FACULTY OF LAW
FINAL EXAMINATION – APRIL, 2009

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 DIRECITED TO DO SO.
Edna Konkin is a 62-year old elementary schoolteacher from Nanton, Alberta who is devoted to her family and to her profession. Her late husband, Bill Konkin, was also a teacher. Wednesday, January 14, 2009, is not a day which Edna recalls with unadulterated pleasure. On that day, Edna was hosting a party at her newly constructed home to mark the 36th anniversary of the accession to the Danish throne of Queen Margarethe II. (Edna is extremely proud of her Danish heritage). Her house was festooned with reproductions of the Danish flag (the Danneborg) and her windows and walls were almost entirely covered with pictures of Denmark’s queen and of other various members of the Danish royal family.

Over 30 people attended the party, which held the promise of ranking as one of Nanton’s major social events of the season. Edna enjoyed showing off her new home. She was especially proud of the living room’s inlaid wood floors that she had specified in her contract with the builder, and was in the process of explaining the different kinds of wood used when she heard a horrible sounding crash coming from the corridor linking the living room to the kitchen. Running to the corridor, she noticed the door leading to the basement was opened. She had specifically warned her guests upon arrival that they may perambulate anywhere within the main floor, but not to go downstairs since she had not yet herself been down the stairs to assess the conditions. She also pointed out that the lights had not yet been installed in the staircase. Peering down the stairs, she could make out the faintest image of Karl Sorensen lying at the bottom.

Piecing together the story from other guests and from Karl, who was still conscious though in great pain, Edna gathers that Karl had not approved of the brand of beer that Edna had in her kitchen fridge (which had not stopped him from already quaffing down two), and had decided to see if she had a fridge downstairs with a better selection of beer. He then stumbled on the first step down, and fell. One of the other guests, Hank Hill (a well-known builder in Nanton) immediately produced a tape measure from his pocket, took a quick measurement of each step, then told Edna in front of all the guests: “Dang it, Edna, that numbskull builder of yours built risers on the stairs that do not comply with the Building Code. They’re not high enough. No wonder Karl fell. I tell you what, there’s a lawsuit there.” It turns out that Hank is right. The Alberta Building Code 2006, which was declared in force by the Building Code Regulation, Alta Reg. 117/2007 under the authority conferred by the Safety Codes Act, R.S.A. 2000, c. S-1, requires that residential staircases include a 7 ½” high riser, whereas Edna’s risers are only 6 ¾” high.

Extremely irritated, Edna wants to sue the builder for building her a substandard and dangerous staircase. The builder is Robert Kurvers. In March, 2008, Edna and Robert had signed a contract for the job of building her house. It stipulated that before suing for any construction deficiency, Edna must first give Robert the option of rectifying the deficiency himself. Edna now thinks Robert is an incompetent builder and she wants to sue for the cost of hiring someone else to demolish and replace the staircase with a new staircase that conforms to the Alberta Building Code 2006.
Edna was extremely anxious at the prospect of being sued by Karl. After two sleepless nights, she resolved to speak to you about it. On Friday, January 16, 2009, she was on her way to your office. While crossing Nanton’s main intersection, she was injured when she was hit by a 1977 Chevrolet Camaro owned by Nanton Body Shop Ltd. ("Nanton Body Shop"), and driven by its 18-year old employee, Randy Skolos. Randy had been instructed by the owner of Nanton Body Shop Ltd. to drive the Camaro from Nanton Body Shop’s premises across town to the Nanton Trade Show. On the way, he had been challenged by the driver of another vehicle to a drag race, and it was in the course of that drag race that he ignored a red light, proceeded across an intersection and struck Edna. Randy has no property and, now that Nanton Body Shop has fired him, no money, and Edna does not want to pursue him for damages.

Edna was seriously injured when the Camaro struck her. She was unconscious when taken to hospital. While she was being assessed by the emergency room physician, Dr. Hannah Kwak, an attending nurse drew Dr. Kwak’s attention to a wrinkled piece of paper, about the size of a business card, that he had found in Edna’s purse. On the note, in blue-inked handwriting, was the following:

Please be advised that I am a member of the Church of Tender Mercies.
As such, I adhere to the proscriptions required by the doctrines of my faith, including the proscription against medical treatment of any kind.

Edna was treated for a closed head injury, a broken right arm, a broken nose, a shattered right orbit and various scrapes and bruises. Due to Dr. Kwak’s treatment, she has made a full and prompt recovery. She returns to work tomorrow – on April 15, 2009. In accordance with the terms of the disability insurance plan contained in her union’s collective agreement, Edna has received 80% replacement income during her time off work. She also received 20% income replacement through a disability insurance policy that she had purchased herself.

Unfortunately, Karl’s recovery was not as rapid as Edna’s. He was in hospital for over three weeks, and his recovery necessitated avoiding all work for another five months. At the time of the accident, he was employed by Nanton Financial Services Ltd. ("Nanton Financial") as an auditor, with the responsibility of furnishing financial reports to shareholders of various Alberta corporations. As his recovery coincided with the time of year at which many corporations have their annual general meetings (May/June), Nanton Financial lost a great deal of business. Edna has also learned through mutual friends that Karl’s wife Julia, who was also at Edna’s party, has suffered severe depression since seeing her husband lying at the bottom of Edna’s staircase. This comes as no surprise to Edna, who has noticed that Julia has often seemed emotionally fragile since the death of her son Duane in a farming accident last summer.
Edna has just left your office after relating all these facts to you. Please write a letter to her 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 Edna depends on what such additional information might reveal, please canvass the various possible outcomes.)

END OF EXAMINATION