

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

FINAL EXAMINATION – APRIL 2021

LAW 211.001  
Contracts

Professor Uteck

**EXAM PASSWORD: 74CDz5**  
RESUME CODE: B0FDAC

**TOTAL MARKS: 100**

(8:50 AM PDT) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 2.5 HOURS (150 minutes)**

**8:50-9:00 AM Preparation Time (Exam writing not permitted)** – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

**9:00 AM Exam Writing Time** – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

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This is an open book examination, meaning that you can refer to all materials used in this course, including:

- Course Casebook and other assigned cases;
- Materials on our canvas course site; and
- Your own notes.

You **may not** refer to the following materials:

- Materials from other Contracts sections or previous iterations of this course;
- Materials from other courses;
- Textbooks and other texts not assigned or discussed in this course;
- Dictionaries; and,
- Any other materials available to you that have not been used in this course.

**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. Do not email your professor or anyone else about this while the exam is in progress.**

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### **ACADEMIC INTEGRITY**

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. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

### **CONFIDENTIALITY REGULATIONS – READ CAREFULLY**

As this exam is being written off-campus and is unsupervised, any communication whatsoever (including, but not limited to in person, telephone, e-mail, text, social media, etc.) concerning the contents of this examination with anyone (other than the Student Services staff of the Allard School of Law) is strictly prohibited.

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A breach of these regulations may constitute student misconduct, and you may be subject to penalty or discipline under UBC's Academic Misconduct policies.

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#### **What Do I Do If:**

- **I cannot access the exam questions on Canvas**

If you experience technical difficulties accessing the exam questions on Canvas, email [studentservices@allard.ubc.ca](mailto:studentservices@allard.ubc.ca) and the exam questions will be emailed to you. Please provide your phone number when emailing Student Services.

- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

If you experience technical difficulties with Exemplify at the very beginning or during an exam, you may attempt to solve your problem/reboot your computer **BY YOURSELF**. You are **STRONGLY** encouraged to spend **NO MORE THAN 5 minutes** attempting to do so. You will **NOT BE GIVEN ANY EXTRA TIME** to complete the exam. **If your attempt to solve the problem is unsuccessful**, or if you choose not to make such an attempt, you **MUST** immediately **begin hand-writing** your exam answers with pen on lined paper. **You may NOT type your exam answer in word-processing software.**

When you have finished writing the exam, you must upload the exam answers that you completed in Exemplify (if you are prompted for a Resume Code, it is on the coversheet of the exam questions). Email Bernie Flinn, [flinn@allard.ubc.ca](mailto:flinn@allard.ubc.ca), for help with this. Please provide your phone number in the email. Bernie or another IT Support staff person will then help you to upload any answers that you typed in Exemplify.

You must also upload to Canvas your hand-written exam answers into the “Exam Answer File Upload (Word Processor or Hand-written ONLY)” folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file should be named, and the coversheet of your answers should be titled with:  
Your Exam Code, Course Number, Name of Course, and Instructor Name  
i.e., **9999 LAW 100.001 Law of Exam Taking - Galileo**

- **I’m experiencing technical difficulties EXITING and UPLOADING the exam**

If you experience any difficulty exiting and uploading your Exemplify exam answers, you must wait until the allocated time period specified on the coversheet of the exam has ended, then email Bernie Flinn, [flinn@allard.ubc.ca](mailto:flinn@allard.ubc.ca), and he or another IT Support staff person will help you to upload your Exemplify exam file. Please provide your phone number in the email.

If you have approved accommodations to type your answers using Word Processing Software, and experience difficulties uploading your exam answer file to Canvas, email your exam answer file to [studentservices@allard.ubc.ca](mailto:studentservices@allard.ubc.ca).

- **I fall ill in the middle of an exam, or am otherwise interrupted such that I’m unable to continue writing my exam**

Please stop writing, note the time that you stopped, and email [studentservices@allard.ubc.ca](mailto:studentservices@allard.ubc.ca) immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

## Fact Pattern

Data Solutions Inc. (DS) is a company located in Vancouver, B.C. started by two newly graduated UBC students, John and Dave, who have great entrepreneurial spirit and tech-smarts. DS was formed because John and Dave identified a need for young entrepreneurs to access quality life coaching and business consulting services. Hard work and good marketing paid off and by 2018 DS had expanded its client base, hired six employees and relocated its business from its home-based operations into downtown office space. One of the primary services DS offered its young clientele was assessment and advice on securing loans from commercial lenders which depended on a specific software program. In early 2019, to better serve its clients and further build its business and increase revenue, DS decided to find a replacement system for its existing outdated software system. Bestco Corporation (Bestco) is a large nationally recognized company headquartered in Vancouver, B.C. in the business of licensing and implementing computer software.

DS entered into negotiations with Bestco for a new replacement software system. Bestco responded to DS's request for information indicating that it currently had a proven, mature base product used by over 1,000 corporate institutions across Canada which was adaptable to DS's specific needs with minimal customization. Bestco further outlined its skill and expertise and stated that it would be able to implement the software in accordance with DS's timeline to have it up and running by the Fall of 2019.

In April 2019, Bestco gave a demonstration of its software. It is not clear what version of the software it demonstrated since at that time, Bestco had designed a new version of the software which was not fully tested. DS was impressed and the demonstration helped seal the deal on the basis that Bestco's solution had the "best fit for DS's needs" and based on its own research, concluded that no other software supplier could provide the calibre of product and service that Bestco could deliver. At no time did Bestco distinguish between the demonstration software and the software actually in use by its existing clients.

DS did not want to purchase untested software because it was too risky for sustaining even its core business, and DS told Bestco this was the reason why DS chose to go with them over their competitors. Bestco responded that its existing base product software typically met 85% of the client's needs and had an 81% functional fit with DS's requirements.

Bestco senior executives and lawyers drove a hard bargain over the course of several days, but on May 20, 2019, DS, anxious to finalize the deal and get started, entered into a five-year Agreement with Bestco for the implementation and license of its base product deliverables based on the April 2019 demonstration. The Agreement provided that DS would pay a licensing fee for the base product software in the amount of \$300,000 per year. This fee felt quite high to DS, but DS believed it could recoup this cost with the new business it expected to generate.

The first installment of 50% of the first year's license fee was paid shortly after the Agreement was executed by the parties, with the remainder of the first-year license fee to be paid in October 2019. The license fees for future years would be payable annually.

The Agreement further provided that Bestco would deliver to DS a sandbox version (a testing version) of the software by June 30, 2019 so that DS could get started on data conversion. Two computer geniuses were hired for this purpose. The Agreement contemplated that DS would be able to “go live” with the Bestco software and the necessary customizations on or about October 15, 2019.

The Agreement also contained the following standard form clause which both parties initialed: “Bestco shall not in any circumstances be liable for losses that are caused in any way by some act, omission, misrepresentation arising from negligence or breach of contract committed in connection with this Agreement.”

As early as April 2019, DS had requested that Bestco provide it with a user manual for the software so it could familiarize itself with Bestco’s product. However, Bestco stalled on this ask and told DS that they could not review the manual until after the Agreement was signed. DS continued to press for the manual, but Bestco did not meet this request. After the Agreement was signed, Bestco continued to assure DS that it was coming once updates were made.

By September 2019, Bestco had not provided the user manual or sandbox version of the software despite repeated requests by DS. Finally, in October 2019, implementation of the new software began. Shortly after, DS calculated that the actual functional fit of the Bestco software was only 46% and worse, the software was found to be full of bugs which meant that it could not be used in its current form for DS’s implementation. DS refused to pay the second installment for the remaining 50% of the first year’s licensing fee due to these issues. Bestco then advised DS that it would actually need to charge DS an additional \$500,000 to implement the promised software and an additional six months to deliver a product that would meet all DS’s requirements.

DS was disappointed with this development and told Bestco that it strongly objected to the additional cost, but felt it had no choice as Bestco’s new proposed timeline was still faster than if DS were to switch to a competitor at this point, and DS had clients it stood to lose if it did not implement the new system by April 2020. DS paid the \$500,000 to Bestco on the promise that Bestco would deliver the new base software product on April 2020.

April 2020 came and went, and Bestco did not deliver the base software product. In May 2020, Bestco asked DS for another \$500,000 and an additional 12 months to help with their continued design of the new base software product which could be customized and implemented for DS. DS refused to pay Bestco any further.

DS reassessed the project and explored other options. It came up with a ‘Plan B’ which involved developing an in-house hybrid software system made up of components licensed from third party suppliers and other components built specifically for DS. While it did not meet all of the features DS expected to receive from the Bestco software, after preparation and testing, DS went live with its new hybrid software in October 2020. The total cost of Plan B was \$1 million.

From October 2020 to date, DS’s monthly profits resulting from its new software have been \$200,000. This helped to defray the \$2 million in business that DS had lost to competitors commencing in October 2019 when it was not ready to offer its clients the upgraded service that

new software from Bestco would have provided. Further, in July 2019, DS had entered into a contract with Zippo Communications Inc. (Zippo), a newly popular video communications start-up. DS estimated it would have generated profits of \$5 million from its contract with Zippo. Zippo terminated its contract with DS in April 2020 once it discovered that DS could not provide the level of technology and consulting support it had promised.

In January 2021, DS's two computer geniuses Stella and Lucy decided to leave DS and work for Coastal Consulting (Coastal), a rapidly growing business consulting firm that is proving to be one of DS's main competitors. Coastal is headquartered in Calgary, AB and has offered Stella and Lucy sizeable signing bonuses. However, when Stella and Lucy joined DS they had each signed a contract with DS which included a provision that if they left their jobs at DS, they would not work for five years with any "direct competitor" of DS. "Direct competitor" is defined in the contract as "any business consulting service in Canada." DS included this specific provision for these computer geniuses because it was worried Stella and Lucy would gain specialized confidential expertise about DS's business and its client base, thus could share this information with DS's competitors who were located all across Canada given the technological nature of the business.

**Advise Data Solutions.**

**END OF EXAMINATION**