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 3

Professor Beswick

**TOTAL MARKS:** 100

**TIME ALLOWED:** 15 minutes reading time

and 60 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 Examplify/Examsoft.
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 answer.
3. Full case citations are not needed; short-form case names are fine (e.g. “*Bettel*”).
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 A FACT PATTERN WITH 4 QUESTIONS WORTH 25 MARKS EACH

LAW 241, Section 3 (GEE – Professor Beswick)

MARKS: 100

You are a clerk for a judge of the British Columbia Provincial Court. Your judge presided over the case of *Pelican v. Wheaten and Wheaten*. Based on the findings of fact reproduced below, you are asked to address the following questions:

1. Should Mr. Pelican succeed in a claim of trespass to land? **(25 marks)**
2. Should the Wheatens succeed in a claim of assault? **(25 marks)**
3. Should the Wheatens succeed in a claim of trespass to land? **(25 marks)**
4. Should the Wheatens succeed in a claim of intentional infliction of mental suffering? **(25 marks)**

Do not discuss what remedies the parties might be awarded.

**Facts**

Mr. Pelican and Mr. and Mrs. Wheaten are neighbouring house owners in Campbell River, British Columbia. Their properties sit on a hill, with Pelican’s property several feet higher than the Wheatens’. The Wheatens have built what they describe as their dream home. Five years ago, they built a concrete retaining wall between their property and Pelican’s. Unfortunately, due to Mr. Wheaten miscalculating the property boundary line, and the fact the concrete spread, part of the wall ended up on Pelican’s property. The error was inadvertent, not intentional. Mr. Wheaten accepts that his wall encroaches onto Pelican’s property.

The retaining wall is approximately 31 feet long. It runs north to south between the two yards. The wall, before it was damaged by Mr. Pelican, was 10 to 12 inches above the ground on Pelican’s side. The wall is not exactly parallel between the two yards: it runs at an angle. It protrudes by up to 7.5 inches onto Pelican’s property towards the south (front of the property). At the north end (back of the property), it is not on Pelican’s yard. Mr. Pelican testified that, despite it being on his land, the retaining wall was to his benefit. It effectively shored up his yard, prevented slips, and looked smart, which increased the value of Pelican’s own property.

The retaining wall houses an unfenced sports court at the back (north end) on the Wheaten side. There is a basketball hoop just inside the court next to the wall. Last year, the Wheatens put up an approximately 10 foot high green mesh fence on top of the retaining wall to keep balls from going onto Pelican’s property. In order to build this fence, Mr. Wheaten at times had to stand at the top of the retaining wall on Pelican’s side of the boundary.

The erection of the encroaching retaining wall precipitated a breakdown in the relationship between Mr. Pelican and the Wheatens. The situation escalated when, in January this year, Mr. Pelican dumped approximately 20 pounds of dog faeces on his own side of the retaining wall. He testified that he put the faeces there as a message to the Wheatens to stay off his property. Mr. Wheaten, who saw Mr. Pelican dump the faeces, bellowed at him, “you’re an ignoranus, Pelican …emphasis on *anus*!”

After the dog faeces incident, Mr. Pelican made ongoing gestures and comments towards the Wheatens. Since last year, Mrs. Wheaten noted in her diary 29 incidents where Mr. Pelican made lewd gestures or unwelcome comments towards her. She testified that she stopped documenting them after a while because she did not see the point. By way of example, Mr. Pelican told her she is old and ugly, and has more wrinkles than a highway. In response, Mrs. Wheaten started crying. On a subsequent date, Mr. Pelican pulled up his car next to her and mocked her by pretending to cry. Mr. Pelican also regularly insults Mr. Wheaten, calling him repulsive and stupid. As a result, the Wheatens avoid spending lengthy periods in their yard.

In May of this year, Mr. Pelican sprayed his side of the retaining wall with green paint. He wrote the word “*Remove*” on his side of the wall’s south end. He sprayed a line on the top of the wall. Upon seeing the paint, Mr. Wheaten walked next door and knocked on Mr. Pelican’s door. Mr. Wheaten sternly told Mr. Pelican not to paint the wall. It was a heated exchange. Mr. Pelican yelled at Mr. Wheaten several times to leave, which he ultimately did.

One week later, Mr. Wheaten cleaned up the paint. In June of this year, Mr. Pelican spray painted the retaining wall south end on his side again with the word “*Remove*”. This time he used black paint. Mr. Wheaten attempted to clean it off, but was unable to do so.

Last month on the first day of November, Mrs. Wheaten saw Mr. Pelican, dressed in orange coveralls and a hard hat, standing next to the retaining wall with his jackhammer. She heard him start up the jackhammer, so she ran outside. Mr. Pelican started laughing at her. She told him to stop. He told her that her husband should have heeded his warning to remove the concrete wall, and so Mr. Pelican said he was taking matters into his own hands. He said, “I can damage whatever I want when it’s on my land. That’s the law, lady.” Mr. Pelican had not spoken with the Wheatens about his intention to destroy the wall prior to jackhammering it.

Mrs. Wheaten called her husband over. The two of them began to take down the green mesh fence, because it was in danger of falling. The fence was 10 feet high and weighed 100 lbs. Mr. Pelican continued to use his jackhammer. Mr. Pelican jackhammered inches from their faces as they worked to remove the bolts from the fence. Mr. Pelican taunted Mrs. Wheaten as he jackhammered the wall. He said things like:

“This is what you get for being a bad neighbour. This is just the beginning. Lots more surprises coming. Your kids are losers. I moved out when I finished high school. Your kids stay home in the basement all day.”

Chunks of concrete fell into the Wheatens’ sports court. The jackhammering loosened the concrete supporting the fence bolts and it fell on top of Mr. Pelican. A metal post barely missed him. Mr. Pelican pushed the fence towards the Wheatens; if the basketball hoop had not been in the way, it would have fallen on the Wheatens. Fortunately, it stopped short of hitting them. Mr. Pelican laughed like Santa Claus, saying “Ho ho ho. Merry Christmas.” Ultimately, Mr. Pelican removed 14 inches from the top of the wall. The wall is now unsightly. The top is crooked and broken. The rebar inside is exposed. The wall remains in that state. The Wheatens testified that they worry about their safety. They no longer use their sports court because they are afraid a ball might go onto Pelican’s property.

END OF EXAMINATION