

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

FINAL EXAMINATION – APRIL 2021

LAW 211.004
Contracts

Professor Ljiljana Biukovic

EXAM PASSWORD: CG5yTe
RESUME CODE: B10301

TOTAL MARKS: 100

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

(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 2 HOURS 30 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.

This is an open book examination, meaning that you can refer to your casebook, class notes, slides, and other class readings. The use of library books is not 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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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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LAW 211, Section 4

THIS EXAM HAS TWO (2) QUESTIONS

Question 1:

MARKS

60 On April 4, 2019, Leslie's antique store, *Fun Object*, on Main Street in Vancouver closed due to a fire that had broken out in a neighbouring fast-food restaurant. The fire department said that she had to vacate the store immediately because the municipal authorities had established that both of the buildings adjacent to the burned property needed to be demolished. This meant that Leslie had to rent a new place for her business and inventory that included retro teak furniture, the 1960s-era music festival posters, kitsch ashtrays, collectable Star Trek toys from the 1970s, vintage lighting, old cookbooks, and twelve boxes of rare vinyl records.

Leslie realized that she needed to put most of her store's inventory into a storage unit as soon as possible. She feared that it would take a long time to find a new location for her business in the same neighbourhood. She decided to store only the vinyl records in her apartment.

Leslie heard from another Main Street small business owner about *Best Kondo*, a relatively new self-storage on East 2nd Avenue. The storage company is owned by Philip Orange and his wife Fiona. Their children, Alicia and Daniel, work as their only employees. Leslie phoned *Best Kondo* on April 5, 2019, and learned from Fiona Orange that their storage has been open for three years. *Best Kondo* consists of prefabricated metal units that look like a line of garages which share common walls. Units are very basic, with no water pipes, no climate control but Fiona claims they are well lit and secured with a modern surveillance system. Fiona says that *Best Kondo*'s rental price is lower than other rental prices in the neighbourhood because they only rent out units for a minimum one-year term.

On April 6, 2019, after researching online four other storage places in East Vancouver, Leslie came to see the *Best Kondo* storage. She asked Daniel Orange if *Best Kondo* had any problems with their storage business. He responded that since its opening, the storage has been completely problem free. "It has always been a safe place" said Daniel. Leslie was exhausted from looking for a storage facility, packing her store's inventory, and searching for a new business location. Daniel said that if she would rent one unit in *Best Kondo* they could help her with moving her belongings into the storage. Leslie agreed.

On April 7, 2019, while Daniel and Alicia were moving *Fun Object*'s furniture and boxes of collectables and books into the unit #88, Philip Orange met at with Leslie in the office and provided her with a standard *Best Kondo* Storage Agreement. He asked her to read it and sign it. Leslie just glanced over the agreement without reading it carefully. She told Philip that she was too tired of moving her business from its damages premises and that all contracts looked the same to her anyway. Philip explained that each page of the Storage Agreement needed to be initialized by both parties and signed by them at the last page. The following clause was on page 1:

Question 1 continued

LOSS OR DAMAGES TO GOODS

5.1. Renter acknowledges that *Best Kondo* is only providing space to the Renter for the storage of goods at Renter's own risk and that *Best Kondo* is not a bailee or warehouseman, and does not have custody of and has no obligation to care for or preserve Renter's goods.

The liability clause was on page 2 and it specified that:

7.1. Renter agrees that under no circumstances shall *Best Kondo*, its directors, representatives, or employees be subject to any liability whatsoever for loss, theft, or destruction of, or damage to, any goods stored by the Renter in the unit, whatever the cause of such loss, theft, destruction or damage.

At the last page of the agreement there was the following provision:

FAILURE TO PERFORM

13.1. In the event the Renter terminates this agreement prior to the expiration of this one-year term, the Renter agrees to pay as liquidated damages an amount equal of the sum of the Renter's monthly billing for the most recent six months. The Renter acknowledges that the foregoing liquidated damages are reasonable in the light of the anticipated loss caused by the termination and are not imposed as a penalty.

Leslie managed to rent a new place for her antique store in November 2019. She was barely getting by financially by using online platforms to sell rare vinyl records. On November 20, 2019, she came to collect her items from the *Best Kondo* storage and found that all of her books and most of the stored furniture, including four rare original "cowhorn" dining chairs designed by Hans J. Wegner, were damaged by water that had probably leaked into the unit and flooded it. Leslie was devastated because she was hoping to sell these chairs for at least \$78,000.00. Alicia and Daniel, who were moving the items out of the unit, did not deny the damage but they could not figure out where the water came from since not a single unit in the storage had any water pipes. Leslie was upset and told them that it was all their fault because the two of them moved the furniture into the storage and it was them who were supposed to ensure that stored goods were safe. She wanted Daniel and Alicia and *Best Kondo* to pay her for the loss that she suffered. Alicia replied: "You better speak to our mom and dad about that. We have nothing to do with that."

Leslie subsequently made a claim on her insurance policy but the claim was rejected. That was all bad news for Leslie. Not having readily sellable furniture when she had to pay for newly rented store premises caused further loss of income. The insurance agent told her to sue *Best Kondo* and its employees for acting carelessly and causing damage. He said that it made no sense for people to store their goods in self-storage unless storages provide dry and safe places.

On December 12, 2019, Leslie received a notice from *Best Kondo* requesting her to pay liquidated damages stipulated in the storage contract because she left the arrangement before the end of the term. She was furious and determined not to pay that amount.

Imagine that you were on the externship in a law office next to Leslie's *Fun Objects* store. Imagine that she had asked your principal Jay Law what her possibilities to

Question 1 continued

recover losses from *Best Kondo* are and that your principal asked you to let him know what were Leslie's contractual rights and duties vis-à-vis *Best Kondo*. "Kiddo, you should focus only on jurisprudence and common law principles of Contract Law. I will take care of any statutory interpretation and application if necessary. And I will also look into Leslie's insurance policy."

Question 2:

MARKS

40 Petra is one of the millennials who likes the flexibility of the gig economy. She has a large consumer van and she occasionally works as a driver for guests of the Whistler Sunshine Hotel. She is also a wedding photographer and she sells on eBay and Kijiji old cameras that she buys at garage sales in Whistler and Penticton.

On January 7, 2020, Petra was driving a hotel guest to Vancouver International Airport (VYR). He told her that his name was Nicholas and that he was a collector of old cameras. Petra told him that she was not only a professional driver but also a photographer and a Kodak Brownie camera collector. Petra also said that she had some rare cameras for sale in the back of her car and that she could show him when they arrive to VYR.

When Petra dropped Nicholas off at the entrance of the airport, he asked to see her cameras. Petra opened a duffle bag at the back of the van and among some old Polaroid SX-70 alpha cameras that Petra was trying to sell for about \$180.00 each, there was one Hasselblad worth about \$2,500, one Rolleiflex she thought could catch over \$3,000 and one weird looking old black paint Leica MP 39. Petra said that she would like to get Leica cleaned and then sell it. She told Nicholas that she was hoping to sell it for a few thousand dollars. Nicholas said that she should not try to clean it on her own. He was certain that the camera was in professional use by some photographer in the 1950s.

Nicholas said to Petra that he would be very interested in purchasing that Leica MP 39 for \$10,000. However, he would first need to sell some of the shares that he held in his investment portfolio and that might take one or two weeks. Nicholas asked Petra if she would hold the camera for him for a modest fee of \$250.00. Petra said that she would wait two weeks but not more. Nicholas took Petra's email address and cell number and said that he would send an e-transfer of \$250.00 when he was home in Toronto.

As soon as Nicholas arrived to Toronto, he checked with his Leica dealer about the status of Petra's camera on the market. The word was that the camera could be worth about \$50,000.

On January 10, 2020, Nicholas called his friend Henry and offered to sell him \$15,000 worth of shares in a small brokerage lobster company in Nova Scotia. Henry and Nicholas together held 20% of shares of the company. Henry sensed that the deal was a matter of urgency for Nicholas and said that he was interested in buying half of all shares owned by Nicholas and nothing less. Nicholas said that he would agree to sell half of his shares if Henry agreed to give him an advance payment of \$10,000 by the end of the following week. Once he received the advance, Nicholas could draft their

Question 2 continued

agreement, signed it, and send it to Henry. Henry agreed to buy shares on terms as orally set by Nicholas. He mailed the cheque to Nicholas on Monday, January 13th.

While Nicholas was selling his shares in Toronto, and one week had passed since he and Petra had discussed the terms of sale of Leica, Petra went to Vancouver to see a camera repair mechanic Hugo. Hugo told her that he wanted to buy the camera for \$20,000 and that he could write her a cheque immediately. Petra could not believe her luck. She left the camera with Hugo and took his cheque.

On January 16, 2020, while Petra was driving to Whistler from Penticton, she got a text message from Nicholas: *Sorry for not sending the \$250 fee. But I got \$10,000.00. Ready to transfer money. Call me to arrange Leica's shipping.*

As soon as she parked her car in front of Whistler Sunshine Hotel, Petra texted back: *I sold the camera. Got more than twice that you offered ☺.*

Nicholas was furious. He texted back: *How could you do that when we agreed that you would keep it for me?*

Petra texted: *And you said that you would send me money as soon as you arrived to Toronto but you never did. Haha...*

Nicholas texted back to Petra: *I'll see you in court.*

The following day Nicholas changed his mind about selling his shares to Henry. Nicholas called Henry and said that he wanted to return his \$10,000.00 cheque and that he did not want to sell his shares anymore. Henry said that he wanted these shares and he would not settle for anything less. Nevertheless, on January 22, 2020, Nicholas sent the cheque back to Henry. On January 27, 2020, Nicholas found in his mailbox an envelope from Henry with the same \$10,000 cheque in it. He decided to mail it back to Henry.

On January 30, 2020, Nicholas got a letter from Henry's lawyer alleging Nicholas had broken the binding agreement reached between him and Henry. Consequently, said the lawyer, Henry would be seeking to enforce their agreement by a court order for specific performance. On the same day, Petra read in *Vancouver Sun* that Hugo sold that Leica MP 39 at Sotheby's auction for \$155,000.00. Apparently, that camera once belonged to the legendary American photographer Margaret Bourke-White.

Nicholas consults you about his legal position and relationships with Petra and Henry. Imagine that there are no statutes affecting his rights. Advise Nicholas.

END OF EXAMINATION