

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

FINAL EXAMINATION – APRIL 2020

LAW 211.003
Contract Law

Professor Carol Liao

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 100

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

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QUESTION ONE

Prue is 60 years old and has a Grade 10 education, having left school to support her family at the age of 15. Subsequently, she and her partner raised six children (and, for significant periods, multiple grandchildren). Prue was primarily responsible for the management of the family household for the next four decades. After her partner retired, Prue decided that she would start a career.

At this time (10 years after her partner's retirement) she now owns and operates a world famous bakery that specializes in particularly complex custom cakes. Her business is expanding and she has begun to make substantial investments, buying new ovens, cookware, and safety equipment. Owing to this, she decided to insure her business against fire.

Prue contacts Noel, who sells insurance on behalf of the Safe Hands Assurance and Mutual Enterprise (hereinafter, "SHAME"). (Note: Noel is an employee of SHAME with full capacity to act and sign on SHAME's behalf.) SHAME is a large insurance company, with annual revenues of approximately \$1 billion. Noel visits and inspects the bakery and its financial records before sitting down to negotiate the terms of the policy.

Prue would like the policy to cover up to \$500,000 in property damage (as she still owns the premises in her personal capacity) and lost income. She would also like the policy to insure her for any period of disability that might be caused by a fire in the bakery, up to and including any loss amounting to \$500,000. She has the following conversation with Noel:

Prue: "So for this monthly premium I'll get half a million in damage and disability, right?" Noel: "Yes. You don't need to worry — you'll get coverage for that amount under each of those categories." Prue asks Noel how much that would cost, and he tells her the premiums would be \$200 a month.

A week later, Noel draws up the contract. At that moment, he is unclear about whether she wanted \$500,000 in coverage for property damage and \$500,000 in coverage for disability, or \$500,000 in total coverage that would include claims for both types of loss. His memory is hazy, but he believes that she had agreed to a \$500,000 maximum for all losses. However, he notes that on the basis of this coverage, a \$200 premium would be quite high. Normally, for that amount of coverage, the premium would only be approximately \$125.

Noel concludes that it must have been the case that she had agreed to the single cap of \$500,000 owing to her desire to obtain insurance from SHAME, which had a good reputation in the community owing to its extensive advertising campaigns, which feature the slogan: "Entrust your most precious assets into our safe and caring hands." Noel is also pleased to obtain a substantial commission on the sale.

When Noel brings the insurance contract to Prue, she tries to read it over, but she finds it difficult. She then says to Noel: "Do I need to get my lawyer to look this over? I really don't know if I can make sense of it." Noel responds: "Well, it's just a standard insurance contract. You're a business owner, so I'm sure you've seen worse. Why don't I give you a half an hour to look it over and then I'll come back and pick it up."

Noel then leaves the bakery to get a coffee. As he is at the coffee shop, Prue attempts to read the contract but fails to comprehend any of its provisions. She signs the document. When Noel returns to the bakery he picks up the signed contract and wishes her well as he leaves.

One year after the contract comes into force, there is a fire at Prue's bakery. Prue rushes in to try to extinguish the fire, but she is overcome by the smoke and loses consciousness. The fire causes \$600,000 in property damage. Prue is hospitalized and is incapacitated for three months due to the effects of smoke inhalation. She is unable to work as a baker for the following six months. As she was a highly skilled baker, she would have been able to earn \$50,000 in salary in those six months had she been uninjured in the fire (the company she controls itself lost millions of dollars in revenue during this period).

Immediately following the accident, a competing bakery offers Prue \$850,000 in exchange for an exclusive license to use the trademarks of her bakery (including her famous "Pow! Cake in Your Face!" slogan) for the six months following the fire. Prue declines the offer because she is advised that this license would be worth substantially more than what her competitor is offering.

Prue files a claim with SHAME after she recovers from the accident, seeking \$500,000 in property damage and \$50,000 for her six months of disability. SHAME did not honour the claim, arguing that substantially all of the damage in the bakery fire was the result of a faulty sprinkler system.

Prue and her family had no savings, and as a result of the fire and the denial of the claim, they had to move into a small studio apartment above a bowling alley. Prue was then the subject of a magazine article in "Cake Chief Monthly" that accused her of being the author of her own misfortune and unworthy of the prominent position she had held in the culinary community before the fire.

A court action brought to enforce her rights under the contract lasted for 16 weeks. Prue testified for six days. Her legal fees and the costs of the fire protection experts and engineers who testified amounted to \$300,000. Prue has no way of paying these fees, although her lawyer and the expert witnesses have agreed to forego any request for payment until she prevails in court, as they believe that SHAME's claims about the sprinklers are baseless.

After 16 weeks in court, the judge declares a mistrial owing to jurors' misconduct. Prue must begin her legal action anew, and asks you—her new lawyer—to re-evaluate her legal strategy.

Please advise Prue with respect to the following:

- (1) What legal claims offer Prue the best chance of success? Discuss all reasonable arguments and counterarguments. [40 Marks; 72 Minutes]**
- (2) What damages might be recoverable in this case? [25 Marks; 45 Minutes]**

QUESTION TWO

Paul Perkins is a heavy machine operator with a high school education, who is also an avid "enduro" racer in his spare time. Enduro racing is an off-road cross-country motorcycle sport where racers are timed while completing a number of obstacles. Paul severely injured his back when he fell off his motorcycle during an enduro practice session at the Berry Raceway on 6 April 2019. He was thrown from his motorcycle in a corner of the track and landed awkwardly on some car parts strewn on the side of the track. Just before he fell off his motorcycle, it had become cross-treaded, meaning that the front and rear wheels got stuck in separate parallel ruts on the track.

Since the accident, Paul had three surgeries on his back. He could not stand up for three months and could not work. He has not returned to work as a heavy machine operator. Paul wants to bring a claim against the British Columbia Motorcycle Association (“BCMA”) as the owners of the lands on which the Berry Raceway in Bakeoff, BC is located, and the Lower Mainland Enduro Racing Club (“LMERC”), which leased the raceway from the BCMA. All the parties concede that Paul’s injuries were caused, or at minimum heavily exacerbated, by the car parts left on the side of the track, which should not have been there.

At the Berry Raceway, the typical procedure for signing up a participating rider is as follows. Before paying the fee for riding on that particular day, a rider will pick up a blank sign-in sheet and pen and fill in their name, bike number, class, model and size of bike. Then he/she/they will go to the first window to pay the fee for riding that day. The attendant then marks the sign-in sheet with a highlighter to confirm payment has been received, and the rider is told to move forward where he/she/they then sign a one-page release of liability waiver document (“Release”). The relevant provisions of the Release are as follows:

RELEASE OF LIABILITY, WAIVER OF CLAIMS, ASSUMPTION OF RISKS AND INDEMNITY AGREEMENT. BY SIGNING THIS DOCUMENT YOU WILL WAIVE CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE.

PLEASE READ CAREFULLY:

In full or partial consideration for allowing me to participate in riding sessions on 6 April 2019 (the “EVENT”) of the British Columbia Motorcycle Association, I hereby warrant and agree that:

1. I am familiar with and accept that there is the risk of serious injury and death in participation, whether as a competitor, student, official or worker, and all forms of motor sport and in particular in being allowed to enter, for any reason, any restricted area.

...

I UNDERSTAND AND AGREE, ON BEHALF OF MYSELF, MY HEIRS, ASSIGNS, PERSONAL REPRESENTATIVES AND NEXT OF KIN THAT MY EXECUTION OF THIS DOCUMENT CONSTITUTES:

1. AN UNQUALIFIED ASSUMPTION BY ME OF ALL RISKS associated with my participation in the EVENT, even if arising from the negligence or gross negligence, including any compounding or aggravation of injuries caused by negligent rescue operations or procedure, of the Releasees as the term is defined below, and any persons associated therewith or otherwise participating in the EVENT in any capacity; and

2. A FULL AND FINAL RELEASE WAIVER OF LIABILITY AND ALL CLAIMS that I have, or may in the future have against any person(s), entities or organization(s) associated in any way with the EVENT including track owners and lessees, promoters, sanctioning bodies, racing associations, or any subdivision thereof, track operators, sponsors, advertisers, vehicle owners and other participants, rescue personnel, event inspectors, underwriters, consultants, and others who give recommendations, directions of instruction, or engage in risk evaluation and loss control activities regarding the EVENT or event premises,

any one or more of them, and their respective directors, officers, employees, contractors, agent and representatives (all of whom are collectively referred to as the "Releasees") from any and all liability for any loss, damage, injury or expense that I may suffer as a result of my use of or my presence at the event facilities or my participation in any part of, or my presence in any capacity at, the EVENT, due to any cause whatsoever, INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF ANY STATUTORY OR OTHER DUTY OF CARE, INCLUDING ANY DUTY OF CARE OWED UNDER THE RELEVANT OCCUPIERS LIABILITY ACT ON THE PART OF THE RELEASEES.

...

I HAVE READ AND UNDERSTAND THIS AGREEMENT AND I AM AWARE THAT BY SIGNING THIS AGREEMENT I AM WAIVING CERTAIN SUBSTANTIAL LEGAL RIGHTS WHICH I AND MY HEIRS, NEXT OF KIN, EXECUTORS, ADMINISTRATORS AND ASSIGNS MAY HAVE AGAINST THE RELEASEES.

I SIGN THIS DOCUMENT VOLUNTARILY AND WITHOUT INDUCEMENT.

On the day of the accident, Paul recounts as follows: "The Release was attached to a clipboard and there was a line-up of people waiting to sign it. It was like herding cattle to get racers through the race start. Nobody told me it was a waiver and that it affected my legal rights. No one was reading the sheet before signing it and everyone appeared to treat it just like a roster, which is what I did. Everyone, including myself, quickly signed the sheet so we could start the practice runs on the track."

Paul did not read the waiver, and he did not understand that he was waiving his right to bring a lawsuit. He had some general understandings that: "I could probably not sue if I got hurt falling off my bike because it happened so often. However, hazardous debris located next to the track is not part of the sport and I had never seen that before." No one explained the legal consequences of the Release and no one directed him to read it. Paul concedes that injury, and sometimes even death, is common within the sport of enduro racing, but he argues that what occurred on the day of the accident was not in his contemplation.

Paul claims that the Release he signed does not bar him from seeking damages for his injuries because he was not aware that he was signing a waiver and the Release does not apply under the circumstances. Alternatively, Paul claims that if the Release is effective, it only protects the BCMA because the LMEC is not privy to the contract.

Please discuss the relevant legal arguments in support of Paul's claims, as well as the counterarguments, and likelihood of success. [35 Marks; 63 Minutes]

END OF EXAMINATION