

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

FINAL EXAMINATION – APRIL 2021

LAW 211.003  
CONTRACTS

Professor Joel Bakan

**EXAM PASSWORD: 3ck22A**  
RESUME CODE: B10149

**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 casebook, handouts, and student notes.

**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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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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## QUESTION I

### Total: 70 marks

Stonerbrook Farms is a small organic farm near Surrey, B.C. It's run by a group of self-described 'hippies' who live there communally, grow their own food, and make an organic yogurt, called YO, which they sell from a roadside stand. YO is their main source of income. When it's ranked as the world's #1 yogurt by *Gourmet Magazine*, YO catches the attention of MalMart Stores, a large box retailer. MalMart's Ed Effing visits the farm to discuss with Sky Starchild, its manager, the possibility of selling YO in MalMart stores. Sky agrees to hold a meeting with the commune members to discuss Ed's proposal. "We really have no choice," she tells them at the meeting. "At current revenue levels, we can't keep the farm going for more than a year. Without this deal we're done. We'll lose our beloved farm and our beautiful way of life." The commune members vote unanimously to enter a deal with MalMart.

Ed invites Sky (who is a signing officer for Stonerbrook) to visit his downtown Vancouver office to do the paperwork. When she arrives, he presents her with a deal document comprised of one legal size sheet with 10 clauses on the front, and more than a dozen on the back, all in small font and faint print. "There isn't really time to read through this whole thing," Ed tells Sky. "I have to go to another meeting real soon, so I'll show you the highlights."

He draws her attention to three key clauses:

- 1) Stonerbrook agrees to supply MalMart with 1000 liters of yogurt each week, in exchange for payment of \$3 per liter.
- 2) Stonerbrook can terminate the agreement with one year's notice, and MalMart can terminate with one month's notice.
- 3) MalMart will not sell any product in its stores made by any manufacturer other than Stonerbrook that is identical or closely similar to YO.

"Now, I really have to fly," says Ed. "Sign the agreement, and my secretary will see you out." Sky signs the agreement.

Had Sky read the back of the agreement, she might have seen clause 23:

23. This entire agreement, including clause 3, is subject to MalMart's "MalMart's Choice" policy, which will be provided for review upon request.

And had Sky requested the policy and read it, she might have seen this passage:

*MalMart has an unrestricted right to develop and market its own "MalMart's Choice" products, even if those products are identical or closely similar to any supplier's product, and regardless of any contractual terms with suppliers.*

When YO hits MalMart's shelves, it's a huge success, and quickly becomes highly profitable for the store. So MalMart decides to create its own version of YO, market it as YOYO – part of its "MalMart's Choice" brand – and sell it for half the price of YO. YOYO sales boom and YO sales plummet to almost nothing. No longer making money from YO, MalMart gives Stonerbrook the one-month notice required by clause 2 to end the agreement.

Stonerbrook responds by suing MalMart for creating and marketing YOYO in breach of clause 3. MalMart defends by claiming clause 23 permitted it to create and market YOYO. Stonerbrook claims clause 23 should not be enforced. "I would never have signed that contract if I had known about clause 23," says Sky. "It effectively allows MalMart to steal our product."

**Discuss the following:**

- 1) When the case goes to court, Stonerbrook argues that clause 23 should not be enforced because:
  - a) Sky was not aware of clause 23 and therefore did not consent to it. **(25 marks)**
  - b) Clause 23 is unconscionable. **(25 marks)**
- 2) **Assume the following factual scenario (different from the one above).**

Several days before Stonerbrook and MalMart entered the YO deal, Surrey City Council enacted a new by-law that, among other things, limited to two the number of cows permitted on any property. No one at Stonerbrook was aware of the new by-law when the agreement was signed. Once Sky learned of it, she knew Stonerbrook could not go ahead with the deal, as four milk cows were needed to produce 1000 liters of YO for MalMart each week. Sky tells Ed that, unfortunately, Stonerbrook has to pull out of the deal. "Are you kidding?" he responds. "You should have found out about the by-law before you signed the contract." Stonerbrook cannot produce sufficient quantities of YO and fails to make the required deliveries. MalMart sues Stonerbrook for breach of contract.

How plausible is Stonerbrook's defense that the contract is void (or voidable) for mistake? **(20 marks)**

## **QUESTION II**

**Total: 30 Marks**

**Prompt:**

“The classic paradigm underlying freedom of contract is the freely negotiated bargain or exchange between autonomous and self-interested parties. At the heart of this theory is the belief that contracting parties are best-placed to judge and protect their interests in the bargaining process. It also presumes equality between contracting parties and that the contract is negotiated, freely agreed upon, and therefore fair. In cases where these assumptions align with reality, the arguments for enforcing contracts carry their greatest weight. But these arguments may speak more or less forcefully depending on the context.”

*Uber Technologies v. Heller* (SCC)(2020), per Abella and Rowe JJ.

**Question:**

Is contract law sufficiently sensitive to cases where traditional assumptions about the bargaining process do *not* align with reality?

**Discuss in relation to ONE of the following:**

1. Standard form contracts

**-OR-**

2. Unconscionability

**-OR-**

3. Mistake

**-OR-**

4. The Duty of Good Faith

**-OR-**

5. Any combination of the above

**END OF EXAMINATION**