FACULTY OF LAW
FINAL EXAMINATION – APRIL, 2008

LAW 430  THE LAW OF TORTS (BROWN)

Time allotted: THREE (3) hours

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 three (3) 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 5 (below), you may consult any materials you find helpful.

3. 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.

4. WRITE IN COMPLETE SENTENCES. Credit will not be awarded for point-form answers. Also, WRITE LEGIBLY. If this means you must write on every other line, then please do so.

5. Cell phones, pagers, beepers and related devices are strictly forbidden. Please turn off and stow away such devices immediately. Computers are also not permitted in this examination.

6. 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.

7. 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.
At approximately 5:00 a.m. on April 19, 2007, a fire destroyed 14 newly constructed homes in the Town of Pincher Creek, Alberta (the “Pincher Creek fire”). One of the houses was owned by Marlene Moriarty, who had just three months earlier moved into her new home, having retired from her accounting practice. At the time of the fire, Marlene was not at home, but in Calgary where she had driven the day earlier to visit her sister. Her adult daughter, Sylvia Moriarty, had agreed to house-sit for Marlene.

Marlene learned about the fire later that morning while watching the television news. She quickly recognized her neighbourhood as the location of the fire and that her house was probably destroyed. In a panic, she phoned Pincher Creek’s RCMP detachment, but was told that no information could be released over the telephone. Slamming down the phone, she ran from her sister’s home, got into her 1999 Chevrolet Corsica automobile, and started the 220 km drive to Pincher Creek.

Proceeding southbound in the right lane on the Queen Elizabeth II Highway (Highway 2) (a limited-access multilane freeway) 40 km south of Calgary, Marlene glanced at her watch. It was just before noon. Thinking she might learn more about the Pincher Creek fire by listening to the news, she began to fumble with the radio frequency dial with her right hand while holding onto the steering wheel with her left. Although she managed to keep her eyes on the road most of the time, she did look down at the dial occasionally to see what frequency she was at. Unfortunately, during one of those quick glances down at the dial she failed to notice that she was veering into the left lane, and her automobile clipped a 1994 Ford Aerostar van operated by Orlando Kurtenbach. Orlando – a 13 year old boy – had stolen the van from his school parking lot in a misguided attempt to visit his father in Lethbridge. At the moment of the impact, he was also distracted while attempting to operate the cigarette lighter and so he was unable to undertake any evasive action. The van left the road and Orlando was rendered a quadriplegic, shattering his dreams of becoming a heavy duty mechanic.

Marlene’s car began to spin in the right lane. It struck a passing seagull, knocking the poor bird across the freeway median and into the windshield of a northbound 2004 Western Star freight truck owned and operated by Clifford Clark. Clifford lost control of the truck and it went down an embankment. Miraculously, he was not injured. The truck was damaged, however, and its cargo was strewn about the embankment. The cargo consisted of stock which Clifford had been transporting for Swenson’s Hardware Ltd. (“Swenson’s”) in Airdrie, Alberta. A certain amount of the stock – which Swenson’s could have sold for $100,000 – was destroyed. The remainder of the stock – worth approximately $500,000 but with a resale value of $800,000 – was eventually collected and delivered to Swenson’s, but not before Swenson’s had to close for a week due to lack of inventory. The closure caused approximately $20,000 in lost revenue and other expenses (such as salary) to Swenson’s.

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Members of the RCMP arrived at the accident scene within ten minutes, and several ambulances soon followed. Though badly shaken, Marlene had the presence of mind to ask them to inquire about the Pincher Creek fire and specifically about Sylvia. One of the RCMP members went to her cruiser and spoke on her radio for several minutes, occasionally glancing at an anxious Marlene. She then walked over to Marlene, put her arm around her shoulder and said “I’m sorry, Mrs. Moriarty. Your daughter’s body was recovered from the fire and identified this morning.” Marlene collapsed. Though conscious, she was diagnosed with severe nervous shock and spent the next two weeks in hospital. Marlene regrets never having been able to view Sylvia’s body in order to “say goodbye properly”.

Senior members of the Edmonton and Calgary fire departments were called in to investigate the cause of the Pincher Creek fire. Although a source of the fire was not identified, the cause of the spread was identified by investigators as “likely” caused by the vinyl siding that covered the exterior of all the houses involved, including Marlene’s. They estimated that, in the event of a housefire, the installation of vinyl siding increases the risk of total destruction by 20%. They also noted that vinyl siding manufacturers recommend that builders install drywall underneath the vinyl siding to slow the spread of fire, but that is rarely done unless builders are required by public authorities to do so. Joe Fortin, the builder of Marlene’s house, was quoted in the *Pincher Valley Weekly Times* as saying: “Nobody around here has made us install drywall, so none of us do it. I wasn’t doing anything different than the next guy.”

Marlene’s house (and all the other houses that burned in the Pincher Creek fire) were built according to the requirements of the Alberta Building Code Regulation 1998, AR 50/98, which was made by Alberta’s Minister of Municipal Affairs and Housing (the “Minister”) under the authority of the Safety Codes Act, R.S.A. 2000, c. S-1. In 2002, representations were made to the Province by the Alberta Association of Fire Chiefs (AAFC), urging the adoption of a requirement that drywall underlie all vinyl siding installed on residential housing. The Minister, however, resolved not to implement such a change. Her concern, stated in a letter to the AAFC, was that it would increase the cost to young families of purchasing a home. In light of the Pincher Creek fire, the Minister has written a letter to the editor of the *Pincher Valley Weekly Times*, conveying her sympathies to the affected residents, but emphasizing that the investigation was unable to conclude whether, on a balance of probabilities, the installation of drywall would have slowed the fire spread enough to save the homes from destruction.
In her will, Sylvia set aside $10,000 as a gift for Marlene. Unsure what to do with that much money, Marlene decided to consult her neighbour, Arnold Dingfelder, who is a licensed investment broker. One day as they chatted over coffee at the Pincher Creek Café, Arnold told Marlene about a publicly-traded British Columbia mining company called Fly-by-Night Gold Exploration Ltd. (“Fly-by-Night”). “In my professional opinion”, said Arnold, “this investment would be a sure thing.” Taking Arnold’s advice, Marlene invested $10,000 in Fly-by-Night shares. Within two weeks, their value had plummeted and the value of Sylvia’s shares had become worthless.

Please write a letter to Marlene addressing **ALL** tort law issues that may arise in the facts that have been set out above.

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

**END OF EXAMINATION**