

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

FINAL EXAMINATION – APRIL 2021

LAW 469.003
Civil Procedure

Professors Goulden/Kuntz

EXAM PASSWORD: D3982v
RESUME CODE: B14E2B

TOTAL MARKS: 100 MARKS

(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.

This is an open book examination, meaning that you can refer to class notes, B.C. Annual Practice (Supreme Court Civil Rules) (the “White Book”) and other class readings.

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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THIS EXAMINATION CONSISTS OF 12 QUESTIONS and is 6 pages long (not including these introductory pages).

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Britnee Hilton and her fiancée Cardi Swift, residents of West Vancouver, have been dreaming of hosting a lavish wedding ever since Cardi proposed to Britnee on a spring break trip to Daytona Beach in 2018. Initially, they had set the wedding date for May 30, 2020, and entered into a contract with Mo Movassaghi and his company, Massive Wedding Extravaganza Inc. for the company to provide the venue (an enormous White Circus tent), flowers, buffet catering, DJ, laser show and petting zoo for the enjoyment of Britnee, Cardi and 450 of their closest friends. Mo and his Company operate out of the Telus Garden Residences in Vancouver.

The contract, signed on January 4, 2020, provided for the company to charge cancellation fees on a sliding scale depending on the cancellation date. For cancellations between 31 and 90 days before the event, the cancellation fee was set at 25% of the event's total estimated cost of \$285,000. The contract also contained a "force majeure" clause, which addresses unforeseeable events "due to acts of God, war, terrorist act, civil disorder, or other comparable unforeseen emergency." The contract is governed by the laws of B.C. and a clause states that the parties have agreed to attorn to the B.C. Supreme Court for the resolution of all disputes.

In early 2020, Britnee learned about COVID-19 and the possibility that it may impact her scheduled wedding. By then, Britnee had already made 3 down payments for a total deposit of \$112,000. On March 16, 2020, Britnee and Mo exchanged email messages that discussed their mutual hope that the wedding could proceed, and they also discussed the cancellation policy. Britnee stated that she was not going to cancel the contract, but wanted Mo to be prepared for possible disruptions. That same day, Dr. Bonnie Henry issued an order under the Public Health Act to prohibit gatherings for more than 50 people.

Britnee told Cardi that they'd have to scale down the wedding if it was to proceed, but Cardi was having none of it. "No Petting Zoo? No 450 people? No buffet? No wedding! Okuuuuuurt!" cried Cardi. On March 19, 2020, Britnee emailed Mo and stated that the Public Health Order made the contract impossible to perform as contemplated by the force majeure clause. She asked for the return of her full deposit. Mo disagreed that the contract was impossible to perform. Via text message, he advised Britnee that the event could be held with less than 50 people and possibly reducing the petting zoo to one baby goat and one pig. For a little extra money, he would agree to host the wedding with 200 guests in attendance at his penthouse suite at Telus Gardens. "Hell NO! It's got to be all 450 people and I need baby horses too!", cried Cardi. A subsequent telephone call between Britnee and Mo did not result in an agreement about how to proceed. Britnee maintained her position that the wedding simply couldn't happen under these conditions.

On May 28, 2020, Cardi checked her credit card statement and saw 2 charges of \$20,000 paid to Massive Wedding Extravaganza Inc. Britnee reviewed her credit card statement and saw two charges for \$25,000 each payable to the company. Frantic, Britnee called Mo to complain about the charges. Mo replied "What are you talking about? Cardi called me and said the wedding was going ahead! I've already bought the flowers and the lasers! You owe me!" Before hanging up, Mo shouted "Read your contract!"

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Question 1. (12 marks)

1. Cardi denies telling Mo that the wedding was still on, and Britnee insists she gave sufficient notice that the wedding was not going ahead back in March. Prepare a draft of the main document that should be filed by Britnee to proceed with her claims. Be sure to cite the rule(s) on which you are relying and the reasons for using this document, identify all parties against whom the claim(s) are brought and include the complete style of cause.

Question 2. (8 marks)

2. Britnee's lawyer sends a copy of the initiating pleading to Mo via email, mail and registered mail. Mo's lawyer contacts Britnee's lawyer by email, stating "I'll get back to you", but two weeks go by and Mo does not file a response.

- a. Provide three reasons why the court may not come to Britnee's aid if her lawyer tries to file for default judgment at this stage. Cite all applicable rules and other considerations.
- b. After his default order is rejected, Britnee's lawyer tries again to get the initiating pleading to Mo, going so far as to hire a circus clown to show up at the Telus Garden Residences to deliver the document. The clown reports back that each time he rings the intercom for Mo's penthouse, it sounds like the same person is answering but on each occasion the person fakes a new and interesting accent. The person refuses to admit they are Mo and refuses to allow the clown into the building. What should the lawyer do to ensure that Mo receives the pleading before trying, once again, to apply for default judgment? Explain the process and cite all applicable rule(s).

Question 3. (3 marks)

3. When consulting with her lawyer, Britnee mentions she had an earlier run-in with Mo back in 2013 when she and Mo lived in Calgary and Britnee was organizing her high school prom. The party went off without a hitch but Mo had over-charged Britnee by \$10,000 for the horse and carriage she'd rented to arrive at the event. As Britnee's lawyer, would you add this claim to the current lawsuit? State any applicable reason(s) for your answer.

Question 4. (10 marks)

4. As part of the document discovery process, Britnee has produced documents to her lawyer. Describe whether her lawyer would include the following documents in her client's list of documents, under which part she would list the document, and state why:

- a. A draft version of the Contract for Service containing edits to the description of the laser show, which edits did not make their way into the final version of the contract.
- b. A text from Cardi to Mo sent on March 24, 2020 in which text Cardi writes to Mo: "K. Wedding a go. Ponies are on fleek. TL"
- c. Cardi's credit card statement from May, 2020.
- d. A letter sent from Mo's lawyer to Britnee on August 27, 2020 setting out why Britnee's claim was weak and presenting an offer to settle the dispute.
- e. An article from the September 2020 issue of CBA digest entitled "Force Majeure: For sure?"

Question 5. (10 marks)

5. Mo has failed to produce certain documents which Britnee's lawyer believes are material and ought to be produced. Britnee's lawyer files an application to seek an order that Mo produce the documents, and files a supporting affidavit containing the following information in support of the application. Assume there are no defects with the form of affidavit (i.e. the style of cause or the execution of the affidavit). Provide five (5) examples of why or how the substance of this affidavit is deficient or problematic. Explain your answers.

I, JACINDA SISTANT, Paralegal, make oath and swear as follows:

1. I am a paralegal employed by the law firm of Kardashian Dershowitz LLP and I swear that everything that is presented in this affidavit is true.

2. I have reviewed the legal file of my law firm and have consulted with the instructing lawyer and our client, so that I have knowledge of the matters in this case.

3. On April 5, 2021 we received a list of documents from the defendant. It has been determined that there are very important and relevant documents missing from their list of documents. I spoke with Lisa Simpson, my supervisor, and she told me she was informed by Bruce Lee, a partner at the firm, that we cannot win our case unless we have access to the missing documents.

(Question 5 continued)

4. After reviewing the list of documents, I was instructed to draft this application and affidavit to proceed to court immediately and without delay.

5. It is desirable and in the interests of justice that the defendant produce the missing documents. It has been determined that our client will suffer prejudice if the Order is not granted. I verily believe that the defendant will not suffer any prejudice if the Order is granted, such that the Order should be granted in this instance.

Question 6. (10 marks)

6. Britnee is stunned when the application to compel Mo to produce documents is unsuccessful. Master Edwards tosses out the application and orders Britnee to pay “costs in any event of the cause, payable forthwith.”

- a. What does the costs order mean for Britnee?
- b. Will Britnee have to pay all of Mo’s legal fees and disbursements for the application or any other part of the proceeding because of this Order? Why or why not?
- c. What steps must Britnee do to appeal this decision? Cite the applicable rule(s) and process.
- d. Britnee plans to argue that the Master lacked jurisdiction to make the decision. Does she have a hope in hell of winning this argument? State why or why not and cite all applicable authority for your position.

Question 7. (14 marks)

7. Mo is rankled by the bad press he is receiving for allegedly over-charging Britnee and Cardi for a cancelled wedding. It is really cutting into his profits at his condo nightclub at Telus Garden. To retaliate, he posts a story on the “Vancouver is Cool” website alleging that Britnee and Cardi proceeded with their 450 person Wedding/Laser show/Petting Zoo in the middle of Stanley Park, contrary to the Public Health Order. Mo even accuses Cardi of riding, and subsequently injuring, a deer in the park. Soon after the story goes online, Cardi’s employer calls and fires Cardi from her job. Explain what steps Cardi and Britnee should take to stop the story from ongoing publication in the most expeditious fashion. Cite any and all applicable rules of court and the test the court will use to determine whether to grant the order(s) they are seeking. Who would the lawyers seek order(s) against? What order(s) would they seek?

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(Question 7, continued)

Assuming the order(s) are granted, but not complied with, identify and discuss two options available to Cardi and Britnee in response.

Question 8. (4 marks)

8. Mo is confident that the claim against him has no merit and that his legal arguments founded on the inapplicability of the Force Majeure clause are strong. He doesn't think he should waste the time and money to participate in a full trial. Please identify and discuss two options that she has to try to conclude the case short of proceeding to a full trial? Cite any applicable rules in support of your position.

Question 9. (8 marks)

9. Two months before trial, Britnee presents Mo with this offer to settle via an email sent by her lawyers to Mo's lawyers at 4:59 pm:

In exchange for the discontinuance of the lawsuit, I will agree to accept a payment of \$205,000 plus full reimbursement of all of my legal fees and disbursements. Payment must be made to my lawyer's office within 24 hours. This offer is open for acceptance until 7 am tomorrow morning, after which the offer will be withdrawn and we are going to trial. This is my final offer.

- a. If Mo rejects this offer, what argument(s) would he raise to justify his rejection of it as an unreasonable offer?
- b. Mo rejects the offer, proceeds to trial, and loses. When arguing the issue of costs, Britnee reveals this offer to settle and the judge concludes that the offer was, in fact, reasonable and ought to have been accepted by Mo. What orders may the court make in respect of costs, in light of the court's decision at trial and its view of Britnee's offer to settle? Cite the applicable rules and explain your answer.

Question 10. (10 marks)

10. Britnee decides that if she can just sit down with Mo and hash out the issues, a settlement of the case can be accomplished.

- a. Explain one option provided by the Rules of Court to convene settlement discussions and how the process can be initiated. Cite all applicable rule(s). Can this process proceed if Mo does not agree? Why or why not?

(Question 10, continued)

- b. Explain another mechanism not mentioned in the Rules of Court to trigger settlement negotiations. Cite the name of the provision which outlines this process. Can Britnee trigger this process if Mo does not want to participate? What can Britnee do if she starts the process but Mo refuses to participate?
- c. If the contract for Services does not contain an arbitration clause, can Britnee compel Mo to arbitrate the outcome of their dispute? Explain why or why not.

Question 11. (5 marks)

11. Two weeks before the trial, a witness Britnee intends to call and has subpoenaed to testify at the trial decides that he does not want to attend or participate. State the rule(s) of court that the witness should cite in support of his position and what steps he would have to take to be excused from testifying. What factors(s) will the court consider when deciding what to do? What might the court do if the witness simply does not show up at trial?

Question 12. (6 marks)

12. Identify and discuss three (3) ways that Britnee could introduce evidence at a full trial without necessarily calling a witness to provide oral testimony, including the rule(s) that would be relied upon.

[End of Exam]