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**THIS EXAMINATION CONSISTS OF 8 PAGES (INCLUDING THIS PAGE)
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**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

2018-2019 FINAL EXAMINATION

**LAW 211:002
CONTRACTS**

Professor Uteck

TOTAL MARKS: 100

**TIME ALLOWED: 180 minutes (3 hours)
PLUS 15 minutes reading time**

PLEASE NOTE:

1. This is an open book examination. Candidates may bring in and refer to written/typed notes and the course casebook. Laptops are permitted only for use in completing the computerized exam. Other communications devices are not permitted.
2. Record your answers to the Multiple Choice Questions on your computerized exam or in your examinations booklet. **DO NOT record your multiple choice answers on the examination paper. Responses on the examination paper will not be marked.**
3. Record your Exam Number at the top of this Exam Paper. Examination Papers and all Booklets must be turned in to the Invigilator.

**THIS EXAMINATION CONSISTS OF 3 PARTS:
Part One: Multiple Choice Questions (10 Marks)
Part Two: Fact Pattern (70 Marks)
Part Three: Essay Question (20 marks)**

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PART ONE: MULTIPLE CHOICE (10 MARKS total/ 1 mark each)**Recommended time: 30 minutes**

Choose the **BEST** single answer for **EACH** of the following **10** multiple choice questions. Record your responses on your computerized exam or in your examination answer booklet.

1. Why is *Hong Kong Fir Shipping Co Ltd v Kawasaki* significant?
 - A) Held that pre-contractual statements can be treated as collateral warranties to the main contract.
 - B) Affirmed the role of secondary obligations in contract formation.
 - C) Introduced the intermediate term approach as a concept for assessing a breach of a pre-contractual term entitling the aggrieved party to rescind the contract or sue for damages.
 - D) Held that any breach of a primary obligation entitles the non-breaching party to rescind the contract.
 - E) Introduced an approach to analyzing contractual terms by looking at the effect of the breach and asking if the breach has substantially deprived the aggrieved party of the whole benefit of the contract.

2. Talent Productions, a company in the business of music promotion, hires Isabel McMaster to perform a fiddling concert in exchange for \$5000. Based on Talent Production's experience in the music business, it expected to receive a net profit of \$7000 from the concert. Isabel McMaster received full payment when she signed the contract, but tells Talent Production a week later that she is not willing to perform. Talent Production cancels the concert. In a claim for breach of contract, a court will likely award Talent Production:
 - A) Expectation damages in the amount of \$12,000.
 - B) Specific performance because Isabel McMaster is a world-renowned fiddler with a unique musical style.
 - C) No expectation damages because Talent Production took a risk that the concert would be profitable.
 - D) Expectation damages in the amount of \$7000.
 - E) Reliance damages in the amount of \$7000.

3. Suppose that a term is not the result of a statement expressed by either of the two negotiating parties. Which of the following is true?
 - A) It could never be a term of any contract between them.
 - B) It could only be a term of a contract between them if it is implied by a court.
 - C) It could only be a term of a contract between them if it is an implied term.

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- D) It could only be a term of a contract between them if one party subsequently affirms the term.
 - E) It could only be a term of a contract between them if both parties subsequently affirm the term.
4. Imagine Professor Uteck offers to sell you her drums for \$1000, whereas the fair market value is in fact only \$850. You want the drums and know what they are worth but feel it is better to pay the extra \$150 rather than risk offending her before the grades from Contracts class are final.
- (A) This is a classic example of an unconscionable transaction.
 - (B) In order to prevent you from walking away from the deal, Prof. Uteck will have to rebut the presumption of undue influence.
 - (C) In order to prevent you from walking away from the deal, Prof. Uteck will have to make sure that you obtain independent legal advice.
 - (D) (A) and (B) are both true.
 - (E) (A) and (C) are both true.
5. Leading scientist Niles Brown signed a contract with Discovery Innovations Group in which he promised to research for them and promised not to research for any other company. After winning a Nobel Prize for inventing a new scientific technology to aid in the cure of cancer, he decided that his contract with Discovery Innovations Group did not pay enough and wanted to work elsewhere for more money. If Discovery Innovations Group sues Leon Brown for breach of contract, a court will likely:
- (A) Award specific performance to fulfill his contractual obligation.
 - (B) Award damages because they are sufficient to compensate loss of value.
 - (C) Compel Leon Brown to choose between working for Discovery Innovations Group and not working at all as a researcher.
 - (D) Provide Discovery Innovations Group injunctive relief.
 - (E) Allow the parties to renegotiate the salary terms of the contract only.
6. Sly Stone is considering filing a medical malpractice claim against Dr. Zinck for having botched a facelift on Sly. Dr. Zinck is uninsured and worried about what a lawsuit would do to his reputation. Dr. Zinck offers to take care of all of Sly's damages if he does not sue. Sly agrees and Dr. Zinck promises to pay him \$25,000 in 2 weeks. Anticipating the payment, Sly went out and purchased new Bodybig training equipment on credit, in part because of the Bodybig dealer's promise that Sly's phone would soon be "ringing off the hook" with calls from women. A few days later, Dr. Zinck withdraws his offer to Sly having learned that Sly had in the past filed malpractice suits against five other plastic surgeons for related complaints. He accuses Sly of using his "ugly face to extort money." Without the money from Dr. Zinck, Sly is broke and unable to make payments on the \$5,000 he still owed to the Bodybig dealer. Furthermore, after having used the

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Bodybig machine regularly his romantic life remained at a standstill. If Sly attempts to get out of the Bodybig contract he will likely:

- A) Succeed in having the contract rescinded if he can show that he honestly believed that the use of the equipment would make him more attractive.
- B) Fail because he didn't use the equipment long enough to give it a fair chance to provide the promised benefits.
- C) Succeed if he can show that he relied on the anticipated funds from Dr. Zinck in making the purchase.
- D) Fail on the basis of the rule in *Smith v Land & House Property Corporation*.
- E) Succeed because the Bodybig dealer breached a condition of the contract.

7. What is restitution?

- (A) a cause of action
- (B) a type of contractual remedy for wasted expenditures
- (C) a theory
- (D) a claim for relief
- (E) loss-based common law recovery

8. Theresa enters into a contract with VanWest Pools & Decks. She promises to pay \$10,000 and VanWest promised to build a deck in her backyard. The contract contained specific terms regarding the quality of the materials that VanWest would use. VanWest built the deck, but many of the materials that were used fell below the standard required by the contract. As a result of the breach, the deck is worth \$1000 less than Theresa expected. It will cost \$7000 to replace the materials with materials that will satisfy the terms of the contract. Which of the following statements is true?

- (A) A court will certainly award cost of cure damages if VanWest deliberately used materials that did not satisfy the terms of the contract.
- (B) A court will probably refuse to award cost of cure damages because of the difference between the loss of value and the expense to fix the deck.
- (C) If Theresa is awarded cost of cure damages, according to *Groves v John Wunder Co.*, Theresa must use that money to cure the defect.
- (D) Cost of cure damages are classified as a form of punitive damages because they often require the defendant to pay for more than the plaintiff's actual loss of value.
- (E) None of the above.

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9. How do courts regard restrictive covenants?
- A) Courts will assume that unless there was unfairness during the bargaining process, restrictive covenants should be upheld because the parties have freedom to contract.
 - B) Courts will find all restrictive covenants to be against public policy.
 - C) Courts will presume restrictive covenants to be against public policy unless the party seeking to enforce the covenant demonstrates that the restriction is reasonable.
 - D) Courts will presume restrictive covenants to be reasonable unless the party seeking to avoid the covenant demonstrates that the restriction is against public policy.
 - E) Courts presume restrictive covenants with geographical limitations violate mobility rights guaranteed under the *Canadian Charter of Rights & Freedoms*.
10. Merlin Magnifico, Master of the Impossible, is a magician. On July 1 he entered into a contract with Showstoppers Inc. under which he agreed for a fee of \$10,000 to perform a magical extravaganza at the Pyro Palace Theatre on August 30. On August 15, Pyro Palace Theatre incurred substantial damage after the negligently installed smoke alarm system did not detect a fire, destroying 75% of the seating in the Theatre. Repair work was underway, but could not be completed by August 30. Showstopper had sold almost all the tickets to the extravaganza and did not wish to cancel or postpone it. Showstopper insisted the show's venue be changed to another available Theatre, but Merlin refused to perform at the other Theatre because it did not have the unique staging features to accommodate his magic and thus his show would be entirely unsuccessful, indeed a disaster because the magic could not be performed. How would you advise Merlin Magnifico?
- A) The contract is frustrated.
 - B) A claim based on *Greater Fredericton Airport Authority Inc. v Nav Canada* would likely succeed.
 - C) Suing in tort for negligently installing the smoke alarm system is the only viable cause of action.
 - D) Sue for breach of contract and claim damages.
 - E) Rescind the contract and claim damages.

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PART TWO: FACT PROBLEM

(70 MARKS)

Recommended time: 1 hour and 45 minutes

Question #11

Richard and Denise Ripley became acquainted with Danny Kane through mutual friends in 2011. This developed into a friendship.

Fraser Valley Property Developers are the owners of a residential development site, known as WestCoast Estates, encompassing 34 residential lots on the shores of Blue Sea Lake near the City of Vancouver. Danny Kane was the sole authorized agent and representative of Fraser Valley Property Developers in marketing and completing this development.

In June 2012, Danny Kane told the Ripleys that some of the pre-sale lots were being returned to the developer for marketing. At that time, Danny Kane, on behalf of the Fraser Valley Property Developers (the Vendor), orally agreed that the Ripleys would purchase Lot 33 in the proposed subdivision at a price of \$100,000. Lot 33 was one of three lots with direct water access and had more rolling hills than most of the other lots. In anticipation of completing the purchase and building a new home on Lot 33, the Ripleys sold their home in Burnaby, a suburb of Vancouver, in March 2013 for \$500,000, placed all of their belongings in storage at a cost of \$500.00 per month and moved into Mrs. Ripley's mother's basement apartment, rent-free.

In August 2013, the Ripleys entered into a written agreement to purchase Lot 33 from the Vendor for the price of \$100,000. Because the subdivision plan for the development had not yet been approved by the municipality, the contract did not specify a closing date. Danny Kane told the Ripleys that the approval of the lot subdivision was expected shortly from the municipality, but it was not received until December 2013 after which the subdivision plan was registered with the Land Titles Office in January 2014.

As required by the agreement, the Ripleys provided a cheque for a deposit of 10% of the purchase price (\$10,000). The agreement was then forwarded to a signing officer for Fraser Valley Property Developers in Vancouver, where it was duly executed and returned to Danny Kane.

The contract between the Ripleys and the Vendor contained a clause dealing with the deposit in the event the purchase and sale of Lot 33 did not complete. The relevant portion reads:

“Section 1.2 - Payment of the Deposit by the Vendor's Solicitor:

In respect of the Deposit, the Vendor's Solicitor, Mitchell & Company, is authorized, unless precluded by Court order, to pay the Deposit to the Purchaser as liquidated damages and as the Purchaser's sole remedy without further

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recourse against the Vendor, if the purchase and sale contemplated by this Agreement is not completed by reason of the Vendor's default hereunder."

In anticipation that the approval and registration of the development plan was imminent, the Ripleys also paid a \$2000 deposit to architect Brandon, recommended by Danny Kane, to initiate home design plans for their intended residence. Danny Kane remained very involved in the design process to ensure appropriate standards for the development were followed, particularly as Lot 33 stood at the entrance to the development. Design work stopped when the \$2000 deposit had been used up.

Undisclosed to the Ripleys, the Vendor had entered into a written contract in September 2011 to sell the proposed Lot 33 to Mr. and Mrs. Atkins at a price of \$90,000. In July 2012 the Vendor wrote to Mr. & Mrs. Atkins purporting to cancel the contract on the basis that the development plan had not yet been registered in the Land Titles Office by reason of "an act of the governmental authority" in the area in which the lot was situated. Mrs. Atkins responded to this letter asserting that their contract was valid and enforceable. The Atkins' commenced legal action against the Vendor in or about January 2013. After protracted litigation, the Atkins' were eventually successful in obtaining an order for specific performance of their agreement.

In the meantime, Danny Kane continued to tell the Ripleys that the reason for the delay in completing the sale was due to difficulties in obtaining approval for the subdivision from the municipality, when, in fact, the delay was due to the outstanding claim for specific performance by the Atkins' for the purchase of Lot 33.

In December 2014, the Ripleys became aware that the subdivision had been approved and were told about the claim for specific performance by the Atkins. Danny Kane encouraged them to remain committed to their agreement by ensuring them that the Vendor would prevail in its litigation. At this point, the Atkins' trial had occurred, but the judgment had not been delivered.

The Ripleys remained in the rental basement apartment until December 2015 when, fed up, upset, hugely disappointed, concerned about incurring further expenses associated with their decision to purchase Lot 33, not to mention having long overstayed their welcome at Mom's place, they purchased a condominium in Abbotsford BC and removed their belongings from storage.

But for the Vendor's breach, subject to unknown contingencies in new home construction, the Ripleys claim that if they had built a home on Lot 33 it would have a value of some \$800,000 as of December 2015. Appraisal evidence is that Lot 33 has a fair market value of \$200,000 as of December 2015. The fair market value of the home in Burnaby the Ripleys sold as of December 2015 is \$1,000,000.

Richard and Denise Ripley are now seeking your legal advice. Please advise the Ripleys' what remedies and against whom may be available. Explain fully and render a conclusion.

PART THREE: BUILDING A PRECEDENT (20 MARKS)
Recommended time: 45 minutes

Question #12

Proposition:

“One of the fundamental dogmas of the law is that everyone is free to contract as he wishes, as long as no illegality is involved, but the idea of freedom of contract is more mythical than real... [t]he tendency of modern law is away from the principle of freedom of contract. It may be that there is a long way to go before utter regulation of contractual relationships is the rule, rather than the exception. But the signs to be found in the cases, it is suggested, point to a movement towards such a situation.”

G. H. L. Fridman, *The Law of Contracts in Canada*

DIRECTIONS

Carefully select **one decision** (from the cases that we have canvassed this year) that you think lends the best precedential support to the proposition and provide the following:

1. A **brief** quotation from the decision that you have selected which provides the best support for the proposition;
2. Your own explication of the legal significance of the chosen quotation, carefully tying the quotation directly to the proposition.

END OF EXAMINATION