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THIS EXAM CONSISTS OF 4 PAGES (INCLUDING THIS PAGE)

THE UNIVERSITY OF BRITISH COLUMBIA FACULTY OF LAW

FINAL EXAMINATION - SPRING - 2019

**LAW 211
CONTRACTS**

**Section 1
Professor J. Bakan**

TIME ALLOWED: 2 Hours and 15 minutes

NOTE:

1. This examination is ***OPEN BOOK***. Candidates may use any materials they have brought into the examination room (with the exception of library and text books) during the examination.
2. Do not concern yourself with statutes, cases or other sources not covered in the course materials.
3. It is better to cover more points in brief than fewer points in detail. State clearly any facts you assume in answering the questions. You should describe the arguments that might be made on both sides of an issue, and give some sense of the relative strengths of the arguments.
4. Full citations of cases are not necessary. You may refer to cases in short form.

Question I

Total: 70 marks

Jane is homeless. She recently arrived in Vancouver from out of province and is ineligible for social assistance. She also suffers from a mental disability that makes it difficult for her to find steady employment. She reads at a grade 5 level. Jane earns enough money panhandling to keep herself fed, though she usually falls short of having enough to stay in a cheap hotel or shelter. Most nights she sleeps on the streets.

John owns a condominium building in Kitsilano, as well as numerous other properties that he leases. He prides himself on his socially responsible business practices, and believes, as he frequently states, that business people can do well by doing good. In that spirit, he decides to lease one of the units in his Kitsilano building (a small studio unit that would normally rent for \$1250 a month) to a homeless person in exchange for that person becoming the building caretaker.

Jane, tired of being homeless, and feeling that street life is slowly killing her, responds to an advertisement placed by John in the newspaper *Street News*. She applies for, and gets, the condominium unit and the position of building caretaker.

Jane and John enter an agreement. On the front of the document, in large type are these terms:

1. JOHN AGREES TO RENT SAID PREMISES TO JANE FOR A PERIOD OF 12 MONTHS IN EXCHANGE FOR WHICH JANE AGREES TO WORK AS CARETAKER OF SAID BUILDING FOR THAT 12- MONTH PERIOD.
2. JANE'S CARETAKER DUTIES ARE TO BE AS FOLLOWS: MAINTAINING THE GROUNDS, LIGHT MAINTENANCE WORK ON THE BUILDING, JANITORIAL WORK, 24 HOUR AVAILABILITY TO RESIDENTS OF THE BUILDING FOR MAINTENANCE AND OTHER PROBLEMS, AND ANY OTHER WORK, FOR ANY REASON, AT ANY TIME, REQUESTED BY JOHN.
3. EARLY TERMINATION OF THIS AGREEMENT REQUIRES CONSENT OF BOTH PARTIES, AS DOES EXTENSION OF THE AGREEMENT FOR A FURTHER TERM.

On the back of the document, buried at the bottom of the back page among a number of other terms, in very light and small font, is clause 11:

11. Jane agrees that John will have no legal liability for any problems arising in relation to the unit, including those relating to its safety, habitability, or security, even where such problems are a result of John's negligence.

When John and Jane sign the document, John says, "There's some legal mumbo-jumbo on the back of the document, but you don't really need to read it." Jane responds, "I wouldn't understand it anyhow — so I won't bother."

Three months after signing the agreement, a huge wind and rain storm hits Vancouver, the worst storm suffered by the city in over a century. Jane's 2nd-floor unit (it's a two-story building) suffers substantial damage. The wind blows part of the roof away and water pours into it. The end result is a unit that, by any reasonable standard, is uninhabitable and unsafe. In addition, a window is blown out and, unfortunately for Jane, that allows a thief to enter her unit and steal her stuff after he climbs onto her balcony. The unit should have withstood the storm, but — and neither John nor Jane could have known this at the time they signed the agreement — the roof had been shoddily constructed by a negligent builder. The day after the storm, John tells Jane that he expects her to remain in the unit and continue to work as building caretaker — "you're still better off than on the street," he says.

Even before the storm Jane had been thinking of getting out of the lease and returning to the streets. The caretaker job had turned out to be much more onerous than she had anticipated. It was, she realized, at least a two or even three-person job, and, several times a week, her sleep was interrupted with calls from residents expecting her to fix their plugged sinks, tell their neighbors to turn down their television sets, and so on. Her life on the streets had been less stressful than this, she thought. She calculated that she averaged 12 hrs. work a day, 7 days a week, and that if she were being paid minimum wage that would total around \$2500 a month, effectively twice as much as what the apartment (before the storm damage) would rent for.

It is now one month after the storm. John has not kept his promise to fix the unit. Jane has been living, unhappily, in an effectively uninhabitable apartment and continuing his work as caretaker. He is fed up and decides to take legal action against John.

Discuss the following:

- 1) Jane sues John for losses suffered from the break-in. She claims John was negligent for not fixing the window, and that he can't rely on clause 11 in defense because she didn't read that clause when she signed.
(20 marks)
- 2) What Jane really wants to do is walk away from the lease, and go back to living on the streets. How she would argue each of the following, and what arguments from John would she likely have to meet.
 - a) The lease is unconscionable **(20 marks)**
 - b) The lease is void and/or voidable under the doctrine of mistake **(20 marks)**
 - c) The lease has been frustrated **(10 marks)**

Question II

Total: 30 marks

Prompt:

"No longer is the law of contract seen as a negative instrument whose main function is merely to enforce agreements which people have chosen to make. The tendency nowadays is to look on the law as a positive instrument for the achievement of justice. The moral principle that one should abide by one's agreements and fulfill one's promises is being increasingly met by another moral principle, namely that one should not take advantage of an unfair contract."

Patrick Atiyah, *The Rise and Fall of Freedom of Contract*
(1979)

Discuss in relation to ONE of the following:

1) The ticket and standard form contract cases

-OR-

2) Unconscionability

-OR-

3) Mistake and Frustration

-OR-

4) *Bhasin v. Hyrnew*

-OR-

5) All or any combination of the above

END OF EXAMINATION