

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

FINAL EXAMINATION – APRIL 2020

LAW 211.04  
CONTRACT LAW

Professor Ljiljana Biukovic

**EXAMSOFT PASSWORD:**  
**EXAMSOFT RESUME CODE:**

**TOTAL MARKS:** 100

**WRITING TIME ALLOWED:** 2 HOURS 30 MINUTES  
**PREPARATION TIME ALLOWED:** 10 MINUTES

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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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**THIS EXAM HAS TWO (2) QUESTIONS****Question 1****MARKS:****60**

Harriet, a single woman in her late 50s, owns a vegan and gluten-free restaurant “Saved by Plants” on Commercial Drive in Vancouver, BC. Her creativity, and her lifelong devotion and enthusiasm for veganism, helped her build a solid reputation in the city’s restaurant industry and grow a respectable customer base. Harriet finds that success makes her work rewarding but also quite stressful. When she heard from one of her cooks that there is a fantastic gym in the neighbourhood, she decided to see if there is anything there that can help her ease her anxiety and relax her body muscles.

In March 2017, Harriet participated in a one-week boot camp for beginners at the “Move Your Body, Free Your Soul” studio. The price of the boot camp was \$197.97. Harriet found the boot camp to be a truly moving experience, though a bit painful since she had never been a devoted gym goer or jogger. Her instructor, a UBC trained kinesiologist, Sam Strong (the owner of the fitness studio) encouraged her to consider taking classes more frequently in order to improve her strength, “learn to manage her work-related stress,” and to “sharpen her vigour.” Sam said that Harriet, being a successful business owner in another industry, could in no time become good enough to instruct her own fitness classes at her own studio.

Since the beginning of 2019, a number of new vegan and gluten-free restaurants opened on Commercial Drive. Although Harriet’s restaurant was the first of the kind on the Drive and remains very popular among vegan food lovers, she has become well aware of the increasing competition. She looked at her fitness classes as a refuge. Over a period of 24 months, Harriet spent \$34,000 on various fitness classes and workshops, now including rhythm sessions, and even more high intensity interval training. Harriet has been a vegan all of her life and has never needed to spike her metabolism to burn extra calories. She improved her muscles but she lost a lot of weight as well. Her instructor Sam suggested that she should take a few weekend relational survivor retreats to learn to organize her exercise differently, sleep more, and work less at nights in her restaurant. On April 1, 2019, Harriet bought additional 50 personal training sessions but was too busy with her restaurant business and was unable to use them.

Harriet no longer felt the same passion for the restaurant industry that she had initially had and considered leaving the industry altogether. Through one of her training mates at the gym she got in touch with Mr. Dolomite Placebo, who operates two BBQ parlours in Surrey, BC. At their meeting on September 15, 2019, that took place at Saved by Plants, Mr. Placebo told Harriet that he wanted to purchase her restaurant but that he needed to see her financial statements to get

### Question 1 continued

a sense as to how much food she sold. More importantly, he said that he needed to know if the restaurant was profitable.

Harriet explained that there were some slow days and that some periods in the year are busier than others but that the business was profitable and that her profit was about 20% of the monthly sales revenue. She explained that she renovated the restaurant and put in a new kitchen in 2016.

The following day, Mr. Placebo came to the restaurant to pick up the financial statements and the list of staff and food suppliers. Harriet herself did not ask to check any financial statements or business books of Mr. Placebo's restaurants. She trusted him completely and on October 1, 2019 when he came to the restaurant and wrote the Agreement of Purchase and Sale on the blank page of her restaurant's menu, she signed it immediately. There were only a few terms on the paper. The most important for Harriet was that the price of \$500,000 seemed fair and reasonable, considering the fact that in the best of times she made almost \$150,000 net profit per year. Mr. Placebo agreed to transfer to her \$100,000 as a first installment of the purchase price. She also agreed to sell him all her restaurant equipment as well as her liquor licence. The rest of the payment would be done in 2 equal installments of \$200,000 each, two months apart, starting on November 6, 2019. Harriet insisted on adding a sentence that if any of the installments is not paid in two days from the due date she should keep all paid installments and the deal would be off. Mr. Placebo agreed, added the sentence, and signed the agreement." Mr. Placebo orally agreed to keep all Harriet's employee who wanted to continue to work for him on payroll. They then agreed to meet again in a week at the restaurant to finalize less important aspects the transaction, such as to change the name of the restaurant, arrangement for garbage collection, and transfer of utilities bills and lease documents from Harriet to Mr. Placebo. The next day Mr. Placebo transferred \$100,000 to Harriet's business account but for four days after the transfer he kept coming to the Drive, parking across the restaurant at 5:30pm, and counted customers coming in and leaving.

On October 13, 2019, a famous celebrity fitness trainer Matt Crux, an acquaintance of Harriet, came to her restaurant after spending four months filming in Germany. "Harriet, what's going on with you? Are you sick or something? You lost so much weight" he said. She told him about taking extreme fitness classes to release work related stress and described her fitness regime. Matt was shocked and told her to stop taking classes with Sam Strong before her body would give up. He advised her to go find a new place that would have more respect for her true physical abilities and ask "Move Your Body, Free Your Soul" for her money back. "They have been ripping you off, darling", said Matt to Harriet.

Although she had heard it all before from her friends who had often made fun of her new skinny figure, hearing it from Matt resonated differently with Harriet.

### **Question 1 continued**

After this conversation, Harriet was adamant on getting a refund for her classes since she had been poorly trained all that time. She also felt that she should be compensated damages for mental distress and the loss of her reputation among her friends. When she complained to the “Move Your Body, Free Your Soul” she was told that, as explained in the terms of the agreement she signed when she paid for the personal sessions, she could get a full refund for the classes that she was yet to take but not those that she missed in the past.

Mr. Placebo texted Harriet on October 24<sup>th</sup> to say that he would not make any further payments and would cancel the deal unless she agreed to sell her business for \$460,000 in total. In his estimate, based off of his count of customers visiting the restaurant over the course of four days, the business was hardly as profitable as Harriet had claimed. Harriet was not willing to lower the price. She said to Mr. Placebo that it was fine by her to not proceed with the deal but that she would retain the payment he had already made as stipulated in the contract. Mr. Placebo was angry and threatened to sue her for keeping the money and lying about the business. “Our deal is off,” he texted again. She then threatened to sue him for a breach of their agreement.

Harriet came to see you for advice. Based on materials we covered in Contract Law this year what do you tell her with respect to issues involving her, the “Move Your Body, Free Your Soul” studio and the instructor Sam Strong; and those involving Mr. Placebo ? Harriet tells you that she never read any of the studio’s agreements she signed and did not know that she would not get back money for missed classes without cancelling 24 hours in advance. In particular, advise Harriet by explaining all arguments she may make to impose liability on each party and what remedies, if any, she would be able to claim? Please ignore issues related to any statutory regulation of Harriet’s business and consumer protection legislation.

### **Question 2**

#### **MARKS**

**40**

A world renowned, Edmonton based civil engineering company called “Steel Wheels” was planning on celebrating its 50th anniversary by building a small community library complex as its donation to the city. The construction would be undertaken in two phases on land belonging to the company itself. The budget for the project was approximately \$35 million, including all costs related to the project. “Steel Wheels” earmarked \$5.7 million for the costs of the construction work itself. The project was supposed to be finished in 22 months. On May 20, 2019, “Steel Wheels” solicited tenders from five reputable contractors that had experience in building public infrastructure projects. The tender submission

**Question 2 continued**

deadline was stipulated to be 4:30 pm Edmonton time on September 19, 2019. The bidders were instructed to use the ePost Connect service for their submission.

The call for tenders indicated that tenders submitted after that time would not be considered. Clause 4.1. of the call for tenders stated that each bidder, upon submitting a tender, waived any right to challenge the evaluation procedure established by Steel Wheels. The same clause further outlined main factors of evaluation that included the past experience of bidders with similar projects, mechanical capacity of the construction company, its ability to perform the work on the specified schedule, and total costs of work.

Clause 6.1. said that “Steel Wheels” reserves the right to reject the lowest or any tender, or all tenders for any reason at its sole discretion, and that “Steel Wheels” has the right to waive any defects or informalities in any tender. Clause 6.3. explained that “Steel Wheels” would provide the successful bidder with a written notice of acceptance. According to clause 7.3. the \$75,000 bidder’s bond, payable upon the submission of a tender, should remain in the “Steel Wheels” account for 60 days. The money would be forfeited if the bidder revoked its bid before the successful bidder was selected and if the successful bidder refused to conclude the construction contract with “Steel Wheel” in 5 business day from receiving a written notice of the bid’s acceptance.

Shortly after “Steel Wheels” reviewed the submitted tenders it informed all five bidders that their tenders were over the budget and asked all five bidders to adjust their tenders by reducing their costs by \$17,000. None of the bidders managed to meet this requirement and “Steel Wheels” approached “Tinka Brothers,” the company with the second lowest bid that had worked with “Steel Wheels” before, and offered them the construction contract on a slightly revised schedule of completion (26 months) and for the budgeted price.

The manager of “Beau Maison”, an unsuccessful bidder with the lowest bid, came to ask you about his legal rights against “Steel Wheels”. In his opinion, “Steel Wheels” were acting dishonestly, making every bidder work hard to comply with the requirements of the bid only to give an easy pass to the company they had worked with before. “Steel Wheels” were making money from the unsuccessful bidders by earning 2 months interest on the bonds deposited”, the manager said. “Beau Maison” has been in a very difficult financial situation since construction work in Alberta slowed down two years ago, and they put a lot of money and work hours into the preparation of the bid, expecting to have a reasonable chance to win the job. Explain to the manager what are the legal consequences of his company’s relation with “Steel Wheels” and how would the court view them and why.

**END OF EXAMINATION**