Faculty of Law

FINAL EXAMINATION: APRIL 2003

LAW 430:C2 - TORTS (ROBERTSON)

Time Allocated: TWO HOURS THIRTY MINUTES (2½ HOURS)

Code Number: DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS OR BOOKLETS OR ON THIS QUESTION PAPER. 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 on the examination booklets in the space provided for surname and on the question sheet in the space provided for code number. This will provide for anonymity during marking.

Special Instructions:

1. This examination question paper contains 2 questions on 4 pages. Check to ensure that it is complete before starting.

2. Answer ALL questions.

3. Questions are NOT of equal value. Apportion your time accordingly. Suggested times are provided beside each question.

4. This examination is OPEN BOOK. You are allowed to bring any books, notes or materials with you into the examination room.

5. In order to avoid disrupting other students who are still writing the examination, please do not leave the examination room during the last 15 minutes of the examination period.

6. This examination represents 75% of the overall assessment for the course.
QUESTION 1

Total Value: 60 Marks. Total Suggested Time: 2 hours

This question consists of a factual hypothetical followed by a number of questions. The mark assigned to each of these questions is indicated immediately beside it, along with a suggested time.

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. Louie and Stacy are both heavy smokers, and Louie suggests that 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 each light up a cigarette. Libby, the owner of the pub, strolls by their table and says hello to Louie. Boris, who is sitting at an adjacent table, says to Louie and Stacy, “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 Libby 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.

Seated at their table, 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 the telephone near the entrance door to call an ambulance. However, in his panic he does not notice a small pool of beer which one of the waitresses recently spilt on the floor. Boris slips on the beer and falls to the ground, badly injuring his shoulder.
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.

PLEASE ANSWER THE FOLLOWING QUESTIONS

A. (Value: 20 marks. Suggested Time: 40 minutes)

Stacy sues Louie, Libby, and the City of Edmonton, for damages for the burns to her head and face. Discuss their liability, including any possible defences.

B. (Value: 15 marks. Suggested Time: 30 minutes)

Boris wants to sue for the injury to his shoulder. Identify potential defendants and discuss their liability, including any possible defences.

C. (Value: 20 marks. Suggested Time: 40 minutes)

Wilma and Pebbles both want to sue for their injuries. Identify potential defendants and discuss their liability, including any possible defences.

D. (Value: 5 marks. Suggested Time: 10 minutes)

Assuming Louie is negligent, discuss whether he is liable for Stacy’s broken leg which occurred in the ambulance collision.
Johnnie Walker returns from vacation to find that during his absence someone has broken into his house and stolen his valuable collection of rare scotch whisky. Only two people knew he was away - his two next door neighbours, Glen (who lives in the house immediately to the west of Johnnie), and Keith (who lives in the house immediately to the east of Johnnie). Johnnie suspects that Glen is the culprit, even though he has no real basis for this suspicion, other than the fact that he knows Glen has a criminal record and likes whisky. Johnnie decides to contact the police and accuse Glen of theft. He figures that even if he is mistaken, it doesn’t really matter since he doesn’t like Glen anyway. Johnnie therefore writes a letter to the local police accusing Glen of stealing his whisky collection. He also sends a copy of the letter to Glen’s employer, but the employer has a very high opinion of Glen and so refuses to believe Johnnie’s accusation.

Johnnie also puts a sign on his front lawn which reads in large letters, “Beware of the man who lives next door”. The sign is there for two weeks, and is read by many of the people who live in the community. After a lengthy police investigation it turns out that it was Keith, and not Glen, who stole Johnnie’s whisky.

Glen and Keith sue Johnnie for defamation. Discuss the parties’ rights and liabilities.