THIS EXAMINATION CONSISTS OF 3 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

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LAW 241.004
Torts

Professor Arbel

TOTAL MARKS: 100

TIME ALLOWED: 90 minutes (plus 15 minutes reading time)

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(1) THIS IS AN OPEN BOOK EXAMINATION. Candidates may bring notes, books, or any other written material into the examination room. Communication devices such as mobile phones are not permitted. Candidates are asked to ensure that their phones are turned off.

(2) THE READING TIME MAY NOT BE USED TO WRITE THE EXAM. You may use this time to take notes on scrap paper or in your exam paper. You are advised to use this time to read through the exam and think about your answers.

(3) Full citation of cases is not necessary. You may refer to cases in short form (e.g.: “Scalera”).

(4) This examination is designed to test material covered in this course only. Do not concern yourself with sources not covered in the course materials, class discussions, or lectures.

(5) Questions raise issues that do not have one “right” answer. Identify and discuss fully the points raised by each question, giving some sense of the relative strength of the arguments.

(6) State clearly any facts you assume in answering the questions. If you need to rely on additional facts that are not in the exam, state so.

(7) A suggested working time for each question is indicated on the exam paper. Be careful to budget your time.

THIS EXAM CONSISTS OF TWO PARTS
YOU MUST ANSWER THE PROBLEM QUESTION IN PART ONE
ANSWER ONLY ONE QUESTION OF YOUR CHOOSING IN PART TWO
PART ONE: 70 marks (recommended time: 60 minutes)

Natalie West is a 16 year old girl living in Vancouver, British Columbia. She attends high school, is a good student, and is involved in various athletic activities and with the school student council. Natalie was raised in a secular household. Recently, she developed a deep and abiding belief in God. Natalie’s religious convictions have been the source of some controversy at her school, as she has introduced some faith based activities and policies through her role on the student council. For example, she has introduced a “modest dress code” initiative, designed to ban the wearing of tank tops, short skirts, and high heels for all the girls in school.

Many of Natalie’s classmates do not understand her religious convictions, and object to the policies she has introduced. One student in particular, Stacey Smith, is vocally opposed to Natalie’s “modest dress code” initiative. Stacey has been speaking out against the policy at school and also on social media, and teasing Natalie at school by making comments like “freak” and “prude” under her breath when Natalie walks down the hall. Stacey has also been sending Natalie emails and texts linking to articles that criticize, dismiss, or condemn, Natalie’s religious beliefs as dangerous and wrong. With every passing week, the texts and emails have become more frequent and more aggressive. This has caused Natalie great distress. She has suffered from insomnia and has trouble eating. She has still maintained her grades and kept up with her duties on the student council, but has become more reserved and less sociable at school.

Stacey runs an online blog that is visited regularly by the students at school. One Friday after school, Stacey posted a long rant about how dangerous she believes Natalie’s “modest dress code” initiative really is. She wrote in detail about how that initiative violates the rights of students to express themselves, and how she finds the initiative offensive, sexist, and insulting. In addition to this rant, she embedded a link to an opinion piece hosted by another blog criticizing religious extremism among youth in schools, and identifying religious people as fundamentally dangerous, bigoted, and violent. She titled the post “Another story about religious freaks. Here’s looking at you, Natalie”, and hyperlinked the words “story about religious freaks” to the opinion piece on the other blog. Approximately 200 visitors viewed the blog post, and roughly 100 of them clicked on the link.

Natalie was deeply disturbed by this blog post and the attention it received. She had already been feeling isolated and targeted at school before this incident, and this additional exposure and attention made matters worse. For three days, she could barely sleep or eat. She locked herself in her room, and barely spoke to anyone. Her parents described her as depressed.

The following Monday, Natalie decided to confront Stacey at school. She encountered Stacey on the stairs outside the school and asked why she would post such an article on her blog. Stacey turned her back on Natalie and said, “I have nothing to say to you freak”. Annoyed, Natalie grabbed Stacey by her shirtsleeve to get her attention. Stacey was startled, and pushed Natalie angrily in retaliation. Natalie lost her footing and, as a result of Stacey’s push, fell down several flights of stairs and sustained a spinal fracture. Stacey was horrified and rushed to Natalie’s aid. [question continues on next page]
Stacey immediately called 911 and alerted the school nurse. Stacey was visibly distraught, apologized to Natalie repeatedly, and said she did not mean to cause Natalie any harm.

An ambulance arrived on the scene and took Natalie to the closest hospital for treatment and diagnosis. Natalie was conscious throughout this whole time. After conducting several tests, Natalie’s physicians concluded her spinal fracture was very serious. They recommended a surgical procedure involving the fusion of two vertebrae with a bone graft held together by a large metal plate, hooks, and rods. If performed without delay, the procedure was expected to give Natalie a 90-95% chance at a full recovery. Without it, Natalie could be confined to a wheelchair for the rest of her life.

Natalie’s physicians advised her fully and frankly about the nature of the procedure and the risks involved. Natalie refused to provide consent. She said that her religious beliefs prevented her from agreeing to the placement of metal objects in her body. She said further that she understood she would likely be confined to a wheelchair for the rest of her life, and that since this was “God’s plan”, she would embrace it.

You are a lawyer working in Vancouver. Natalie’s parents seek your counsel. They claim that Natalie’s religious convictions are just a “phase” and that she “does not know what she is doing”. They want to compel Natalie’s physicians to proceed with the surgery despite Natalie’s objections. They also want your opinion regarding any other legal claims Natalie might have against Stacey.

Advise Natalie’s parents about the possible tort claims arising from the above fact pattern. If you think damages might be appropriate for any of the torts you identify, state which ones. You do not need to quantify damages.

PART TWO: 30 marks (recommended time: 30 minutes)

Answer ONLY ONE of the following questions:

1. British Columbia does not currently recognize a tort of harassment (see e.g. *Fowler v Canada*, 2012 BCSC 367). Do you think British Columbia courts should recognize a new common law tort of harassment? Why or why not? Support your answer using examples from the material studied this term.

2. In *Norberg v Wynrib*, [1992] 2 SCR 226, the Supreme Court of Canada explained that the concept of consent in tort law is based on a presumption of individual autonomy and free will. In your opinion, have Canadian courts established effective definitions and legal processes by which to evaluate consent, and give meaning to this presumption? Why or why not? Support your answer using examples from the material studied this term (you are not restricted to speaking only about *Norberg v Wynrib*).

END OF EXAMINATION.