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**THIS FINAL EXAM CONSISTS OF 5 (FIVE) PAGES (INCLUDING THIS PAGE)
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**THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW**

FINAL EXAMINATION – APRIL 2019

**LAW 211.003
Contract Law**

Professor Erez Aloni

**TIME ALLOWED: 2 hours 45 minutes
READING TIME: 15 minutes
TOTAL: 3 hours**

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NOTES:

1. This exam is open book. Students may bring in the course's textbook, instructor's slides, self-prepared course outlines, and any student-prepared notes, *but nothing else*. No books, commercial outlines, or other texts are permitted.
2. This exam has two questions, worth a total of 100 points. The first question is worth 75 points and the second, 25 points.
3. If anything in any question seems ambiguous or erroneous to you, say so clearly in your answer and indicate any assumptions you are making to resolve the alleged ambiguity or error in order to address the question. If you feel additional information is required to answer a question, please indicate the additional information you feel is necessary and explain why that additional information is necessary.
4. Good Luck!

QUESTION 1

Allocation: 75 points

(Recommended time: 2 hours)

After the war with He-Who-Cannot-Be-Named was over, Rubeus Hagrid was appointed professor of magical creatures at Hogwarts. In 2019, at 91 years old, owing to the natural longevity of wizardkind, he was in great physical shape and still had a great love for magical creatures. He recently got married to Madame Olympe Maxime, and they lived happily in Hogwarts, a charming town in British Columbia, Canada.

In recent years, because the birth rate of wizards has decreased, there are fewer young magicians. Hence, Hogwarts has experienced a decline in the number of admitted students and in revenue from tuition, and has had to reduce the professors' salaries. Madame Olympe Maxime and Hagrid have had to find new ways to make some extra money. They decided to combine their love for magical creatures with their need for extra cash, and began the business of breeding magical creatures, raising them for sale and show purposes. After a new creature is born, Maxime and Hagrid train them until they are well-behaved and then sell them to the highest bidder. Sometimes, when they have unique creatures, they take them to shows, where the awards can be enormous amounts of money. Most recently, for example, Aragog, their Acromantula,¹ won first place in a show with a prize of \$100,000. After this win, Maxime and Hagrid made a name for themselves as top international breeders in the field of magical creatures.

Their recent new and promising creature is named Ms. Vanjie, who is of a new breed of creature, and they are extremely proud of her. After some training, Ms. Vanjie can serve a fur realness and an extravaganza-eleganza runway walk, like no one else. They decided to introduce Vanjie to the world in the most exclusive annual show in London. They were convinced that Vanjie was going to be a sensation.

To purchase a plane ticket, they went onto Glamazonian Airways's (GA) website. The price was \$2,000 per ticket. GA's website states: "Always make a separate reservation for your pet via the GA Customer Contact Centre." Hagrid called customer service and asked the representative about a space in the cabin for Ms. Vanjie. The representative stated: "Look, we can't promise a spot in the cabin, as there is a limit on the number of animals/creatures allowed there. But don't worry, this is merely a formality that I am required to cite. In reality, there has never been a case of someone being denied travel in the cabin with their animal." "Okay, I am relieved," Hagrid said. He paid the \$300 fee for a space in the cabin or in the cargo for Vanjie and received a confirmation number.

He then turned to buying the tickets for Olympe Maxime and himself. He filled in all the required details. When he reached the payment webpage, the following statement appeared, "By clicking on 'I ACCEPT, PURCHASE' below, you confirm that you have read and accept Glamazonian Airways's fare rules, [General Conditions of Carriage and Tariffs](#) and [hazardous materials](#) restrictions." This statement was placed next to the "I ACCEPT, PURCHASE" button, and was conspicuous. If one clicks on the link, they get into a five-page document titled "General Conditions of Carriage and Tariffs," which includes, in the relevant parts, the following text:

¹ A species of giant spider.

General Conditions of Carriage and Tariffs

A. Definitions

Carriage means transportation of Passengers and their Baggage by air or ground, either gratuitously or for payment, together with any related services provided by the Carrier in connection with such transportation.

Carrier means the Carrier (air or ground) issuing the Ticket and all Carriers that carry or undertake to carry the Passenger and/or his/her Baggage thereunder.

B. Liability for Carriage

1. Glamazonian Airways (hereinafter: GA) is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.
2. GA shall not be liable for any damage arising out of GA's compliance with any laws, government regulations, orders, rules, requirements, or security directives or as a result of a Passenger's failure to comply with such laws, government regulations, orders, rules, requirements, or security directives or as a result of Passenger's reliance on advice provided by GA regarding such laws, regulations, orders, rules, requirements, or security directives.
3. GA shall not be liable for any punitive, consequential, or special damages arising out of or in connection with Carriage or other services performed by GA, whether or not GA had knowledge that such damage might be incurred.

C. Delay and Baggage, Goods and Compensation Liability Limitations

For damage caused due to delay during the passenger's journey, the compensation owed by GA to each passenger will be limited to \$1,500.

For the destruction, loss, damage, or delay of baggage during carriage, the compensation owed by GA to each passenger will be limited to \$2,000.

D. Conditions and Charges for Acceptance of Live Animals Other Than Service Animals

GA will accept domesticated cats, dogs, magical creatures, ferrets, guinea pigs, hamsters, household birds, non-poisonous reptiles, rabbits, and tropical fish (hereinafter: animals) for transportation at GA's discretion, and subject to the conditions below:

1. GA reserves the right to refuse Carriage of animals in cabin or as cargo at any time.
2. Advance arrangements must be made. Space must be reserved for animals in either the Passenger or cargo compartment.
3. Animals will be transported in either the Passenger or the belly cargo compartment. GA reserves the right to limit the number of cages or containers per flight.
4. GA will not be liable for illness or injury to an animal or death of an animal due to illness or injury when the animal has been handled by GA with ordinary standards of safety and care.

Hagrid inserted his credit card number and their details, clicked the “I ACCEPT, PURCHASE,” and received a booking confirmation for him and Maxime. He did not follow the link to the General Conditions of Carriage and Tariffs webpage. He soon received an email titled “Booking Confirmation.” Among other relevant information, the email stated:

IMPORTANT: Your official Itinerary/Receipt is attached to this email. You must bring it with you to the airport for check-in. Please also take the time to review it as it contains the general conditions of carriage and applicable tariffs that apply to the tickets, bookings, and air services detailed below.

The email contained a link to the aforementioned contract and the contract was enclosed as an attachment to the email. Hagrid only read the time of the flights. He saw that the email also confirms payment of the fee for Vanjie’s trip.

On the day of the flight, Olympe Maxime, Hagrid, and Vanjie arrived three hours prior to the time of departure. Unfortunately for them, the number of in-cabin animals/magical creatures on this flight exceeded the allowed numbers. There are governmental regulations that put a cap on the number of animals/creatures allowed in the cabin so that allergic travelers have enough space from the animals/creatures. Olympe Maxime and Hagrid were annoyed, and cited the representative who told them that there had never been such a case of denial. Apparently, the representative’s statement was a complete nonsense, pets’/creatures’ spots in the cabin are highly limited and often denied. The GA’s representative referred them to the General Conditions of Carriage and Tariffs. Olympe Maxime and Hagrid thought they would wait to board the next flight, but the GA representative explained that then they would have to purchase a new ticket at full price and that, in any event, the airline could not guarantee a space in the cabin for Ms. Vanjie.

Desperate and defeated, they decided to fly Vanjie in the plane’s cargo area. They explained to the representative that Vanjie was their precious magical creature, more expensive than everything they owned.

Vanjie, who never travelled in cargo before, began to panic when she was separated from Maxime and Hagrid and forced to remain in the dark for an entire transatlantic flight. In her efforts to free herself from the cage, she scratched herself repeatedly and banged her head against the bars of the cage, causing herself considerable bleeding.

And as if this were not enough, GA delayed returning Olympe Maxime and Hagrid’s “baggage”—that is, Vanjie. It took two days after the landing to receive the “baggage” back. Being so long without Olympe Maxime and Hagrid, Vanjie suffered serious injury in her cage and required extensive medical attention. When Olympe Maxime saw her bellowed creature this way, she suffered a significant shock; since then, she has spent \$4,000 on psychological treatment resulting from the trauma. As for Vanjie, Maxime and Hagrid incurred \$5,000 in vet bills. While she was in care, she missed the London show, which was the purpose of the trip.

Vanjie’s life was saved, but she lost her talents and will never be able to compete in any show. It bears noting that, given their level of expertise and the excellence of their magical creatures, Maxime and Hagrid had been confident that Vanjie would win first prize, as a few of their creatures had done in the past few years. The show carried a \$100,000 first prize, a \$50,000 second prize, and a \$10,000 third prize. Obviously, another win would have boosted their reputation further.

You are a partner in a Vancouver firm. Maxime and Hagrid come to you for advice, as they are interested in bringing suit against Glamazonian Airways for losses they suffered on that trip from Vancouver to London. They have asked you to write a memo detailing the best arguments to pursue if such a suit were to be filed; the likely counterarguments the Airline would make, including any defenses the it might raise; and what damages they might hope to be awarded, if successful. Please write them such a memo, relating to the facts laid out above. You may assume that the couple wishes to sue in British Columbia, Canada, and that BC law—as well as general principles of Canadian contract law—is the governing law. You may further assume that there are no other sources of law governing contract claims of this sort in BC (e.g., there are not relevant statutes or international conventions that apply to this dispute).

Assume also that the representatives' behavior are attributed to GA, and that there is no question concerning the agency or authorization of the representatives.

QUESTION 2

Allocation: 25 points

(Recommended time: 45 minutes)

Pacta sunt servanda (Latin for “agreements must be kept”) is a judicial aphorism that signifies that contracts must be honored.

The following statement, by Lord Jessel, M.R., in *Printing and Numerical Registering Co. v. Sampson*,² is considered a strong endorsement of such principle:

[I]f there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by Courts of justice. Therefore, you have this paramount public policy to consider—that you are not lightly to interfere with this freedom of contract.

Almost a hundred years later, in *Lloyds Bank v. Bundy*,³ Lord Denning, M.R., declared that:

Pacta sunt servanda is still the rule but numerous safeguards for the unwary and the needy have become engrafted on it, partly by legislation, partly by innovative judicial lawmaking, and this holds true equally of civil law and common law jurisdictions.

Where does contemporary Canadian contract law stand on this issue? To what extent is Lord Denning's statement reflective of the current law? In what cases or situations does Canadian contract law reflect Lord Jessel's perspective? In your opinion, when is it appropriate to deviate from the principle of *pacta sunt servanda*, and why? In making your argument, make sure to illustrate your position by using class materials.

END OF EXAMINATION

² (1875), L.R. 19 Eq. 462 at p. 465.

³ [1974] 3 All E.R. 757 (C.A.)