EXAM NUMBER: \_\_\_\_\_\_\_\_\_\_

THIS EXAMINATION CONSISTS OF **3** PAGES

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2022

LAW 241

Torts

Section 2

Professor Thomasen

**TOTAL MARKS:** 100

**TIME ALLOWED:** TWO HOURS (120 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. “*Bettel*”).
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

Every September in Vancouver, the clothing store Arutzia holds a sale on clothing items from its warehouse. The annual sale is attended by hundreds of customers, who line up for hours to get in. The sale is held at the Vancouver Convention Center, in a large spacious room. Given the popularity of the sale, customers have to be quick to grab any merchandise they might want to buy and try it on anywhere they can. As customers make their way through the line-up to the entrance, they pass numerous Arutzia signs stating that there are no change rooms inside.

Pea, our new client, attended the sale this past September and claims to have experienced a horrendous ordeal as a result of the conduct of Dee.

Pea waited three hours to access the sales room. Upon entry, Pea was quick to grab the clothes she wanted. Dee, by happenstance, was interested in the same pair of jeans as Pea and became angered when Pea pulled them away before Dee could get her hands on them. Pea never made physical contact with Dee during the interaction. But this encounter triggered a series of events for which Pea is seeking our legal advice.

After Dee lost the jeans to Pea, Dee was angry, and shouted a number of obscenities at Pea, including at least one threat that Pea can recall – “I’m going to find you after I pay for my clothes and make it so those jeans are useless to you.” Pea isn’t sure if this was a threat of bodily harm, or a threat to somehow destroy the jeans. Either way, Pea felt frightened. But Pea had waited hours to get into the sale and wasn’t about to leave over one angry encounter.

Pea continued searching for good deals at the clothing sale, and then took a pile of clothes to a concealed space behind a clothing rack to try them on. The clothing rack was on wheels and could be moved around, so Pea positioned it to provide some privacy while changing. On the other side of this make-shift changing space was the outer wall of the convention room, so there was only one open angle into the sales room from where Pea changed and no one was standing there, so Pea had some privacy. Pea says she felt entirely comfortable with this, as she knew from the signage outside the convention center that there would be no change rooms.

As Pea finished trying on items, and was dressed again in her own clothes, Dee walked around the clothing rack. According to Pea, Dee seemed surprised to find Pea standing there. Pea nevertheless felt scared, given Dee’s earlier remarks. Dee is about half a foot (15 cm) taller than Pea. Dee also appeared to be quite muscular according to Pea, who felt that Dee could easily outpower Pea in an altercation. Dee loomed over Pea, whispering in a frightening voice – “give me those jeans.” Pea swung her fist at Dee, striking Dee’s leg. Pea said she did this in order to escape, but it didn’t work – Dee didn’t move and Pea felt stuck between Dee, the wall, and the clothing rack. Dee smiled after being hit by Pea and said something along the lines of “ohhh, I see. You want to get into it here! Fine by me.” Dee then swung her fist at Pea’s face, making contact and breaking Pea’s nose. Because of a pre-existing condition, Pea’s cheek bones are quite weak, and the punch also broke her orbital bone (a bone in the cheek that protects the eye), causing excruciating pain and vision problems.

After Dee swung at Pea, Pea remembered that the clothing rack was on wheels and she turned around, grabbed the rack, and shoved it back at Dee, causing Dee to fall to the ground. Pea then ran out of the convention center and sought immediate medical attention. Pea received expert medical care, which has provided as much relief as possible. However, Pea continues to suffer from nightmares about the attack and related insomnia, as confirmed by her doctor.

Pea has no idea if Dee was injured when she fell over. Pea has not had any contact with Dee since the encounter and has only now decided to consider legal options. It’s worth noting that Pea has also detailed what happened that day on one of her social media platforms, WOOF, a new sharing platform where users can post short stories for their followers to read. Followers receive multiple notifications whenever a story is posted. On December 1, Pea shared a description of what happened at the Arutzia sale with her 4,000 followers, many of whom later responded to the story with concern and support. In her post on WOOF, she also commented on how the whole ordeal has made her feel and what it was like to experience such violence. While Pea knows Dee’s full name, she only used Dee’s initials in the WOOF post. Pea has insisted that everything she shared online is an accurate reflection of the facts set out above and her genuine feelings about that experience.

For now, let’s assume that all of these facts are true, and can be proven in court. **Please identify and assess the strength of any viable and worthwhile intentional or strict liability tort claims Pea might be able to bring against Dee**, based on the law you learned in the fall term of Prof T’s tort law course. **I would also like to you assess whether, on these facts, Dee might bring any counter-claims against Pea** – we’ll want to consider this in weighing our best legal strategy. Also, be sure to **include your evaluation of any viable defences** available to either Pea or Dee.

Please do not consider any litigation that might arise by or against the Convention Center or against Arutzia. We can think more about that once you’ve learned negligence and vicarious liability in the new year. Also, I am not concerned with any property or contract law issues that might arise from the purchase or taking of clothing.

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

Thanks for your help! I look forward to seeing what you come up with.

END OF EXAMINATION