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**THIS EXAMINATION CONSISTS OF THREE PAGES
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**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION - DECEMBER 2018

LAW 537

Commercial Transactions

Professor Bruce MacDougall

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

NOTE: 1. This is an open book examination. Students may take any materials they wish into the examination room except library books.

**THIS EXAMINATION CONSISTS OF TWO QUESTIONS. DO BOTH. THEY
ARE NOT OF EQUAL VALUE.**

Marks83

1. Annie Arbor is in the landscaping business. Annie designs interior and exterior landscapes for clients and also supplies landscaping materials. Annie sees a trend developing for people wanting exotic fruit trees, especially citrus fruit trees for their gardens, homes and offices.

Beautiful Blossoms Ltd. is a greenhouse company that claims to have developed orange trees that will survive in Vancouver's climate or in offices and that will bear edible, aromatic fruit.

Annie gets Beautiful Blossoms to supply it with hundreds of these trees and Annie then begins to solicit customers for the trees. Annie does this by sending out advertising flyers to prospective customers. The flyers are provided to Annie by Beautiful Blossoms. The flyers show a picture of an orange tree bearing fruit. The flyer also has a scratch-and-sniff section. If one scratches and sniffs this section a fragrant orange smell is emitted and the following words appear: "You too can have the fragrance of the citrus south in your garden or office."

Annie sends one of the flyers to Gunter Gaertner. Gunter has a garden that he began as a hobby. It became so large and magnificent that Gunter now lets the public come to see it at certain times and upon voluntary payment of a donation. Because of Gunter's reputation and the size of Gunter's garden, he sometimes sells surplus plants to the public, the price asked usually only covering costs and not allowing Gunter any profit.

Gunter is interested in getting some of the orange trees from Annie and immediately phones Annie to place an order. Gunter says he will take 50 of the trees to be sent in batches of 10 a month, the first batch to be sent on 1 January 2018 and then another batch at the beginning of the following four months. They agree that the price will be the lesser of (a) \$100 per tree and (b) 10 percent less than the price Annie charges to Work Weeds Ltd. in the contract Annie is imminently going to conclude with Work Weeds Ltd. for the supply of orange trees. (Work Weeds Ltd. is a major office plant supplier.) Gunter and Annie at first agree that Gunter will make two payments: one "interim payment" of \$1,000 at the end of March and the final payment at the end of May. After a few moments' discussion, they revise this plan and agree that the "interim payment" idea will be replaced by the provision to Annie by Gunter of 200 rose bushes in August.

On 1 December 2017, Annie and Gunter sign a contract setting out the above provisions relating to payment. The document is entitled "Contract for Orange Trees and Maintenance". "Maintenance" refers to a provision in the agreement that says that the price includes one visit by Annie's workers one week after the plants are delivered. The purpose of the visit will be to give the plants a dose of a

special fertilizer. The agreement also contains a clause saying, “There are no other warranties in this contract except those expressly set out in this document.”

Soon after the agreement is signed, Gunter realizes that he does not need 50 orange trees, rather 40 is all that are needed. So, Gunter phones up Eddie Extra to ask, “Do you want 10 orange trees for \$100 a tree, delivery in April?” Eddie says, “Yes”. Gunter plans to send the April shipment of 10 orange trees to Eddie when Annie delivers them.

The January, February and March 2018 trees are delivered. Gunter puts them in the garden. After the March trees arrive and are given the special fertilizer by Annie’s workers, Gunter gets concerned because there is no sign of oranges growing on any of the trees. The January trees in fact appear to be losing all their leaves. Gunter has an independent expert, Ruth Root, come to look at the trees at the end of March. Ruth says that the orange trees cannot survive outside and will die unless brought into a greenhouse (which Gunter does not have). Furthermore, Ruth says that the trees will never bear fruit. (The orange fragrance is produced in the fruit, not the rest of the tree.)

Gunter, very distraught, phones Annie on 1 April to express his outrage at the “cruel hoax” that has been perpetrated on him. Annie denies that anything was done contrary to the contract and, in any event, according to Annie, there is no liability under the terms of the contract. Annie also reminds Gunter that the fourth shipment of trees is ready. Gunter says “not to bother” with them. On 10 April, a wall at Annie’s storage centre falls down and crushes the trees Annie set aside for the April delivery to Gunter.

Assume it is now 15 April and nothing further has been done by any of the parties. Discuss the commercial transactions issues involved in this matter. Ignore any issue of frustration. Ignore, too, the *Business Practices and Consumer Protection Act*.

Marks

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2. Should the *Sale of Goods Act* be scrapped and replaced by the common law (including interpretation of the parties’ actual agreements and implication by custom and usage)? Give reasons why or why not.

END OF EXAMINATION