

**THIS TEST CONSISTS OF FOUR (4) PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FIRST TERM EXAMINATION - DECEMBER 2012

**LAW 140
(Torts)**

**Section 002
Professor Joost Blom**

MARKS: 100

**TIME ALLOWED: ONE HOUR 15 MINUTES
(INCLUDING READING TIME)**

NOTES:

1. This is a limited open book examination. You may bring into the examination room the Solomon et al. casebook and the supplementary materials, printouts of any postings to the Vista site, and any notes and summaries you have made yourself. No other books or reference materials, whether originals or paper or electronic copies, may be used in the examination.
2. The exam consists of one question.
3. If you think you would need more facts to answer the question fully, please indicate what those facts are.

MARKS

100

Livia, a seventy-five-year-old widow, owns an art collection that was built up by her late husband. The prize of the collection is a large painting by a 19th century German artist, Peter Pinsel. She had recently had the Pinsel appraised for insurance purposes at \$400,000. The appraiser told her the picture could use some cleaning by a qualified expert.

Livia mentions to her favourite nephew, Nero, that the appraiser said this. Nero suggests that he, Nero, take the picture to an art dealer to have it cleaned. Livia readily agrees. Nero takes the picture to a reputable art dealer and auctioneer, Cannelloni, but he sells Cannelloni the picture. He represents himself as Livia's agent for the purpose of the sale. To prove his agency Nero shows Cannelloni a power of attorney signed by Livia. He had some time ago persuaded Livia to give him this power of attorney so he could look after her affairs if she became incapable. Livia is still perfectly capable.

Cannelloni pays Nero \$400,000 for the picture. Nero, a lawyer, has made some very unfortunate investments and most of the money goes to pay his creditors. He retains about \$100,000, which he immediately invests in another investment scheme promoted by one of his friends.

After some months Nero's cousin, a niece of Livia's called Drusilla, is visiting Livia and notices the Pinsel painting is not there. Livia tells her that Nero took it away to have it cleaned but she hasn't seen Nero since. Drusilla knows of Nero's expensive lifestyle and financial troubles. Nero told her a while ago, when he had had too much to drink, that he had been cheating on his taxes "in a major way" and also had lost a lot of money on "deals that went sour".

Suspicious that Nero has misappropriated the painting, Drusilla goes to Nero's apartment at a time when she knows Nero is at his law office. She persuades the apartment manager to let her in by pretending to be Nero's girlfriend of the moment. When Nero returns and lets himself into his apartment, he is startled to see Drusilla there. She accuses Nero of having "stolen" the Pinsel from Livia. Nero admits that he sold the picture for \$400,000 because he was "desperate for cash" and "Auntie would have left the picture to me anyway". He refuses to say to whom he sold the picture. Drusilla says that she will not leave the apartment, or let Nero leave, until Nero gives her a cheque payable to Livia for \$400,000. Her plan is to give Nero a week to get the funds into his account; she assumes he can borrow the money somehow. She knows that if, at the end of the week, the cheque is presented for deposit and there are insufficient funds to cover it, Nero will be in trouble with the Law Society for writing an NSF (not sufficient funds) cheque.

Nero says he has to get his chequebook from the bedroom and disappears into that room. His bedroom has a door onto a small balcony. He goes out onto the balcony

and tries to climb down from it to the ground, three metres down, but loses his grip, falls onto a concrete walkway, breaks his leg in three places, and is taken to hospital. He is likely to retain a permanent limp. When Drusilla hears Nero's cries and realizes he has tried to escape from her and avoid repaying their aunt, she is furious and berates him even as he is taken away by ambulance.

The next day, Drusilla phones the Canada Revenue Agency anonymously to say that Nero has been cheating on his income taxes.

When, the same day, Drusilla goes to her aunt's apartment and tells Livia what Nero has confessed to doing with the painting — something Drusilla relishes doing because she was always jealous that Aunt Livia was noticeably fonder of Nero than of her — Livia suffers a serious collapse of her health, both at the loss of the painting, which was her late husband's special favourite, and at learning of Nero's betrayal.

In the meantime, Cannelloni has sold the picture at auction to Scipio, a well-known local collector. Scipio paid \$700,000 for the picture. This is considerably more than its market value but Scipio just fell in love with the picture and had to have it.

Some time later, Scipio lends it to the Fusilli Fine Arts museum, which is putting on a six-month Pinsel exhibition. When the exhibition is advertised, Livia and Drusilla discover the picture's whereabouts and demand its return from the museum. Unfortunately, by this time, the painting has been severely harmed while being transported to the museum by Hercules Transport, which the museum hired for this purpose. One of Hercules's employees, Dionysus, failed to put the crate containing the painting indoors one night and the crate stood outside in the rain. Dionysus was unaware of what the crate contained except from the labeling on the crate he knew it was probably worth a good deal. The crate leaked and the painting was irreparably damaged, so that it is now worth only \$100,000.

Unlike all his other investments, Nero's investment of the money he kept from the sale of the painting proves a huge success and Nero receives \$400,000 back from it.

The happy outcome is later overshadowed by the fact that he receives a notice from the Canada Revenue Agency that he is being assessed \$1 million for back taxes and penalties. This is directly due to Drusilla's anonymous tip to the Agency. Another negative event is that the Law Society informs Nero that a

citation has been issued for his misconduct, including his misuse of his aunt's power of attorney. He may be disbarred.

Discuss the tort rights of the parties. Please assume that title to the painting remains throughout with Livia.

END OF EXAMINATION