

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2020

LAW 211.002
CONTRACTS

Robert Russo

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 100

WRITING TIME ALLOWED: 3 HOURS
PREPERATION TIME ALLOWED: 10 MINUTES

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This is an open book examination, meaning that you can refer to class notes, casebooks and other class readings. The use of library books is not permitted.

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question.

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QUESTION 1

60 MARKS

(Total Time Recommended 108 mins)

Andrea is a 1st year JD student at the University of Victoria. After starting school in September, her expenses mounted, and she realized she needed to quickly supplement her student loans with some work, or she'd have trouble meeting her rent. After conducting some research she found and responded to an ad on UVic's student employment website asking for historical researchers.

The ad said: "Work from home on important historical research for the Canadian government." The ad appealed to Andrea because it said it involved working on historical research relating to litigation against the Government and that the work could be done from home.

Andrea got an interview. At the interview she asked a few questions about the work was informed that she would be working for a company, Canada Research Associate Services (CRAS). The head of the company, Mony, told her that CRAS has a contract with the Government of Canada to supply research services to the Government of Canada, and that she would be a sub-contractor. Andrea seemed puzzled at this statement.

Andrea: "Hmm, I thought your ad said this was work for the government doing research?"

Mony: "No, it's hard to get those government contracts! "We work kind of like an employment agency, so the Government pays us and we pay you. We spend a lot of time writing up proposals to get the work from the Government, so we take a certain percentage off the top. Besides, you'll be working from home most of the time, so you won't have to sit in one of those small Government cubicles."

Both Mony and Andrea seemed satisfied, the interview ended, and Andrea received a call from Mony a few days later telling her to come into the office to sign a Contract. When Andrea arrived at the CRAS office, Mony met her at the elevator and handed Andrea the Contract.

Mony: "Hey, I'm just on my way to meet Jackie, the Government employee who processes these Contracts for us. If you want to sign this right now, I can take it to her right away."

Andrea: "Uhm, could I take the Contract home and bring it back tomorrow?"

Mony: "Well, sure but the Government only processes these things every two weeks. Also, the Government is really, really slow in paying out our invoices, so you'll be waiting even longer before you get your first paycheque. It's a pretty standard contract for these sorts of things. But I can't really talk now I have to get going - "

Andrea: "Uhm, no, that's ok. Let me just quickly look over some things." Andrea looked over the parts of contract dealing with length of employment (12 months) and rate of pay (\$300/day). "Ok, looks great." She signed the contract and gave it to Mony.

Mony: "Thanks, I'll take this to Jackie right now! Looking forward to you working for us."

Andrea started working from home and Mony was happy with her work. Almost a year later, as her contract was ending, Mony emailed her a new Contract for another year at the same rate of pay. Andrea responded that she decided not to renew her contract and her association with CRAS ended.

A few months later, Mony discovered through a Government disclosure website that Andrea had secured a direct contract with the Government of Canada. Mony emailed Andrea:

Mony: "I know what you've done! Expect a letter from our lawyer."

Andrea responded: "Go ahead and sue me! You ripped me off, the Government is paying individual contractors a minimum of \$500 a day for this work. I know that your company was charging the Government even more than that and paying us a lot less."

Mony: "companies could charge more because they provided better services and that she had breached the contract by contracting directly with the Government.

There was a "Non-Competition Clause" in the CRAS contract that Andrea had not read when she initially signed the agreement. The clause itself was over 2 pages long and contained provisions barring CRAS research contractors from working for a 12-month period following contract termination for any agency of the Canadian Government and prohibiting contact with any Canadian Government employees whom she met as a result of her engagement with CRAS. The clause had no geographic restrictions.

The clause contained the following explanatory paragraph:

The Contractor acknowledges to the Company that in the course of rendering her Services, she may receive the value and advantage of special information consulting business and contracting opportunities generally, in particular involving certain Federal Government agencies in Canada, and that the Contractor will have knowledge of, and contact with clients, employees, agents and other Company contacts. The Consultant explicitly acknowledges that they may well be able to utilize the information and knowledge gained with the Company, following termination of her engagement with the Company, to the serious detriment of the Company by soliciting business, contracts, orders or anything else from any person with whom the Contractor would never have had contact with but for the Contractor's engagement with the Company.

The contract does not contain a Liquidated Damages clause.

CRAS sues Andrea for Breach of Contract and asks for an interim injunction to stop Andrea from any further work or contacts with the Government. Andrea conducts some research about government contracts and found the following Contracting Policy from the Treasury Board of Canada website:

Policy Objective

The objective of government procurement contracting is to acquire goods and services in a manner that enhances access, competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people.

You are Andrea's lawyer. She asks you about the various chances of successfully arguing some basic contractual law defenses that she's studied at UVic. Analyze the chances of success for each of the following:

DEFENSES FOR ANDREA'S NON-PERFORMANCE OF THE CONTRACT

1. Andrea was mistaken when she entered into the contract with CRAS. [10 marks]
2. Andrea was under duress and/or undue influence when she entered into the contract. [15 marks]
3. The non-competition clause is an unconscionable clause and is contrary to public policy. [20 marks]

ANALYZE THE FOLLOWING REMEDIES FOR CRAS IN EVENT ANDREA'S DEFENSES FAIL

1. Is the court required to grant an interim injunction here? Under what circumstances would the court not grant an injunction? Explain. [10 marks]
2. How would the court assess damages in this case? (DO NOT go into quantum calculations – just explain the principles the court will use to assess damages and they would apply here) [5 marks]

QUESTION 2

TOTAL: 40 MARKS (20 MARKS EACH)

(Total Time Recommended 72 mins)

Discuss 2 (TWO) of the following passages or questions with illustrations from course materials:

1. Jag is a very big soccer fan. In January, he managed to obtain tickets to EuroCup2020 which was scheduled to take place in various cities around Europe in June & July 2020. He got tickets to the games being held in Rome, so he secured accommodation in Rome from June 12 - July 12. On February 2, he signed an agreement with Franco to lease his apartment in Rome and paid a deposit of \$1000 towards the total cost of \$2500 for the apartment. The contract specified that the deposit was "non-refundable" and to constitute the total damages if the contract was cancelled for any reason. Coronavirus swept Europe in March. On March 17, all EuroCup games were officially postponed until June 2021. Travel restrictions were also imposed prohibiting all non-European Union citizens entering the EU until at least April 30. On reading the news of the postponement and travel restrictions, Jag immediately emailed Franco to cancel his reservation. Jag also asked if he could have his deposit returned. Franco replied, "I can cancel your reservation but unfortunately, ignore Jag, the deposit is non-refundable."
 - What is the applicable doctrine and considerations here for Jag's breach of contract and for a possible defense?
 - What type of contractual clause might have been useful here and why?

2. A bank lender, the plaintiff, alleges in a lawsuit that the defendant executed personal guarantees for the indebtedness of a company. It was asserted that certain oral representations were made to the defendant by plaintiff when the guarantees were signed, to the effect that the guarantees were merely needed "to paper the file" of the bank and that they would not be relied on. On the basis of these oral representations, the defendant says he gave the guarantees. The defendant testified that he would not have done so had he not been so verbally assured by the lender. The Bank says that all the written documentation indicates no limitation of liability for the defendant.
 - Explain and discuss the doctrine or rule that is applicable here.
 - Also consider whether you think there could be a "collateral contract" in a case like this.

3. Historically, the common law has tried to portray contract at its core as part of private law doctrine respecting individual liberties, particularly commercial freedom and freedom to contract. At the same time, it has also recognized a public law aspect to contracts which regards certain interests of the Canadian state as legitimate limitations on individual freedom.
 - Discuss this statement within the context of contracts and illegality generally.
 - Discuss with regard to contracts contrary to public policy specifically.

4. Historically, in common law systems there were several classes of people who lacked full capacity to contract. In recent years this has changed in most common law jurisdictions, including Canada.
 - Discuss the doctrine of incapacity, relevant case law and legislation, and how it's applied in Canada today across various categories.
 - Specifically, what do you think is the difference between judicial intervention in a contract on the ground of mental incapacity and intervention on the ground of unconscionability after *Hart v O'Connor*?

END OF EXAMINATION