NOTE:

1. This is an open book examination. Candidates may have with them any written material they wish. Laptops are only permitted for the use of Examplify/Examsoft.

2. For students writing by hand, please ensure you write legibly, and on every second line of your exam paper. Write only your exam code for identifying your exams, not your student number.

3. Communication devices such as mobile phones, tablets, etc. are not permitted. Candidates are asked to ensure that their phones are turned off and out of sight.

4. Full case citations are not needed. You may refer to cases in short form (e.g.: “Cooper”).

5. This examination is designed to test material covered in this course only.

6. This exam consists of two parts. The first part, titled ‘fact pattern’ has four questions, all four of which must be answered. The second part, titled ‘essay question’, has a choice of two questions: of which only one must be answered. Students must respond to the fact pattern, and one of the two essay questions.

7. Assume all duties of care raised in the fact pattern are novel.
Part One: Fact Pattern

65 marks total, of which a maximum 10 marks can be obtained for question D.

Answer ALL FOUR of the following questions in this part:

A. Can Popov be found liable in the tort of negligence for Moneypenney’s injuries?

B. Can the police be found liable in the tort of negligence for Bond’s burns?

C. Determine whether Vallance was the ‘legal cause’ of Bond’s depressive state. Do not consider duty of care, standard of care, factual causation, or damages.

D. Can Vallance be found liable in the tort of Intentional Infliction of Nervous Shock?

James Bond, as result of his former work as a spy, is being threatened with serious harm by one of his enemies, the arms dealer and international criminal Francisco Scaramanga. Bond has been in a ‘safe house’ in Victoria, British Columbia, since January 2017, to hide him from Scaramanga and his threats. Safe houses are secret houses owned by governments to protect people at risk of harm—including witnesses in criminal cases and people fleeing violence. Scaramanga has been trying to find Bond’s location in order to harm him since June 2016.

Bond employs Dusko Popov as his lawyer. In July 2016, Bond applied through the courts for a ‘Protection Order’ to prevent Scaramanga from contacting, visiting, or causing harm to him. Protection Orders are a court order, enforced by the police, that limits the kind of contact one named person can have with another named person. The Protection Order reads:

Francisco Scaramanga is hereby prohibited from contacting, observing, interacting with, threatening, or causing harm to James Bond. Any prohibited acts are punishable under the Canadian Criminal Code, with significant police resources deployed every year under Protection Orders to investigate possible offences and avoid harm to protectees.

As part of applying for the Protection Order, Bond read the relevant section of the Criminal Code which spoke to police obligations in relation to Protection Orders. This section reads:

Police are empowered to investigate and enforce all breaches of Protection Orders. In the very rare cases where the breaches of Protection Orders come from persons known or suspected to have the ability to cause physical harm to the Protected Person, police will attempt to take reasonable steps to protect the Protected Person.

Scaramanga addressed his weekly threatening letters to Popov’s well-known Vancouver office. Popov would, when requested by Bond, send Scaramanga’s letters on to Bond’s safe house. Bond would at times draft a response to Scaramanga’s letters. Bond would send his responding letter to Popov, who would then send on that letter to Scaramanga, but not before removing any details from the envelope or letter that may indicate Bond’s location.

Bond’s husband, Quentin Moneypenney, came to stay at Bond’s safe house on the 11th of February, 2018. Quentin is 45 years old, and earns $100,000 per year. Evidence suggests that Quentin was posting to Instagram a variety of photos of birds, including some photos of birds that are known to live only in the city of Victoria. These posts occurred roughly once per day from the 11th of February until his injuries were incurred on the 17th of March. In none of these photos were street signs or other obvious identifying markers visible.

On the 19th of February, Bond was filmed on live television walking past an unrelated protest, with the 3 seconds of Bond in frame broadcast once that day on one national, and two local networks. Bond sent a letter to Popov to send on to Scaramanga on the 20th of February, again requesting that Scaramanga cease in his attempts to harm him. In this letter to Scaramanga, Bond mentioned that he was being visited by his husband. Popov read the letter that day, but accidentally forwarded it on to Scaramanga without removing the stamp on the
Scaramanga, on the 12th of March, flew from his European home to Victoria. Police began surveillance of Scaramanga as soon as he landed. Upon his arrival in Victoria, Scaramanga spent five days driving around the neighborhood where Bond lived, regularly stopping to photograph houses, cars and people. Police deployed ‘sniffer dogs’ in the area surrounding Scaramanga’s hotel suite on the 14th of March. These dogs smelled and indicated the presence of explosives and other bomb making equipment. When they searched his apartment while Scaramanga was out driving around Victoria, there were no explosives present to confirm the sniffer dogs’ detection, but they did find an assortment of weapons, including guns prohibited from use or sale in Canada. The police removed the firing pins from these weapons, making them incapable of firing. The police then left the apartment, leaving no other traces that the apartment had been searched. The police knew the location of Scaramanga at all times, but did not arrest him, with the Chief of Police stating that:

(T)he firearmsoffenceswereaveryminoroffence,weknewthathe wasuptomuchmore serious crimes, but did not have enough evidence to prove any of them. We needed more, and hopefully could catch Scaramanga in the act of these serious crimes.

The ‘Police Guidebook on Safe Policing’, which is not available to the public, states:

(W)here the commission of a much more serious crime by an offender is assessed by the police as reasonably likely, police are encouraged to gather all evidence required to prosecute that more serious crime, including, where necessary, not arresting or prosecuting the offender until sufficient evidence is obtained of the more serious offence.

On the 17th of March, Scaramanga managed to evade police surveillance. He placed a bomb inside Bond’s doorway, and then boarded a plane to his European home, where he remains to this day, beyond the reach of Canadian justice. Moneypenney got home moments before Bond that day, and as a result, the bomb detonated, causing serious burns to Moneypenney’s arms, legs and face. Bond rushed into his home directly after the explosion and rescued Quentin from his burning home. Bond suffered serious burns to his hands as a result, seriously affecting his hopes of success in his new, post-spy career as a guitar player, where he hopes to earn $20,000 a year, until his retirement in a decade. He also claimed that his reduction in social status was worth roughly $400,000 to him, as he is no longer ‘handsome and dapper’ and is unable now to skydive, which is his sole hobby.

Moneypenney spent several weeks in hospital recovering from his burns. He was able to return to work half a year after his burns were suffered. He asserts that he additionally suffered $30,000 in medical bills, and $25,000 in pain and suffering related losses.

Bond was called by his neighbor, Ronny Vallance, on the 23rd of March. Vallance has, in the past, yelled at Bond as a result of Bond’s dogs barking. Bond had talked to Vallance in the past about his past traumas in his work as a spy. Vallance had seen Moneypenney that day in his hospital bed wrapped in bandages, sleeping. Vallance, in his call to Bond said “It looks like Moneypenney has burns covering most of his body! It must have somehow got so much worse, he looks really bad. I don’t know if he’s ever going to be okay”. In fact, the burns suffered by Moneypenney, although extensive, resulted in minimal pain and scarring. Mr. Bond, who had lost a previous partner as a result of assassins, immediately went into what his doctors term a ‘catatonic depressive state’. This state is defined as ‘effectively being unconscious and not responsive to any outside stimulus... pretty much the same as a coma in some ways’. Expert evidence accepted by all parties to this action notes that the depressive state was not causally connected to the burns Bond suffered in the fire, and was likely influenced by Bond’s history of observing violence related to his career as a spy.

**************************************************************************************************************************************************************************************************END OF PART ONE**************************************************************************************************************************************************************************************************
Part Two: Essay Question

35 marks total
Answer ONE of the following two questions:

1. Indigenous laws and the experience of Indigenous peoples in Canada have been strongly affected by the practice of tort law. How, in the future, could the experiences of Indigenous peoples affect or inform the development of the law of torts?

2. If insurers were prohibited from paying the costs and damages awards of negligent defendants, what implications would this have?

END OF EXAM