

FACULTY OF LAW
FINAL EXAMINATION - APRIL, 2003

Code No. _____

LAW 430:C1 TORTS (ERIN NELSON)

Time Allotted: **TWO AND ONE-HALF (2.5) hour** examination.

Code Number: **DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS.** A list will be circulated and your name is to be entered opposite a number on that sheet. That number will be your code number **FOR THIS EXAMINATION ONLY** and should be entered in the space provided above. This is to ensure anonymity during marking.

- Instructions:
1. This examination paper contains **2** questions on **4** pages. Check to ensure that it is complete before starting.
 2. Answer **ALL** questions. Questions are **NOT OF EQUAL VALUE**; apportion your time accordingly. Times indicated are approximate.
 3. Please **DOUBLE SPACE** your answers.
 4. This is an **OPEN BOOK** examination.
 5. This examination is worth **75%** of your final grade, depending on your performance on the mid-term examination. If your mark on this examination is better than it was on the mid-term examination (on a percentage basis), this examination will be worth **100%** of your final grade.
 6. Adhere to the time limitation imposed. Failure to do so may lead to a reduction in grade or a refusal to accept the examination paper.
 7. Cell phones, pagers, beepers and related equipment are strictly forbidden. These items must be turned off and stowed. Laptop computers are not allowed in this examination.
 8. Please **DO NOT** leave the room during the last 15 minutes to avoid disturbing your classmates.
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VALUE QUESTION

60 Marks

1.

READ THE FOLLOWING FACT PATTERN AND ANSWER THE QUESTIONS THAT FOLLOW:

Total

(120 minutes)

It's Friday night, the end of a long week, and Louie and his friend Stacy decide to go out for a drink on their way home from work. As both are smokers, Louie suggests they go to the Devil's Advocate Pub, where he is a regular customer and where he knows the owner has not been particularly diligent about enforcing Edmonton's new smoking by-law. The by-law prohibits smoking in all public places, including restaurants, bars, pubs and lounges, and makes it an offence for anyone to smoke in a public place. The by-law also makes it an offence for the owner of a bar or restaurant to permit anyone to smoke on the premises.

When they arrive at the Devil's Advocate, Louie and Stacy light up cigarettes. Libby, the owner of the pub, strolls by their table and says hello to Louie. Louie and Stacy order drinks. Boris, who is sitting at the table next to Louie and Stacy, says to Louie "You can't smoke in here – butt out!". Louie turns to him and says "You butt out. I'll smoke if I choose to, and you can't stop me." Boris, not to be so easily deterred, finds Libby and asks her to insist that Louie and Stacy put out their cigarettes, but she demurs, not wanting to get involved. In her view, she'll start enforcing the by-law when the City shows some interest in policing the situation. To her knowledge, in the six months that the by-law has been in effect, no attempt at enforcement has been made by the City by-law enforcement officers.

Louie and Stacy are having an intense debate about some office politics. Louie is gesticulating fairly wildly, cigarette in hand, and inadvertently lets go of the cigarette, which lands on top of Stacy's head. Stacy is wearing copious amounts of hair spray to keep her new hairstyle in place; the cigarette ignites the hair spray and sets her hair on fire, causing serious burns to her head and face.

Boris sees what has happened to Stacy and rushes towards her to try to help put the fire out. Boris ultimately manages to get the fire out, but not before he has suffered severe burns to both of his hands.

An ambulance arrives to take Stacy to hospital. On its way to the hospital the ambulance goes through a red light and collides with a vehicle owned by Fred (who is not in the vehicle) and driven by his wife, Wilma. Wilma, who is seven months pregnant, is not wearing her seatbelt. Wilma is seriously injured, and her baby (Pebbles) is subsequently born with severe disabilities caused by the trauma of the

accident. Stacy (who is in the back of the ambulance) suffers a broken leg.

ANSWER ALL OF THE FOLLOWING QUESTIONS:

20 marks

(a) Stacy seeks your advice as to whether she may have a claim against Louie, Libby and / or the City of Edmonton for the losses she has suffered. Please advise her of any claims she may have and ensure that you also explain any defences that could be raised against her. In addition, please provide your assessment as to the likelihood of success of her claims.

10 marks

(b) Boris would like your advice as to whether he has a potential tort claim against any of the parties in the pub, for the injuries to his hands.

20 marks

(c) With respect to the collision between the ambulance and Fred's car, please advise the relevant parties as to any tort claims that arise on the facts. Ensure that you explain the nature of such claims, as well as the likelihood that the claims will be successful.

10 marks

(d) Assume that Pebbles has a successful claim for her injuries. Explain how her damages will be assessed. Do not deal with the amounts of her claim.

VALUE QUESTION

15 marks

(30 minutes)

2. To date, Canadian courts have been reluctant to impose liability on social hosts who do not prevent their guests from driving while intoxicated. In *Childs v. Desormeaux*, a recent Ontario case, the Court suggests that if such liability is to be imposed, then it ought to be by virtue of a legislative enactment.

ANSWER ALL OF THE FOLLOWING QUESTIONS:

1. Can social host liability be justified in a fault-based tort system? Why or why not? What distinguishes social host liability from commercial host liability?

2. In your view, assuming such liability were to be imposed by either the Courts or the Legislature, what limits on liability would you advocate in favour of? Why?

Points will be given for answers that demonstrate independent thinking, critical engagement with the readings, articulation and defence of a clear position and reference to materials covered in this course in support of the answer.

***** END OF EXAMINATION *****

Total: 75 Marks