



Sample Examination

TORTS

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Time: Three (3) hours

Instructions

1. This is an open book examination. You may bring into the examination room and freely consult any non-electronic materials with the exception of personal typed or handwritten notes. This is subject only to reasonable space limitations as determined by the invigilator.
2. The duration of the examination is three hours.
3. The examination is in two parts, as follows.
4. Part I (75%, approximately 135 minutes) comprises a fact pattern followed by three questions. Answer all three questions in Part I.
5. Part II (25%, approx. 45 minutes) requires you to write a short essay or judgment on a specified topic.
6. Please write legibly on every second line in the answer booklets, in complete sentences rather than in point form. State clearly any factual assumptions necessary to the formulation of your answer(s). Briefly cite relevant case law, statutory or other authority as appropriate.
7. Do not begin the examination until instructed to do so by the invigilator. You must stop writing when told to do so.
8. Part I of the examination begins on the next page.

**YOU MUST RETURN THIS EXAM IN THE ENVELOPE PROVIDED WITH YOUR ANSWERS.
FAILURE TO DO SO WILL RESULT IN AN AUTOMATIC EXAM FAILURE.**



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PART I

(75%, approximately 135 minutes including 15 minutes recommended reading time)

Harry and Ina are common law spouses in their late 20's. They are also both hardworking law students who have just completed their first year of law school. Before beginning their summer jobs, both decide they need a break to recover from the ordeal of their first-year final exams. They both decide to take a four-day spring ski holiday at Bare Pass, an alpine ski resort owned and operated in Ontario by Chance Enterprises Inc.

In fact Harry requires considerable convincing to go on the ski holiday, as he has always had a fear of heights and has never been on downhill skis in his life. Ina on the other hand is an expert skier and in fact worked occasionally as a ski instructor before meeting Harry. Ina tells Harry that once she teaches him the fundamentals, he will become a confident skier and enjoy himself. Harry, knowing how much skiing means to Ina, eventually but reluctantly agrees and travel arrangements are made.

On their first day at Bare Pass, Harry and Ina make a late start but shortly after lunchtime they proceed with their ski equipment to the "uploading" station at the base of the ski slopes. From this uploading station a cable car system whisks skiers, in 6-person cable cars or "gondolas", up the mountain. The gondolas are suspended from massive cables supported by a series of towers securely anchored at regular intervals up the side of the mountain. Given the spacing of the towers and the rugged mountain terrain, the gondolas are at times over 30 metres from the ground as they progress up the mountainside.

Although Harry turns pale as he catches sight of the gondolas disappearing into the upper mountain mists, after some additional persuading by Ina they both join the queue waiting to board the gondolas. As they enter the queue, they both notice a large red-lettered sign stating "Ski Safely – Ski Sober!" as well as a second sign stating "Danger! No Overloading or Rough-Housing in Gondolas!" Both signs bear the Bare Pass Resort logo.

Eventually Harry and Ina reach the head of the queue, an empty gondola swings around to the loading platform, and Alec, a Bare Pass employee charged with overseeing the safe loading of gondolas, motions towards Harry and Ina. They both come forward and enter the empty 6-person gondola with their skis. Immediately behind them, a boisterous group of five 17 and 18 year-old snowboarders also pushes forward and tries to shove its way into the same gondola. Alec, distracted by another Bare Pass employee who has brought him coffee, does not immediately notice this. Ina, however, tells the group of five "there's not enough room for all five of you and your snowboards", but by then all five have managed to cram their way into the gondola, laughing and shouting. Alec finally notices the overloading and comes to correct the situation, but as he does so he recognizes two members of the group of five as occasional snowboarding buddies of his. Seeing that all five are already in the gondola and that it is reaching the end of the loading platform, Alec simply swings the plexiglass door shut, slaps the side of the gondola, and shouts through the glass: "Just don't move around too much in there and you'll be fine!" Harry shoots a stricken look at Ina, but there is nothing to be done as the gondola has by now swung out of the uploading station and has begun its ascent.



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In fact all five youths are quite inebriated. They had been up quite late the night before "partying" and drinking alcohol even though they are under the legal drinking age in Ontario. They had awakened late the following morning still somewhat intoxicated, and had immediately resumed drinking until they had finished all their remaining alcohol. They had then headed out, at about noon, to one of the resort pubs operated by Bare Pass. There, Dave, a friend of theirs working behind the counter, had served them three more beers each, notwithstanding their age and the fact that they were already visibly drunk. From the pub, they had decided to do some snowboarding and had thus ended up in the gondola with Harry and Ina. When they first entered the queue at the uploading station, Ernie, another Bare Pass employee, had noticed their intoxicated state but had simply warned them to "behave, or else".

Once in the gondola all five become quite rowdy, pushing and wrestling with one another in the confined space. All five jostle Harry and Ina on several occasions, and at one point one of the five, Lou, loses his balance and accidentally hits Ina in the face with his hand as he reaches out instinctively to grab hold of the handrail. At this Harry, already uptight over the overloaded gondola, loses his temper and shouts "That's enough, all of you! Just stand still until we're at the top!" This provokes howls of laughter and derision from all five youths. Lou in particular begins taunting Harry: "What's the matter, are you scared of heights, big man? Are you afraid we're all going to fall down?" He then begins a rocking motion and is quickly joined by his four friends, who shout "Fall down! Fall down!" in rhythm to the extreme swaying motion they have now imparted to the gondola. Ina shouts "Stop it, you bunch of idiots!!" while Harry tries to restrain Lou to stop the swaying motion.

Unfortunately, just at this moment a strong gust of wind catches the gondola. In combination with the extreme swaying caused by the five youths, this causes the cable from which the gondola is suspended to jump its "track" on the nearest tower. The sudden resulting slack in the cable causes the gondola to plunge 10 metres before its fall is abruptly arrested by the remaining tension in the cable. The force of the fall immediately engages an emergency stop mechanism, bringing the entire cable car system to a stop. The gondola containing Harry, Ina and the five youths sways precariously from the cable, which is now unsupported by the nearest tower.

Inside the gondola, the force of the fall and sudden stop has thrown all seven occupants violently to the floor. None of the five youths is seriously injured (other than cuts and bruises), but Ina's left leg and right wrist have been broken under the weight of two of the five youths who have been thrown down on top of her. Harry, on the other hand, is much more seriously injured. His rib cage has collapsed under the weight of the three other youths, causing massive internal haemorrhaging and damage to his vital organs. His carotid artery (the chief artery passing up the neck and supplying the brain) has also been severed by the sharp edge of one of the snowboards in the gondola. Harry is unconscious and his injuries are so serious that without emergency medical attention he will likely die within three to five minutes.

As the six conscious occupants of the gondola try to untangle themselves, Ina realizes that Harry is grievously injured and panics. She struggles wildly to get the youths out of the way so as to be able to administer first aid to Harry, but the resulting additional motion of the gondola causes the already weakened mount which attaches it to the cable to give way. The gondola plunges the remaining 20 metres from the cable to the snow-covered mountainside.



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Miraculously and due to the deep snow, the gondola's occupants suffer only relatively minor additional injuries. Ina breaks her right leg and loses consciousness almost immediately; Lou suffers four broken fingers; and the remaining four youths merely suffer additional cuts and bruises. Harry unfortunately dies within minutes due to his original injuries. None of the youths knows anything about administering first aid and none of them attempts to do so, although it is highly unlikely that anything they could have done would have saved Harry's life.

Eventually all occupants of the gondola are rescued from the mountainside by an emergency response team. When she regains consciousness in hospital, Ina is informed of Harry's death and immediately sinks into a deep clinical depression that lasts for a year. During this period, her physical injuries heal completely although she requires hospitalization for the first six weeks. Her mother, Joyce, takes a leave of absence from her job during this period and during the following six weeks in order to provide home care to Ina when she is first released from hospital. Ina is of course unable to take up her summer job due to her injuries, and finds herself unable to return to law school in the fall due to her depression. She decides to give up her apartment and to move back home with her parents until she can get back on her feet physically, emotionally and financially. After about a year, through grief counselling and therapy (paid for by Joyce's workplace insurance benefits), Ina reaches the point where she feels she can get on with her life. As part of this process she comes to you seeking legal advice.

Subsequent investigation reveals that the cable car system (including the gondola, its mount, the cable and the towers) were designed, manufactured, installed and maintained in accordance with prevailing industry norms and government regulations.

Questions

1. (50%, *approximately 80 minutes*) Advise Ina as to any negligence actions she and/or Harry's estate may have. Be sure to deal with all potential defendants, applicable defences and types of damages that may be recoverable.
2. (10%, *approximately 15 minutes*) Advise Ina as to whether she and/or Joyce may recover damages under section 61 of the Ontario Family Law Act, and if so, what type.
3. (15%, *approximately 25 minutes*) Advise Ina as to any causes of action she may have in trespass against her person. Again, be sure to consider any applicable defences and the types of damages that may be recoverable.

Part II of the Examination is on the next page.



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PART II

(25%, approximately 45 minutes)

Address any one of the following topics, drawing upon course readings, illustrations from the law of torts, and your own ideas and opinions for content. Please provide brief references, in your answer, to any applicable authority.

Topic 1 "The operation of the tort system is akin to a lottery. The most crucial criteria of payment are largely controlled by chance:

- a) whether one is 'lucky' enough to be injured by someone whose conduct or product can be proved faulty;
- b) whether that party's insurance limits or assets are sufficient to promise an award or settlement commensurate with losses and expenses;
- c) whether one's own innocence of faulty conduct can be proved, and
- d) whether one has the good fortune to retain a lawyer who can exploit all the variables before an impressionable judge or jury, including graphically portraying whatever pain one has suffered."

-Slater Task Force, 1986

Write a short essay critically evaluating this characterization of modern tort law.

Topic 2 "If women were to set about articulating principles to inform and govern human behaviour, then, feminists claim, the system emerging would probably look very different [from our current tort system]: it would be based on a set of ethical principles placing greater emphasis on our dependence on, and involvement with, others rather than giving prominence to our separate and individual status."

-J. Conaghan, 1996

Write a short essay explaining this statement and exploring critically what practical changes such a shift in emphasis would entail for tort law.

Topic 3

Choosing any case assigned in the syllabus (Canadian or otherwise), write an appeal judgment reversing the holding in the case and explaining your reasons for so doing.

END OF THE EXAMINATION



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