

LAW 2003

TORT ASSIGNMENT

Due: At the beginning of class on June 8, 2017.

Task: Analyze the following problem and report your conclusions in paragraphs. Your answers should explain the relevant law and apply it to the particular facts of the case. You should refer to any relevant precedents that are discussed in the text. When explaining an intentional tort, you should define the tort and discuss whether all the requirements of that tort have been met. When discussing negligence, you must discuss all the requirements of a successful lawsuit even if you conclude that a lawsuit would not be successful. Remember that you are demonstrating to me that you understand the subject so a complete explanation is necessary. Your answers must be typed and marks will be deducted for serious errors of spelling and grammar.

Length: Approximately 1500 words

Marks: This assignment is worth 15% of the final grade.

Late Penalty: 2% per day and papers will not be accepted after 5:00 p.m. on June 14. Late papers may be handed in through email. I will acknowledge receipt so if you don't hear from me; I didn't receive your work. It is your responsibility to ensure that I do receive your assignment. Assignments handed in online will be marked but will not receive comments. If you would like comments you must give me a hard copy.

This is an individual assignment. Please note that all quotations must be set off in quotation marks and must be footnoted. Failure to do so is plagiarism and will result in a grade of zero. Cases and legislation must have in text citations. Do not lend or borrow notes or papers. Duplicate papers will both fail. To be sure that you understand the rules regarding academic honesty, please watch the Library's Academic Honesty presentation. You will find a link on Blackboard to the website.

OBJECTIVES:

- To demonstrate an understanding of tort law.**
- To learn how to use a legal search engine to find a statute and to understand the application of statute law to a fact situation.**
- To demonstrate an understanding of the role of precedent in reaching legal decisions.**

Disaster Day

Jennifer, who is an accountant, has consulted you. She recently had a rather bad day and fears that she has exposed herself to liability in tort law. Her colleagues, Anderson Cooper LLP, who are auditors, are also worried about their professional liability. Explain what torts may have occurred. Define each tort and explain the extent of everyone's liability. Explain how damages, if any, would be calculated. If there are any torts of negligence, include in your

answer an explanation of all the steps which must be proved in any negligence action as well as any possible defences. Be sure to apply the rules to the fact situation.

1. Jennifer works from her office which she rents in an office building. Last week her assistant, who was extremely valuable to her, was hired away by a competitor. She hired a temporary secretary, Graham, to fill in but he is not very satisfactory. Two weeks ago she noticed that the carpet in the hall was frayed and thought that it ought to be repaired. On Graham's first day she told him to get in touch with the landlord about it but Graham forgot to do so. (Three marks)
2. Yesterday it seemed that everything went wrong. Jennifer had brought her dog, which is normally very friendly and well behaved, to work with her. A client, Kate, arrived for a scheduled meeting bringing her three year old child with her explaining that her daycare arrangements had fallen through. While Jennifer and Kate were discussing terms of their proposed contract, they did not notice that the child was playing the dog's tail. Suddenly there was a loud growl from the dog followed by screams from the child. It turned out that the child had been nipped by the dog and had a very small cut. Kate was very upset and rushed out to take the child to the doctor. Jennifer has learned that the child was all right and had not needed stitches. Her dog's vaccinations were all current. Unfortunately, in Kate's hurry she caught her foot in the frayed broadloom at the entry to the office and fell. Kate broke her arm. (6 marks)
3. Just then an irate client, Richard, arrived. Richard was furious because CRA has told him that he owes another \$25 000 in income tax and he thinks that Jennifer must have made mistakes when preparing his return. When Jennifer refused to compensate him, Richard shook his fist at her and yelled, "If you weren't a woman, I'd beat you up." Panicked, Jennifer grabbed a heavy vase from her desk and, as Paul, her assistant rushed in, Jennifer hit Richard over the head. Richard was seriously hurt. (5 marks)
4. Having heard all the commotion, security arrived. A new client, Rand, had just arrived. Although wealthy, Rand dressed in old clothes. The security guard took one look at him and assumed that he was the cause of all the trouble. The security guard ordered Rand to return to the security office to wait for the police. Rand went because the security guard was very large. Rand was detained for 20 minutes and then allowed to depart. As Rand left the building, he was stuck in the elevator for more than two hours. The elevator had been serviced two weeks earlier but the workers had failed to fix the known problem with the doors. A friend of Jennifer's has just told her that Rand posted very negative comments about her on Facebook. He said that she was incompetent and criminal and that her business should be boycotted. (7 marks)
5. Jennifer shares office space with a firm of auditors, Anderson Cooper LLP. That firm is also facing potential legal problems. One of its clients was Watson Inc. which had operated in Ontario for several years. Last year it moved its account to the Ontario Business Bank (OBB). Before accepting the account, the OBB asked Anderson Cooper for a copy of Watson Inc's audited statements. These were turned over to the OBB with Watson's consent. The accounts showed a history of increasing profitability. On the basis of this information the OBB lent \$5million to Watson Inc.

Shortly afterwards, Watson Inc. ran into financial difficulty and was forced into bankruptcy. Its debts exceeded \$7 million.

The bank brought an action against Anderson Cooper for negligence. The bank established that the audited statements for the preceding years were inaccurate, carelessly prepared and that Watson Inc. had been in serious financial difficulty at the time CBB accepted Watson Inc. as a client.

All the financial statements included a clause which stated that the auditors had followed IFRS. (9 marks)

Analyze each incident and determine whether *tort* liability has arisen for Jennifer, the auditors and any of the clients. Explain your answer defining each tort and discussing the extent of everyone's liability. Explain how damages, if any, would be calculated. If there are any torts of negligence, include in your answer an explanation of the steps which must be proved in a negligence action. You must also examine the possible liability of the auditors under the Securities Act.

Hint: In addition to the Occupier's Liability Act, there is a Dog Owner's Liability Act.

A very useful legal search engine can be found at: <https://www.canlii.org/>