NOTES:

1. This is a LIMITED OPEN BOOK examination. You may use the required casebook and supplementary cases and statutes for the course, class handouts and any postings to the Canvas site, and your own notes. Only hard-copy materials (i.e. no material stored on electronic devices) may be taken into the examination room. No other sources, whether original, photocopied, or electronically reproduced or accessed, may be used in the examination.

2. Although second term material has the preponderant weight in this exam, the material covered in the first term is examinable except for privacy and defamation.

3. If you think you would need more facts in order to answer any question completely, please state what those facts are.

THIS EXAMINATION CONSISTS OF 4 QUESTIONS
30 1. Tosca puts her large house, in an expensive Vancouver neighbourhood, on the market. The house is about 50 years old and of wood-frame construction. Isolde, who has recently moved to Vancouver, is interested in buying the house. She engages Figaro, who offers a home inspection service, to do a report on the soundness of the house. Figaro inspects the house from the attic to the basement. His report notes a few minor deficiencies, easily remedied, and concludes that the house is otherwise in excellent condition. The report includes a reference to the fact that the roof was entirely renewed about 10 years ago. That renovation, the report notes, was done by a well-known contractor, Alberich, who is still in business.

In the end Isolde decides not to buy the house but her brother, Siegfried, becomes interested. She gives him Figaro’s report. Based on that report, Siegfried makes an offer to purchase the property, which Tosca accepts. The sale closes and Siegfried and his family move in.

Within a year, Siegfried’s spouse, Brunnhilde, notices a musty smell in the attic, which the family uses for storage. She is uneasy about it, thinking it may be a sign of structural rot, and suggests they get an expert in to advise them. The expert discovers that, owing to defects in Alberich’s work when the roof was replaced 10 years earlier, rainwater has got into the roof joists and the joists have begun to rot. The problem is serious and the expert informs them that the rot is so widespread and far advanced that all the roof joists, and of course the roof that rests on them, will have to be replaced at an estimated cost of $500,000. If that is not done the roof will eventually collapse due to the weakening of the joists.

The problem with the joists is one that Figaro, the home inspector, should have detected but negligently did not do so.

Tosca, the former owner, was unaware of the problem. She had not gone into the attic for years and so had never noticed the musty smell.

In the meantime, Siegfried and Brunnhilde have accepted new jobs in Calgary and Siegfried has sold the house. Siegfried’s total loss on the house is $700,000. The expected cost of remedying the roof problem accounts for $500,000 of this, and the other $200,000 is due to a rare slump in the Vancouver market for detached homes.

Advise Siegfried on whether he may have any remedy in tort for his losses on the house.
In September of the year before last there was a sudden, severe outbreak of Cruddisteria (C-S), a highly infectious disease with a significant mortality rate. The outbreak took place in a densely populated country in Asia, Somadesh. A large Somadeshi immigrant community lives in Canada and the United States, so there is a lot of airline traffic between Somadesh and North America. There had never been any known C-S cases in Canada, though there had been a handful, all involving travelers, in the US.

When the outbreak had been in the international news for just a few days, Elizabeth, a resident of Vancouver who had been visiting family in Somadesh, took a flight from Somadesh to Vancouver on Waft Air, a Canadian airline. She arrived at the departure check-in looking pale and perspiring. Waft Air had given its check-in staff strict instructions to obtain a written certification from every passenger that they felt well and were not suffering from any symptom of illness. If they did not sign, or even if they did sign but were showing indications of illness, the airline would deny them boarding until they obtained a medical clearance. This system was mandated, for all airlines flying into Canada, by the Canada Border Health Agency (CBHA), a federal agency charged with implementing the Canada Border Health Act, a statute designed to minimize the risk of diseases being brought by travelers or shipments of goods to Canada. Airlines were subject to severe penalties if they failed to comply with CBHA’s regulations.

By an oversight the Waft Air employee who should have obtained the health certification document from Elizabeth failed to do so. Nor did any of the Waft Air employees who processed Elizabeth through check-in and boarding take notice of her obviously unwell appearance. Elizabeth boarded the flight. By the time she arrived in Vancouver, she was seriously ill with what turned out to be C-S. She had also unknowingly infected a passenger sitting next to her, who developed the disease a few days later. By the time it was known that that passenger had the disease, he had already, without knowing it, infected a substantial number of other people in his home town of Toronto. Elizabeth herself infected a few others before she was diagnosed and received treatment.

There is an effective treatment for C-S, but it requires special drugs not usually stocked in most hospitals. Once Elizabeth was diagnosed, a day after her arrival, the authorities responded to the fact that a carrier of the disease had been on the Waft Air flight. A supply of the necessary drugs was quickly distributed and administered to anyone who had been on the Waft Air flight and anyone with whom those people were known to have had contact. These measures were ultimately effective in stopping the outbreak, but by that time 80 people had
fallen seriously ill with the disease, of whom 10 had died and the rest ultimately recovered fully, though their illness was prolonged.

A number of victims of the disease consult you about the prospects of suing Waft Air and the Government of Canada (as responsible for the CBHA). The plaintiffs would be all those, other than Elizabeth herself, who had suffered illness or died from C-S in Canada. The airline's failures were described above. With respect to the CBHA, your clients suggest that CBHA, knowing of the C-S outbreak in Somadesh, was at fault for leaving it to the incoming airlines, including Waft Air, to screen for disease. That system works well enough as a general approach, but in the case of an outbreak abroad of a serious disease, the CHBA can implement a second screening process at the port of arrival, to catch cases not screened out, for whatever reason, at the port of departure.

The suggestion is that CBHA, knowing of the outbreak in Somadesh, ought already to have had a second screening in place at Vancouver Airport when Elizabeth’s flight took place. The evidence is that, on the date of Elizabeth’s flight, CBHA’s senior officials were discussing whether they should implement second-screening measures at Vancouver and Toronto, the airports at which 99% percent of all passengers coming directly or indirectly from Somadesh to Canada arrive. However, the officials put off making a decision “until we have more data”. They immediately put the second-screening process in place when, a few days later, the disease was known to have arrived in Canada.

Discuss the tort claims that the C-S victims and their families might have. (You can assume this will be a class proceeding but please do not discuss the Class Proceedings Act.)

3. The “fault principle” is often said to underlie tort law. Thinking back over the different torts you have studied in this course (leaving aside privacy and defamation), to what extent would you say it was true that tort law is based on a moral concept of personal fault?

Note: A thorough answer to this question could fill a book. Please keep your answer reasonably brief and do not devote more time to this question than its mark weight deserves.
4. Diego was walking along a leafy, but fairly busy, street in a residential area on a sunny April morning when he saw a dog owner, Claude, getting out of his car further up the street. While he was putting a leash on his dog in preparation for a nice walk, Claude negligently let the dog escape. The dog ran towards Diego. He heard Claude shout at the dog, “Oh no! You’re not used to traffic! Come back, Zorro!” Diego likes dogs and made a grab for Zorro as the dog ran past him. Diego’s lunge startled Zorro, who, in evading Diego, veered from the sidewalk onto the street and was promptly hit by a passing car. The driver of that car was totally blameless.

Zorro ultimately recovered from his injuries after weeks of expensive treatment by the veterinarian. However, the accident was quite bloody and Diego, who was right next to the carnage, suffered from nightmares and anxiety attacks for months afterwards, requiring him to take a lot of time off work.

Discuss the tort issues that arise.