

THIS EXAMINATION CONSISTS OF 5 PAGES  
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THE UNIVERSITY OF BRITISH COLUMBIA  
FACULTY OF LAW

FINAL EXAMINATION – April 2022

LAW 211  
Contracts

Section 4  
Professor Biukovic

TOTAL MARKS: 100

TIME ALLOWED: 2 HOURS AND 20 MINUTES  
including reading time

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- NOTE:
1. This is a LIMITED OPEN BOOK examination. You may bring to the exam a copy of Ben-Ishai & Percy's textbook, copies of assigned, examinable supplemental cases as posted on the course web sites (Canvas and cms), and any additional material that you print from the course web sites (including the syllabus and the class schedule), and your own class notes. The use of library books, textbooks not assigned as mandatory readings for this course, as well as materials from other courses, other Contract Law sections, or previous iterations of this course, is not permitted.
  2. ANSWER ALL QUESTIONS. If you think you would need more facts in order to answer the question fully, please indicate what those facts are, why they are necessary, and specify clearly any assumptions you are making in order to address the question.

**THIS EXAMINATION CONSISTS OF 2 QUESTIONS**

## Question 1

MARKS

- 50 1. Sally and William are a married couple in their mid-forties. Sally works as a nurse in a major private plastic surgery clinic and William is a medical doctor in a family medical center. Sally was taking yoga classes after work three times a week in a Free Spirit Centre located in the same shopping mall in Burnaby where William has his medical practice. On Saturday afternoon, when she was coming back home from her yoga, she saw a promotional campaign poster in the window of a new appliance shop “Magic Waves” which was obviously trying to win customers over by saying that “any customer purchasing a new smart and eco friendly washer and dryer will receive a new iPad Air 10.9” with 64 GB Wi-Fi (4<sup>th</sup> generation) for free.”

Sally spent the rest of the weekend thinking about new home appliances and an iPad. She knew that William would love to get a new iPad. He loves music and his old 1<sup>st</sup> generation iPad could store only 16 GB of music, which was not even one third of his huge CD and vinyl collection. The price of a new iPad is \$699.00 plus tax. Sally had for a long time also been dreaming of replacing their old and noisy washer and dryer.

On Monday morning, as soon as she came to work, Sally went to the store’s website [www.magicwaves.com](http://www.magicwaves.com), made an online purchase of a new eco-friendly Bosch washer and a drier for a total price of \$2,338.19, and printed out the receipt. After she had finished her work, she came to the store in the shopping mall to pick up an iPad for William. However, when she presented her receipt confirming the full payment for the appliances and asked for a bonus iPad she was turned down by the sales assistant who explained that the last iPads were given away on the weekend. She was so disappointed that she wanted her money back, which was refused by the store’s sales manager Susan. Susan showed Sally a note in the text of the poster displayed in the store window that said that the store had a limited number of iPads to give away and that they were offered on a “first-come, first-served” basis. Sally said that she did not read that part of the poster as nobody could have seen that note from a distance. Susan responded: “Well, you could have come a bit closer, couldn’t you? It is not our fault that you did not take your time to investigate before your purchase. You know what they say – caveat emptor!” Sally left the store feeling helpless but angry that she could not find a proper response or course of action. As she was walking towards her car, she googled “caveat emptor” to learn that it apparently meant “buyer beware.”

## Question 1 continued

When Sally came home just after 7 pm, she explained to her husband William what had happened. Neither of them felt interested in getting a new washer and dryer anymore. William suggested Sally to call the store and try to talk to a person in the customer service department. She called the store and left an angry message on the customer service voicemail that she was cancelling her purchase and that she would not be accepting any delivery of appliances they had shipped.

After Sally settled a bit, William said: "You think you had a weird day? Listen to what happened to me." William had an argument with his former employer, Dr. Henri, who had happened to walk into William's walk-in clinic, and had threatened William with a law suit and an injunction to stop him from practicing in violation of the employment agreement they had signed eight years ago. William had worked in Dr. Henri's clinic for over 7 years when his contract was abruptly terminated. As an excellent physician, William had no problems finding a new work in a city like Burnaby where medical staff and family physicians have always been in demand. William's agreement with Dr. Henri provided that for 3 years after the termination of his employment with or without a cause, William would not engage in any medical practices, including surgery, as an employee of any person or persons within the city of Burnaby. It also provided for a sum of liquidated damages of \$500 in the event of any breach of that obligation and for an application for an injunction notwithstanding the claim for recovery of damages. William explained to Sally that in his view the employment agreement with Dr. Henri was not enforceable. He responded to Dr. Henri's threats by suggesting that that he, William, should be suing him, for terminating his employment in front of medical assistants and patients, and humiliating him publicly.

Sally said that what happened to both of them was totally unfair and that they should call her brother Ronaldo, a famous commercial lawyer, to seek help. Sally said that Ronaldo would protect their legal rights.

After the couple's visit to Ronaldo's law office, Ronaldo asks you to write him a memo explaining rights and liabilities of Sally and William on the basis of everything you learned about rules of common law and equity in the first year Contracts course but to leave possible statutory implications on their business relations for him. Ronaldo also tells you that "no one messes with my sister and gets away with it" and stresses that this case is a top priority.

## Question 2

50 2. John and his husband Paul were looking for their first home in Vancouver, BC for a long time. On 16 May 2020, at the annual flower exhibition in Van Dusen Garden, they met a friendly couple Betty and Sam Rosedale, who are retired high school teachers and passionate gardeners. The Rosedales said they were planning on down-sizing and selling their four-bedroom rancher in the Dunbar neighbourhood, and moving into an apartment in West Vancouver to be close to their grandchildren. The Rosedales' house is close to good schools, to a park and a community center, and the lot is much bigger than any lot in their street. John and Paul offered to buy the Rosedales' property whenever Betty and Sam put it for sale.

On 13 October 2020, Sam Rosedale emailed Paul to say that the house would be put for sale in three days and that they needed to make an offer as soon as possible because they had already been contacted by some real estate agents representing overseas investors. Sam said that their asking price was only \$2.5 million. John and Paul immediately called the Rosedales to confirm that they were interested in their property and to hear more about the home's structural features. Sam told them that they were living in the house for 20 years and that they had bought it from the first owner. He said that the structure of the house was strong, and that a local construction company Best Brick Dunbar (BBD) had done all service and renovation work for the Rosedales. Sam confirmed that he had BBD's service record book for them to see if they wanted.

On 18 October 2020, John and Paul hired a home inspector Ron Visage. Visage was recommended to them by their realtor Sonny Dee. Visage agreed to inspect the Rosedales' property for them and asked the couple to first sign his standard Inspection Agreement. It was a short one-page document with eight paragraphs, all in standard Times New Roman font and standard letter size 12.

The first paragraph described the inspection work as "a visual inspection to familiarize the client with the actual condition of the subject property." It further explained that "the inspection is based on all of the exterior and interior areas of the structure that are easily accessible. Areas where no access is available will be considered uninspected."

The second paragraph of the Inspection Agreement said: "This inspection and report are not to be construed as a guarantee, warranty or certification as to the value of the property inspected or compliance with past or present government codes or regulations of any kind."

The fourth paragraph contained provisions related to Visage's liability for the inspection work: "Ron Visage's liability shall be limited to a sum equal to the amount of the fee paid for the inspection. Ron Visage assumes no liability or responsibility for the cost of repairing or replacing any reported or unreported defects or deficiencies, either current or arising in the future, or for any property damage, consequential damage or bodily injury of any nature."

According to the paragraph eight, the price for Ron's inspection was \$ 645.00 plus tax and it was payable on the day of inspection via e-transfer.

## Question 2 continued

Ron stood in silence beside the couple while John read and signed the Inspection Agreement. Paul signed without reading it. He remarked that all these words looked to him like a foreign language that he wouldn't understand anyhow but he trusted John and was ready to accept whatever John had approved. On 20 October 2020, Ron conducted a home inspection and provided them with his report. Ron did not identify any significant issue with the home. On 22 October 2020, John and Paul purchased the home from the Rosedales. They moved in on 19 November 2020.

On 10 August 2021, the landscapers from the Blossom Brothers company that were hired by John and Paul, notified the couple of some structural issues in the exterior of their home, suggested urgent additional investigation, and recommended an engineering and construction company Steel Wheels. Steel Wheels inspected the property and confirmed what the landscapers had suspected – the exterior surface was beyond repair because the brick veneer did not function properly, the house's insulation was swollen, and water infiltration had caused the house substructure to start rotting. John and Paul were devastated to hear that they needed at least \$500,000 to remedy these problems. They immediately emailed Ron Visage and asked him to come and resolve their issues. He never responded to that email. John and Paul decided to hire Steel Wheels for the reconstruction work and they promised to pay the Blossom Brothers extra \$200.00 for finding a problem and referring them to Steel Wheels.

The repair work was completed on 1 December 2021 and John and Paul ended up paying Steel Wheels more than \$600,000. They spent additional \$15,000 on their wellness and mindfulness therapy that helped them overcome the severe depression and headache they were suffering from.

One of the Steel Wheel's engineers who had supervised the construction work told them that they should start a legal action against Visage and make him pay for the work. Paul said that he was not even sure if the money could ever give them back their peace of mind. John felt that they could not live in the house anymore. He would have preferred to make Rosedales take the home back. "Sue the owners then", said the engineer. Paul was reluctant to do so because he really liked the Rosedales and he thought of them as fondly as if they were some kind of an extended family to John and him. The value of real estate in Vancouver skyrocketed in 2021, and their property was worth over \$3.7 million at that moment.

Advise John and Paul on the contractual aspects of their relationship with Ron Visage and the Rosedales. They also think that they do not need to pay extra money to Blossom Brothers because they were only hired for landscaping not to inspect structural aspects of the property. If they go to court with their case, what should they argue and what remedies should they seek from the court? How would the court see their arguments? You should ignore any statutory issues related to the possession of the house and the inspection standards of practice.

**END OF EXAMINATION**