

**THIS FINAL EXAM CONSISTS OF THREE (3) PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE EXAMINATION**

**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

MIDTERM EXAMINATION – DECEMBER 2019

**LAW 211.003
Contract Law**

Professor Carol Liao

**TIME ALLOWED: 60 Minutes
(plus 15 Minutes Reading Time)**

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NOTES:

1. This exam is open book. Students may bring in the course text, instructor handouts, course outlines, and any student-prepared notes, *but nothing else*. No library books or other texts are permitted.
2. This exam has one question worth a total of 100 Marks.
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.
4. If you feel additional information is required to answer a question please indicate the additional information you feel necessary and explain why the additional information is necessary.

END OF EXAM INSTRUCTIONS

In May 2015, Nebula Gamora School (“NGS”) entered into a lease (the “Lease”) for 1 City View Drive (the “Premises”) with Bautista Inc., the owner of the Premises. NGS operates a private school for approximately 300 children from kindergarten to grade 12 on the Premises. The Lease provides that it will terminate on March 31, 2019, subject to earlier termination by NGS through written notice at least 12 months in advance.

In June 2015, NGS purchases a property (the “New NGS Property”) with the intention of renovating the building and moving its school operations to the new facility for the 2017-2018 school year.

In the spring of 2016, Bautista Inc. decides to sell the Premises. In March 2016, it enters into an agreement of purchase and sale (the “Purchase Agreement”) with Yondu Metrics Inc., the sole shareholder and President of which is Finley Diesel. Yondu has outgrown its current location and wants the Premises for its own use. The Purchase Agreement provides that Yondu’s requirement to close the transaction is conditional on it satisfying itself that NGS will vacate the Premises by no later than July 31, 2017.

On April 22, 2016 the real estate agent for Bautista Inc. sends NGS an agreement to amend the Lease, which provides that the term of the Lease will expire no later than July 31, 2017. The amending agreement further provides that NGS will have the right to terminate the Lease at any time prior to July 31, 2017 by providing at least 90 days’ notice in writing. NGS requests a number of minor changes to the amending agreement and it is never executed by the parties.

In May 2016, Diesel, as the prospective purchaser of the Premises, meets with NGS in order to satisfy himself that the Premises will be vacated prior to July 31, 2017, as contemplated by the condition in the Purchase Agreement. During the discussion, Diesel indicates that it would be beneficial if NGS could vacate the Premises even earlier in order for Yondu to undertake renovations to the Premises so that it could occupy it for its own use. The possibility of NGS vacating the Premises by December 2016 was discussed, but NGS could not commit to a firm date due to uncertainty over the timing of the completion of the renovations to the New NGS Property.

Yondu purchases the Premises in September 2016 for \$6.4 million and assumes the Lease. A meeting is held on December 1, 2016 involving NGS, Diesel, and Cara Groot, the Chief Financial Officer of Yondu. At the meeting, Diesel offers to assist in making additional payments to the NGS contractor in order to speed up the renovations. NGS obtains quotes from their contractor who estimates that it will cost approximately \$250,000-\$300,000 to speed up construction and, even then, construction will only be completed three or four weeks ahead of the current schedule. After relaying this information to Groot, the issue of paying the contractor is not raised again.

On April 19, 2017, Groot has a phone conversation with NGS to discuss the status of the construction of the New NGS Property. NGS indicates that it expects construction of the new facility to be completed around May 2017 and that NGS was hoping to be out of the Premises by July 2017. Groot indicates that Yondu wants to start its own renovations to the Premises by June 1, 2017 and asks whether this is possible. NGS indicates that it will cooperate to allow Yondu to begin non-invasive construction activities before the end of the school year, but cannot permit invasive construction until the school year has been completed.

Yondu's plans change sometime in May 2017. Its business had been experiencing a downturn, and a potential investor dropped out unexpectedly. On a personal level, Diesel was also experiencing increased familial obligations with a new baby and an ailing parent where he was primary caregiver. For these and other reasons, Yondu decides to sell the Premises rather than move into it. Diesel is advised that the Premises is more valuable if it is marketed as a school property rather than as office space. The Premise is currently being offered for sale at a price of \$7.96 million, and the real estate marketing materials indicate that it is currently built out for use as a private school.

On June 19, 2017, at a meeting between Groot and NGS, Groot indicates that, as per the terms of the Lease, Yondu would be insisting on 12 months' notice to terminate. This is followed by an email from Groot and a subsequent letter from Diesel dated July 10, 2017 reminding NGS that termination of the Lease requires 12 months' written notice. Diesel offers to consider accepting an early termination if NGS prepays 10 months of rent, approximately \$400,000, and vacates the premises by August 31, 2017. Diesel characterizes his proposal as involving a "saving" to NGS of two months' rent, or approximately \$80,000. However Diesel does not indicate whether, in the event that the Premises were leased or sold to a third party within the 10 months subsequent to August 31, 2017, NGS would be entitled to a refund of any of the \$400,000 prepaid rent.

Due to delays in obtaining the necessary permits, NGS is not able to commence its school operations in its new facility until early September 2017. On September 13, 2017, NGS delivers notice to Yondu that it is terminating the Lease as of December 31, 2017. On September 21, 2017, Yondu responds stating that the Lease required 12 months' written notice of termination and therefore, the notice of termination delivered by NGS on September 13, 2017 is ineffective. Moreover, Yondu now takes the position that NGS is in default of the Lease by moving its fixtures and equipment.

NGS seeks a declaration that its Lease terminated on December 31, 2017 in accordance with a notice of termination it provided to Yondu on September 13, 2017. Yondu argues that there was no agreement to amend the notice requirement and the September 13, 2017 termination notice provided by NGS is ineffective.

Please advise.

- END OF EXAMINATION -