

THIS EXAMINATION CONSISTS OF 3 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW at ALLARD HALL

MIDTERM EXAMINATION

DECEMBER 2012

LAW 140.003
TORTS

Professor Christie

TOTAL MARKS: 100

TIME ALLOWED:

10 MINUTES TO READ/CONSIDER
1 HOUR TO ANSWER

- NOTE:
1. This is an open book examination. Candidates may have with them any written material they wish. Electronic devices are only to be used with Examsoft.
 2. The first 10 minutes are only for reading and considering the question (you may use scratch paper to sketch things out). The examination will consist of the following 60 minutes.
 3. THIS EXAMINATION CONSISTS OF 1 QUESTION.

Question 1

MARKS: 100

On December 3, 2012, Randy Mills was in his store in Kerrisdale (*'Fluffies and Stuffies'*, located in a small mall on the edge of downtown) hoping this holiday season would be a good one for his business. At approximately 4:15 PM he was looking out his front window across the street, watching a young girl walk across the small park over which his store looked out. This young lady had been in his store just a few minutes earlier, looking at his teddy bear collection with another young girl, clearly her close friend. All the time she was in his store it had appeared that her left hand did not leave her coat pocket – it had seemed to Randy that she did not want to take this hand out of this pocket – something Randy thought a bit odd. As she walked with her friend across the park toward several other young people sitting at a bench on the other side he noticed that she still kept her left hand in this pocket. As he watched this behavior (which he continued to think rather peculiar), he looked over at his display of teddy bears and suddenly noticed that a small one was missing – one he knew he had had on display just earlier that day, one he was certain had not been sold during that day.

He ran to his phone and immediately called Sally, the mall security guard, a retired police officer. Sally listened to Randy's story of the missing teddy bear and the suspicious young girl and immediately took off out of her office and into the park, in pursuit of the suspected thief. She caught up with the two young girls just as they were reaching the other young people sitting on the bench. She could see these were the two described by Randy (made obvious by the fact that Randy was in the distance, clearly indicating with hand gestures that these were in fact the two in question).

Sally proceeded to question the two young girls, focusing most of her attention on the one – Mira – with her hand still firmly planted in her coat pocket. Mira seemed nervous and evasive in her responses. Sally came to the conclusion that it was very likely that Mira had shoplifted the teddy bear, and that it was clenched in her hand in the coat pocket. She asked Mira to accompany her back to the main office of the mall, from which location she could call her parents. Mira protested, proclaiming her innocence, saying that she did not understand what Sally could possibly suspect her of doing. She also made it clear from her protestations that she really did not want to have her parents involved in this (which served to heighten Sally's suspicions, as she now suspected that Mira had been caught doing just this sort of thing on previous occasions). As Mira loudly complained (saying that calling her parents would just make the whole situation much more messy), Sally tired of the discussion and grabbed Mira by the elbow. With Mira's elbow firmly in her grasp Sally escorted the young girl back to the mall, and into the main mall office (a corner of which served as the 'security department').

At the security department Sally, on getting Mira's home phone number from her, tried to call her parents. She reached Mira's father (George) and told him to come to the mall office. On getting off the phone with Sally, George called Lena (Mira's mother) at her work, and told her about what was going on. George arrived at the mall's office first, about 10 minutes later, and on seeing his daughter sitting meekly in a corner with Sally

standing ominously beside her suddenly had a powerful anxiety attack. George had spent several years in a harsh prison environment just before immigrating to Canada, and had a deep fear around the idea that he, or anyone in his family, might have to live through similar experiences. In their conversation on the phone Lena had speculated that Mira might have stolen something from a store, and that the mall security official might press to have Mira taken to the local police station.

A minute or so later Lena also arrived at the mall office. Sally then took the two parents outside the office to discuss the situation with them. On hearing that the only evidence Sally had that Mira was a thief was suspicious behaviour Lena pushed past Sally to go back into the office and confront (a crying) Mira. Within a few seconds Mira's side of the story emerged – she had purchased a Christmas present for her friend (Abigail, the young lady she had been with in Randy's store) just before the two had met up earlier that afternoon. She really did not want Abigail to see the present, and so she had kept it safe in her coat pocket, held tightly in her hand, throughout the entire time she and Abigail had been in *Fluffies and Stuffies*. At that point in her story Mira reached in her pocket and pulled out not only the small gift she had earlier purchased but also its sale receipt.

Mira's parents were incensed at this sequence of events. They have approached your firm to explore the possibility of a civil suit. You are an articling student at this firm, and have been asked to draft a memo setting out possible legal actions the family might pursue. Discuss these possible legal actions, using materials around the law of Torts we have covered to this point in the course (up to but not including negligent conduct leading to 'nervous shock'). In your discussion clearly identify missing facts and information necessary for a complete analysis of the law as it relates to these possible legal actions. Please only refer to contractual, criminal or constitutional law matters to the extent that we discussed them in this course, and focus your analysis on the law of Torts.

END OF EXAMINATION