did not discuss what an employee should do when an adult refuses to accept assistance buckling the seatbelt.

Pacey and Joey started taunting each other and eventually, as is to be expected when riding in bumper cars, Joey slammed into Pacey’s car. The force, while limited, was enough to jolt Pacey partially out of the car. This surprised Dawson. In his training, the instructors had been clear that when the seat belts are properly done up, it would be impossible for someone to be jolted out of their car no matter how hard the impact. This confirmed for Dawson that Pacey’s belt was not properly done up.

Thankfully, given the slow speed of the cars, Pacey was not physically injured, not even a bruise or a scratch. But the experience of jolting out of the car terrified him. Later that day, when Joey was driving Pacey home, Pacey jumped at every car that drove (safely) near them. To Dawson’s knowledge, Pacey has no pre-existing personal injuries that might account for this reaction (neither psychological nor physical), but Dawson did tell us that Pacey was a passenger in a car collision when he was a young child. Pacey was not injured in that earlier collision and did not experience any subsequent effects from the collision as far as Dawson could tell us, and in fact Pacey still quite enjoyed driving until this experience at the fair. But driving in a regular vehicle after the experience at the fair has led to Pacey suffering prolonged psychological harm. Pacey consulted with a doctor who confirmed a medical diagnosis of Post-Traumatic Stress Disorder. The doctor also indicated that it is not uncommon for his patients who have been in car accidents to have a similar psychological reaction, though those patients typically experience physical injuries as well.

Pacey plays semi-professional hockey for a living, and because of this experience he can no longer travel with his hockey team. This has led to the coach cutting him from the team and he has lost all of his income. He also has to pay for grocery delivery to avoid driving to the grocery store, in addition to the fact that he can no longer go about his daily activities with the same ease and convenience to which he was accustomed.

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**Bumper Car Training: Policy and Guidelines**

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 Section 3: Seatbelts

3.1 It is crucial for an employee to ensure each rider’s seatbelt is buckled properly. These belts protect the rider against being jostled upon impact with other cars, and ensure a rider who is hit unexpectedly is not propelled forward into the steering wheel, which can cause mild injuries.

3.2 The belt consists of three components: (1) the prong (a metal rectangle that clips into the buckle), (2) the buckle, and (3) the safety clip.

3.3 An employee should either insert the prong into the buckle for the rider as demonstrated in training (similar to a common vehicle seatbelt), or in the event an adult rider has already buckled the prong, then the employee must confirm that it is properly connected before the driver sets out into the arena.

3.4 Employees must also always ensure the safety clip is connected. Failing to do so can increase the risk that a rider’s seatbelt comes undone while driving and may increase their risk of injury. A properly connected safety clip will ensure that the seatbelt works properly and will protect the physical safety of the driver.

END OF EXAMINATION