

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

FINAL EXAMINATION – APRIL 2021

LAW 211.002  
Contract Law

Professor Carol Liao

**EXAM PASSWORD: rX3AtD**  
RESUME CODE: B0FFA0

**TOTAL MARKS: 100**

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

(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS**

**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 the course text, supplemental materials and notes, instructor handouts, course outlines, and any student prepared notes, but nothing else. No library books, other texts or web materials are permitted.

**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

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- **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**

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

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Swankie Solutions Inc. (SSI) is a company located in Vancouver, BC started by two UBC alumni, Fern and Dave, who have great entrepreneurial spirit and tech-smarts. SSI was formed because Fern 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 2017, SSI had expanded its client base, hired seven employees and relocated its business from its home-based operations into downtown office space. One of the primary services SSI offered its young clientele was assessment and advice on securing loans from commercial lenders which depended on a specific software program. In early 2018, to better serve its clients and further build its business and increase revenue, SSI decided to find a replacement system for its existing outdated software system. Nomad Corp. (Nomad) is a large nationally recognized company headquartered in Vancouver, BC in the business of licensing and implementing computer software.

SSI entered into negotiations with Nomad for a new replacement software system. Nomad responded to SSI's request for information indicating that it currently had a proven, mature base software product used by over 1,000 businesses across Canada which was adaptable to SSI's specific needs with minimal customization. Nomad further outlined its skill and expertise and stated that it would be able to implement the software in accordance with SSI's timeline to have it up and running by the Fall of 2018.

In April 2018, Nomad gave a demonstration of its software to SSI. It is not clear what version of the software Nomad demonstrated since at that time Nomad had designed a new version of the software which was not fully tested. SSI was impressed and the demonstration helped seal the deal on the basis that Nomad's solution had the "best fit for SSI's needs" and, based on SSI's own research, SSI concluded that no other software supplier could provide the calibre of product and service that Nomad could deliver. At no time did Nomad distinguish between the demonstration software and the licensed software in use by its existing clients.

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

Nomad's senior executives and lawyers drove a hard bargain over the course of several days, but in May 2018, SSI entered into a five-year Agreement with Nomad for the implementation and license of its base software product. The Agreement provided that SSI would pay an annual licensing fee in the amount of \$200,000 per year. This fee felt quite high to SSI, but SSI believed it could recoup this cost with the new business it expected to generate. The first installment of 50% of the first year's licensing fee (\$100,000) was paid shortly after the Agreement was signed by the parties, with the remainder of the first year's licensing fee to be paid in October 2018.

The Agreement further provided that Nomad would deliver to SSI a sandbox version (a testing version) of the software by June 30, 2018 so that SSI could get started on data conversion. Two computer geniuses, Linda and May, were hired by SSI for this purpose. The Agreement contemplated that SSI would be able to "go live" with the Nomad software and the necessary

customizations by October 2018. The Agreement also contained the following clause which both parties initialed:

“Nomad provides no warranty as to the functionality of the base software product specific to SSI’s particular needs, nor will Nomad be responsible for any losses incurred as a result of any misuse in the software.”

As early as April 2018, SSI had requested that Nomad provide it with a user manual for the software so it could familiarize itself with Nomad’s product. However, Nomad stalled on this ask and told SSI that SSI could not review the manual until after the Agreement was signed. SSI continued to press for the manual, but Nomad did not meet this request. After the Agreement was signed, Nomad continued to assure SSI that it was coming once updates were made.

By September 2018, Nomad had not provided the user manual or sandbox version of the software despite repeated requests by SSI. Finally in October 2018, implementation of the new software began. Shortly after, SSI calculated that the actual functional fit of the Nomad 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 SSI’s implementation. SSI initially refused to pay the second installment of \$100,000 (the remaining 50% of the first year’s licensing fee) due to these issues. Nomad then advised SSI that it would actually need SSI to pay the promised \$100,000 plus an additional \$400,000, and need an additional six months to deliver a base software product that would meet all SSI’s requirements.

SSI was very disappointed with this development and told Nomad that it strongly objected to the additional cost, but felt it had no choice as Nomad’s new proposed timeline was still faster than if SSI were to switch to a competitor at this point and SSI had clients it stood to lose if it did not implement the new system by April 2019. SSI paid the \$500,000 to Nomad with Nomad’s assurance that it would deliver the new base software product in April 2019.

Nomad did not deliver the base software product in April 2019. In May 2019, Nomad asked SSI 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 SSI. SSI refused to pay.

SSI 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 SSI. While it did not meet all of the features SSI expected to receive from the Nomad software, after preparation and testing, SSI went live with its new hybrid software in October 2019. The total cost of Plan B was \$1 million.

From October 2019 to date, SSI’s monthly profits resulting from its new software grew. This helped to defray SSI’s estimated \$5 million loss in business to competitors commencing in October 2018 when SSI was not ready to offer its clients the upgraded service that Nomad’s software would have provided. In particular, the \$5 million loss included SSI’s lucrative contract

signed in June 2018 with Empire Videos Inc. (Empire), a popular video communications start-up. SSI estimated it would have generated profits of \$3 million from its contract with Empire, but Empire terminated its contract with SSI in April 2019 once it discovered that SSI could not provide the level of technology and consulting support it had promised.

In January 2020, SSI's two computer geniuses Linda and May decided to leave SSI and work for Desert Rose Consulting (DRC), a budding business consulting firm that is quickly becoming one of SSI's major competitors. DRC is headquartered in Calgary, AB and has offered Linda and May sizeable signing bonuses. However, when Linda and May joined SSI they had each signed a contract with SSI which included a provision that if they left their jobs at SSI, they would not work for five years with any "direct competitor" of SSI. "Direct competitor" is defined in the contract as "any business consulting service in Canada." SSI included this specific provision for these computer geniuses because it was worried Linda and May would gain specialized confidential expertise about SSI's business and its client base, thus could share this information with SSI's competitors who were located all across Canada given the technological nature of the business. SSI feels Linda and May can still use their talents in many other sectors and want to sue Linda and May for breach of contract.

**Advise SSI.**

END OF EXAMINATION