

**FACULTY OF LAW
MIDTERM EXAMINATION – DECEMBER, 2007**

LAW 430 THE LAW OF TORTS (BROWN)

Time allotted: **ONE (1) hour**

Code Number: DO NOT ENTER YOUR NAME ON ANY PART OF YOUR EXAMINATION. To ensure anonymity during marking, a list will be circulated in the course of the examination and you are to enter your name opposite a number on that sheet. That number will be your code number FOR THIS EXAMINATION ONLY. Please enter it at the top of the front page of your examination paper.

Special instructions:

1. This examination paper contains one (1) question on 2 pages (*not* including this page). Please check now to ensure that you have received a complete examination. Raise your hand immediately if you do not have a complete examination.
2. This examination is an **OPEN BOOK** examination. Subject to the stipulations in paragraph 6 (below), you may consult any materials you find helpful.
3. This examination is failsafe. It will only count towards your final grade if you achieve a lower grade on the final examination in April, 2008, in which event this examination will count for 25% towards your final grade.
4. **THINK CAREFULLY ABOUT YOUR WORK, ORGANIZING YOUR ANSWER BEFORE YOU START WRITING.** Credit will be given for *quality, not quantity*. You must offer concise, clear and well-organized answers that are directed to the question asked, and, where appropriate, supported by reference to, and argument derived from, the relevant cases and statutes.
5. **WRITE IN COMPLETE SENTENCES.** Credit will not be awarded for point-form answers. And, **WRITE LEGIBLY.** If this means you must write on every other line, then please do so.
6. Cell phones, pagers, beepers and related devices are strictly forbidden. Please turn off and stow away such devices immediately. The use of computers is also not permitted in this examination.
7. Adhere strictly to the time limitation imposed on this examination. Failure to stop writing at the end of the examination may lead to a deduction of grades or failure to accept the examination paper.
8. As a courtesy to your classmates, if you finish your examination during the last 15 minutes of the examination period, please refrain from leaving the room.

PLEASE DO NOT TURN THE PAGE TO BEGIN READING THE EXAMINATION UNTIL YOU ARE DIRECTED TO DO SO.

Syd Barrett is a barber and a self-described “entrepreneur”. He lives in Rocky Mountain House, Alberta. Syd has decided to seek your professional advice on several legal matters.

Syd’s home is located across the street from a house owned and occupied by the Rev. Roger Waters, a minister who is employed by Rocky Mountain House Community Church. Syd, not being a particularly religious person, has over the years come to find Roger’s “preachiness” irritating. As a result, this past summer Syd (who has a rather juvenile sense of humour) thought he would try to “get under Rev. Waters’ skin a bit” by erecting on his (Syd’s) roof a large billboard – 20 metres high and 8 metres wide – depicting pornography. The billboard is clearly visible whenever Rev. Waters looks out his living room window (which he does less often now), his home office window, or his front door.

Rev. Waters has written a letter to Syd, complaining that the billboard’s depiction is “offensive”. He also says that, as a result of the billboard’s height, it interferes with his ability to transmit his weekly gospel radio broadcast, which he typically does from his home. Rev. Waters’ letter goes on to state that he is thinking of selling his home and moving to a different neighbourhood because of Syd’s billboard, but that he is concerned that his property value is diminished as a result of the “pornographic monstrosity that would greet any prospective purchaser who happens to glance across the street”.

In late September 2007, residents of Rocky Mountain House were enjoying an unseasonably warm autumn. Syd decided to take advantage of this warm weather one Saturday morning by repainting a portion of his house. This entailed his having to strip some of the old paint from around his front doorframe, with the aid of a small bucket of paint stripper. Syd had poured the paint stripper into the bucket from a 10 litre container which he had purchased at a local hardware store. The container displayed a warning to the effect that its contents are highly explosive.

While Syd was busy working away on his doorframe, his 12 year old son, Tony, was in the back yard. He had been exploring his father’s unlocked garden shed and had come across the container of paint stripper. It was still half full. He gathered some fallen leaves from the lawn, some matches and with a few drops of the paint stripper managed to ignite a fire in Syd’s fire pit. The fire pit is located at the far end of the back yard from the house, near the back lane. Tony wondered what would happen if the entire container went into the fire. He walked over to the house, turned around and flung it into the fire pit. A massive explosion erupted.

At just that moment, fellow Rocky Mountain House resident Carol Kenyon, who was 26 weeks pregnant, was out for her morning walk down the back lane behind Syd’s house. The force of the explosion in Syd’s fire pit knocked Carol to the ground. Syd, who had run to the backyard upon hearing the explosion, saw Carol and immediately called 911.

As a result of the explosion, (1) Carol's child was prematurely born later that day, (2) the child is severely disabled, and (3) Carol was incurably blinded. No-one else was injured.

Please write a letter to Syd addressing ALL tort law issues that may arise in the facts that have been set out above (except, of course, for any issues that you identify which we have not yet canvassed in class, such as products liability, causation, defamation or damages).

Please indicate in the letter if you need more information on any issue, and why such information is significant. If your advice to Syd depends on what such additional information might reveal, please canvass the various possible outcomes.

END OF EXAMINATION