

ADVANCED TOPICS IN PRIVATE LAW: FINAL TAKE-HOME TEST

You have to answer the question from section A and then any four questions from section B, i.e., a total of FIVE questions. For the scenarios, you will need to provide the applicable rule. If it is a negligent tort, you will need to think what the standard of care is and include it. For intentional torts, you will have to use the rules that we discussed in class (and the class notes and slides). All scenarios take place in Sault Ste. Marie, Ontario. Make sure that you don't make up or infer facts from the case. If there is not enough information about a fact in the case, say so. For the analysis of the scenarios, use the chart suggested for the midterm and amply discussed in class. This take-home exam evaluates your ability to apply the theories, methods, and principles that we discussed in class, which are also included in the class notes and slides). **You have to apply the law as we discussed in class**, even if that is a simplification of the existing Canadian law. For example, if we discussed a certain rule with no exceptions, then you have to apply that rule as seen in class, even if there is an exception to that rule in Canada. For the other questions, please make sure that you **precede every argument or idea by its corresponding heading**. In all your answers, you must refer only to sources (topics, theories, elements, examples, readings, cases, etc.) that we discussed in class. **No outside sources may be referred to or included in your answers**. You are not permitted to consult with anyone about this test. I will be glad to answer any questions you may have about the test during class on Monday, November 23. After that, please do not ask me questions about the test. As a matter of fairness, I do not want to give answers to some students that others do not have the benefit (or detriment) of hearing. You will simply have to use your own judgment about how to handle any possible difficulties, including the interpretation of the questions and tasks. Please note that everything we discussed during the live sessions is included in the notes and slides posted on the course website. So, if you missed a live session you still have the information on the course website. **Submission:** You need to submit this evaluation to the Algoma University Moodle platform for this course by the deadline, i.e., November 30, 2020 by 10.00 pm EST. If you have technical difficulties, you can send this evaluation to me by email in an MS Word attachment. In that case, please write "PRIVATE LAW FINAL TAKE-HOME. JURI 4816" as the subject of the email.

Section A: Required (20%).

1. Private International Law rules on contracts emphasize the importance of the place of performance (common law) and the habitual residence of the performing party when there is no express choice of law. Discuss what the place of performance is and who the performing party is. Give, at least, three specific examples to illustrate your explanation. Can a general definition of these two terms be given that would apply to all contracts? If so, how would you define these terms?

Section B: Choose FOUR questions (20% each)

2. Analyze Moe's liability in the following scenario according to the law of torts as discussed in class.

Moe drove at 20 km/h over the speed limit. Curly jaywalked while texting. Larry also jaywalked but looked both ways while crossing the street. Moe tried to slow down but ran over both Curly and Larry. An expert witness correctly determined that both Curly and Larry suffered reasonably foreseeable damages of \$100,000 each.

3. Briefly explain the following quote. Give specific examples to illustrate your explanation. If you disagree with some aspects, please say so.

The existence of what is termed a "duty of care" is generally regarded as a fundamental building block of the common law of negligence, a "core ingredient" or "foundational element" of the cause of action. Furthermore, duty is commonly seen as the logical starting point of the negligence enquiry, analytically anterior to the other building blocks of fault (or "breach of duty"), damage, causation, remoteness and defences. [...] Duty reasoning obscures more than it clarifies, and the deficiencies of the duty concept are in large part responsible for the conceptual confusion in which negligence law is now mired.

4. What is negligence? What are the sources of the standard conduct? How can you determine what is standard and what is not? Give specific examples to illustrate your explanation.
5. "Ontario intestate succession rules tend to favor the deceased's children over the surviving spouse." Do you agree with this statement? Why or why not? Give specific examples to illustrate your answer.
6. Analyze the following scenario according to the laws of intestate successions as discussed in class.

Fred and Wilma were married for 10 years. They had one daughter, Pebbles. Two months before his death, Fred met Betty. They fell in love; and she became his mistress. A few weeks after they met, Betty became pregnant. Fred financially supported Betty until he died. Seven months after Fred's death, Betty gave birth to her and Fred's son, Bam Bam. Fred died with no will.

7. Make up a scenario of a negligent tort, including the facts of the case and the rule. There must be 100% concurrence between the facts of the case and the elements of the rule. In the facts of the case, there must be –recoverable- reasonably foreseeable damages and –unrecoverable- remote damages.
8. Make up a scenario of an international contract where the implied choice of law governing the contract is different from the jurisdiction of the court that will hear the case.
9. Briefly explain the following quote. Give specific examples to illustrate your explanation. If you disagree with some aspects, please say so.

Many modern families do not take the form of the traditional nuclear family. A common variant is the stepfamily, formed when the parent of a minor child marries an individual who is not the other natural parent. In many cases, the relationship that forms between stepparent and child is an important family relationship. Nevertheless, the laws regulating the rights and duties of family members generally exclude stepfamily members. The law of intestate succession illustrates the peremptory manner in which the legal system ignores stepfamilies. Stepfamily members are not eligible to inherit from each other under modern intestate succession statutes. The exclusion of a significant category of family members, namely, stepfamily members, from rights of inheritance is unfair and inconsistent with the purpose of the intestacy laws.

10. Find a news article dealing with a Private International Law conflict. Summarize it and critically analyze it.