

**THIS EXAMINATION CONSISTS OF 4 PAGES**  
**PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**  
**THE UNIVERSITY OF BRITISH COLUMBIA**  
**FACULTY OF LAW**

**FINAL EXAMINATION – APRIL 2022**

**LAW 211**

**CONTRACTS**

**SECTION 2**

**PROFESSOR BAKAN**

**TOTAL MARKS: 100**

**TIME ALLOWED: 120 MINUTES**

**plus 10 minutes of reading time.**  
**(Students may not begin to type during the reading time.)**

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- NOTE: 1. This is an **open book** examination. Candidates may refer to their notes, cans, course syllabus, casebook (Ben-Ishai and Percy, *Contracts: Cases and Commentaries*), and handouts (for the cases: *Uber*, *Loychuck*, *Niedermeyer*, and *Wastech*). No other textbooks or library books are permitted.
2. ANSWER ALL QUESTIONS

**THIS EXAMINATION CONSISTS OF 2 QUESTIONS**

**MARKS****70     QUESTION 1**

The People, an alternative rock band in Vancouver, are comprised of Joan, Jane and John. One day the band gets a call from Natasha at 778 Records, one of the big players in the recording industry. "We've been following you guys", Natasha says. "And we like what we see. You could be the next big thing!" Needless to say, the members of The People are thrilled. When Natasha asks them if they want to sign a distribution deal with 778, they jump. The People had already independently produced a vinyl album and pressed 300 units of it, which were stored in three boxes of 100 units each in Jane's basement. Desperate to become rock stars, believing they had the talent to do so, having sacrificed everything for their dream (and having no other marketable skills), and knowing that the chance of getting the attention of another major label was close to nil, Joan, Jane and John believe a deal with 778 will be their big break. They feel they cannot say 'no'.

A meeting is arranged with Natasha, at her office, to sign the deal. Natasha explains that the marketing strategy is to begin with a limited release of the vinyl album, create buzz, and then leverage that for a digital release and campaign. When the band members show up at Natasha's office, she looks stressed. "Listen you guys," she says. "Snora Jones [one of 778's biggest artists] just came into town. She's at the hotel, they forgot to put bottled water in her room, and all hell is breaking loose. Here's the contract. Read it if you like — give it to my secretary after you sign it. I'll be in touch." And out the door she flies.

Joan, Jane and John start to read the document. It's 9 pages long and contains 45 clauses. After reading the first few clauses, Joan says: "I can't make any sense of this. You need to be a lawyer to understand it. We could spend the next two days reading it and still not know what it means. Let's just sign and hope for the best." The band members are each only 18 years old and none of them have had any real business experience. They all dropped out of high school together to pursue their dreams of rock and roll stardom. They haven't even thought of retaining a lawyer to provide them independent advice on the deal with 778.

If they had read the agreement they would have seen the following provisions at the bottom of page 5:

12.4 The People shall ship to 778 300 vinyl album units in three boxes of 100 units each.

12.5 The People shall be paid by 778: i) \$5 for each of the 300 albums; and ii) a royalty of 30% of sales revenue received by 778, less expenses incurred in relation to marketing and promotion.

12.6 In the event said marketing and promotion expenses exceed 30% of sales revenue, 778 shall not pay any royalties to The People, and The People shall reimburse 778 for the excess expenses.

Things did not go smoothly after the distribution deal was signed. When The People shipped the three boxes of 100 albums, one of the boxes was lost by the shipper, never to be found. A second box, it turned out, had been infested with silverfish insects while stored in Joan's basement. The bugs had eaten through the plastic wrapping on each album, and had bored small holes through the cardboard covers making the units unfit for sale by 778. The bug-related damage had happened well before the distribution agreement was signed. Joan did not know the boxes of albums had been infested, and 778 never inquired about the state of the albums.

With one box lost and another box's product unfit for sale, 778 had just one box left of 100 albums to sell. It sold these for \$20 each, generating \$2000 in revenue. That would have entitled The People to \$600 (30% of \$2000) under clause 12.5. But because 778 had spent \$1000 on marketing and promotion, the company was entitled, under clause 12.6, to withhold the \$600 from The People, and to demand they reimburse 778 \$400. 778 asks for the \$400, and also refuses to pay The People for the 100 albums that were lost, and for the 100 albums ruined by the silverfish.

**Discuss the following:**

1. 778 sues The People for refusing to pay the \$400 owing under clause 12.6. The People defend by claiming clause 12.6 is unconscionable.
2. The People sue 778 for refusing to pay \$500 (under clause 12.5) for the 100 albums rendered unfit for sale by the silverfish infestation. 778 defends with the doctrine of mistake.
3. The People sue 778 for refusing to pay \$500 (under clause 12.5) for the 100 albums that got lost in shipping. 778 defends with the doctrine of frustration.

**MARKS****30      QUESTION 2**

“The main weakness of modern contract law is the changes which have taken place since the classical law was at the height have not been changes of principle. They have been piecemeal changes affecting one type of contract here, one kind of situation there, and they have not generally affected the basic principles of contract law. These principles remain fundamentally as they were enunciated by the judges of the 19<sup>th</sup> century, and despite the numerous modifications and qualifications introduced since the classical period, they still play a large part in law.”

Patrick S Atiyah, *An Introduction to The Law of Contract* (1971)

In light of developments over the 50 years since Professor Atiyah wrote these words, is his complaint still valid?

**Discuss in relation to the doctrines of:**

1. Unconscionability  
    **-OR-**
2. Public Policy  
    **-OR-**
3. Good Faith  
    **-OR-**
4. Mistake  
    **-OR-**
5. Frustration  
    **-OR-**
6. Remedies  
    **-OR-**
7. Any combination of the above

**END OF EXAMINATION**