

THIS EXAMINATION CONSISTS OF 6 PAGES
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THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – April 2022

LAW 469.003/590.003

Civil Procedure

Professors Goulden/Kuntz

TOTAL MARKS: 100

TIME ALLOWED: THREE HOURS

NOTE:

1. This is an open book examination.
2. Where applicable, cite the relevant rules and cases.
3. Answer all questions.

THIS EXAMINATION CONSISTS OF 14 QUESTIONS

Please answer the questions below based on the following fact pattern:

Canadian Restaurant conglomerate YummyFoods Canada Ltd. has been struggling with its subsidiary B.C. company, Jim Snorton's Ltd., a chain of fast-casual restaurants featuring multi-flavoured soda drinks and deep fried cupcakes. To increase sales, YummyFoods and Jim Snorton's have reached out to social media mega-star Dustin Beaver to collaborate. Dustin Beaver is a home-grown star who once worked at the Burnaby Jim Snorton's before making the big time, thanks to his elaborate dance moves posted on the Bock-Bock social media platform. Dustin now lives on Marine Drive in West Vancouver and flies daily to Los Angeles to perform on "Dancing with the D-Listers." This new arrangement with Yummy Foods and Jim Snorton's aligns with the star's frequent social media posts about Jim Snorton's restaurants and products.

Pursuant to the agreement with YummyFoods and Jim Snorton's, Beaver agreed to increase public awareness of Jim Snorton's, in particular their Sour Cream Waffle flavoured soda nicknamed the "Sour Snorton", and to be photographed and filmed wearing Jim Snorton's merchandise (to the exclusion of all other competing brands) for a period of three years. In exchange, Beaver would be paid \$5 million dollars. Jim Snorton's also agreed to grant Beaver an exclusive right to use, copy or display the company's logo and agreed to indemnify Beaver against any loss or damage arising directly from Beaver's use of the brand logos consistent with the terms of the agreement. The agreement also included a "morals clause", which entitled Jim Snorton's to cancel the agreement if, in the company's opinion, Beaver commits any act or does anything that might tend to bring him into public disrepute, scandal, or ridicule, or which might tend to reflect unfavourably on the brand. Beaver also agreed to indemnify Jim Snorton's in the event that Beaver breached the agreement or violated the proper use of the Jim Snorton's logo. The agreement was drafted by lawyers for YummyFoods Canada Ltd. but substantially amended by Beaver's lawyers before it was executed on February 14, 2021 following a press conference in Vancouver at which Beaver attended. "This collab is gonna be super fab", Beaver announced, while simultaneously dancing and chugging a Sour Snorton.

Initially, Jim Snorton's sales were up 171% and YummyFoods' profits skyrocketed, until last November. On the November 7, 2021 episode of "Dancing with the D-Listers", Beaver wore a toque bearing the Jim Snorton's logo and the company's catch phrase "Cake my Soda" while dancing the cha-cha with dancing partner Pete Davidson,* but the judges deducted 10 points for Beaver's poor costume choice and voted Beaver off the show. Livid, Beaver and Davidson drove off in Beaver's lime green Lamborghini (which also bore Jim Snorton's logo across the windshield) and began live tweeting a rant while speeding excessively. After crashing the car into an orphanage, Beaver continued his rant, exclaiming among other things "Jim Snorton's has destroyed my dancing career! The Sour Snorton is full of chemicals! Drinking them made me dance bad and made my car hit a house full of innocent kids!"

Public reaction to Beaver's rant was swift: sales at Jim Snorton's plummeted as did the price of shares in YummyFoods. A number of lawsuits were filed against the companies, echoing Beaver's claims that there were chemicals in the Sour Snorton causing consumers all manner of injuries. Beaver now only wears toques sporting the logo of Jim Snorton's main competitor, "Chunkin' Cupcakes", and is now marketing his own fannie pack displaying the Jim Snorton's logo but defaced with the word "SUX" across the image.

* of course Pete Davidson is in this fact pattern. Pete is EVERYWHERE. But so we're clear, this Pete is entirely fictional and any similarity to any other Pete Davidson is purely coincidental.

Question 1 (10 marks)

1. Prepare a draft of the main document that should be filed to address Dustin Beaver's behaviour. Be sure to cite the rule(s) on which you are relying and the reasons for using this document, identify all the parties for whom and against whom the claim(s) are brought and include the complete style of cause.

Question 2 (6 marks)

2. When Beaver receives notice of the proceedings against him, he believes he is the real victim and is the one who suffered the most serious damage as a result of this failed collaboration. Based on the facts presented to you, state whether Beaver has some potentially valid claims to bring based on what happened. What document(s) should be filed by Beaver to address them? Cite all applicable rules of court and explain why this/these document(s) should be filed.

Question 3 (4 marks)

3. Assume the lawsuits filed by the orphans only name Jim Snorton's as a defendant liable for their damages. What steps, if any, should Jim Snorton's take, or documents should it file, to ensure all responsible parties are involved in the action? Cite all applicable forms and rules of court. Why would you recommend Jim Snorton's take this step?

Question 4 (10 marks)

4. As part of the document discovery process, Jim Snorton's has produced the following documents to their legal counsel. Describe whether the lawyer should include them in the list of documents, and if so, under which part of the list she would list the document, and state why:
 - a. A draft version of the Sponsorship and Collaboration Agreement created during the negotiation process.
 - b. An email from Teddy Cruise, CEO of Jim Snorton's, demanding that Beaver increase the size of the Jim Snorton's logo on the windshield of Beaver's car, and Beaver's reply email expressing concerns that the logo would obstruct his vision.
 - c. A cease and desist letter written by counsel for Jim Snorton's to Dustin Beaver.
 - d. A letter written by legal counsel for Jim Snorton's to Teddy Cruise, explaining various terms of the agreement.
 - e. Financial statements regarding the increase and decrease in Jim Snorton's sales between January and December 2021.

Question 5 (10 marks)

5. Beaver has failed to produce documents which opposing counsel believes are material and ought to be produced. Within seven days of receiving the Beaver's list of documents, opposing counsel files an application for an order compelling Beaver to produce more records. State why the court may not grant the order(s) sought in the circumstances. What is the proper process to seek further and better document production? Be specific. Cite all applicable rules. If you have to go to court, who will hear the application and what is the authority for your answer? If in support of your application, you file an affidavit containing the following information, identify some issues that the court may have with the content:

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 may be 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 January 28, 2022 we received a list of documents from the defendant, Dustin Beaver. 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 my firm, that we need these documents before we go to trial.*
- 4. 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 (4 points)

6. Discuss the purpose of examinations for discovery and how the evidence given at an examination for discovery can be used at trial.

Question 7 (4 marks)

7. After a particularly gruelling examination for discovery, Dustin Beaver vents on social media about how mean and nasty all lawyers are. He then publishes screen shots of various documents the lawyers asked him questions about at the discovery and tells his fans that these documents and his discovery answers will exonerate him in the end. Is

Beaver entitled to engage in this behaviour? Why or why not? If this is not ok, what steps would you take to hold Beaver accountable? Explain your answer.

Question 8 (12 marks)

8. Even after the lawsuit commences, Dustin Beaver continues to post rants and hostile posts on social media, including the Chatter and Bock-Bock social media platforms, about Jim Snorton's products. He also accuses the company of injecting their fried cupcakes with dangerous chemicals. Sales continue to drop. Can Jim Snorton's do anything to stop the ongoing conduct? If court proceedings are an option, explain what steps should be taken to stop Beaver's conduct 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) sought. Who would the lawyers seek order(s) against? What order(s) would they seek? Based on the situation, do you think Jim Snorton's will be successful? What about Dustin Beaver?

Question 9 (8 marks)

9. Dustin Beaver insists the chemicals in the Sour Snorton caused or contributed to his car accident, bizarre post-accident behavior, and the reason why he should no longer be held to his contractual obligations. Should his lawyer submit an expert report in this case? Why or why not? If so, what sort of expert(s) should be retained? If you were Beaver's lawyer, what instructions should you give your expert(s) with respect to their duties and how to prepare their report(s). Describe, in terms of process and timing, what needs to be done in order for the expert(s)' evidence to be presented in court. If one of the experts, Dr. Fakker, suggests his practice is to shred his file notes after preparing each expert report, would you be ok with this? Why or why not?

Question 10 (4 marks)

10. Identify and discuss two appropriate tools for presenting evidence at a trial without the need for a "live" witness to appear at the trial (aside from discovery and expert evidence).

Question 11 (8 marks)

11. Jim Snorton's has a desire to settle the case, and serves Dustin Beaver's counsel with a Notice to Mediate. Is Beaver able to decline to attend the mediation? Why or why not? If Jim Snorton's counsel schedules the mediation but Beaver does not show up, what can Jim Snorton's do to try to keep its mediation plans on track? Can Jim Snorton's force Beaver to attend a Judicial Settlement Conference? Why or why not? Cite any and all rules and other authorities to explain your answer.

Question 12 (8 marks)

12. Assume you are Dustin Beaver's lawyer. Beaver calls you up in the middle of the night and tells you that a secret source has revealed that YummyFoods has several emails that are relevant to the case, but the emails have not been produced. Beaver urges you to obtain an anton piller order to seize the company's hard drives and preserve and obtain the email without delay. Is this the kind of circumstance where an anton piller order would be appropriate? Why or why not? If there was sufficient cause to pursue an anton piller order for this or some other reason, cite the process you would follow to obtain the order, and the rules of court and test you would apply to pursue it. Would you give notice to the other side before seeking this order? Why or why not? What difference does it make if you proceed to court seeking such an order without giving advance notice to the other side?

Question 13 (8 marks)

13. Describe the two types of costs that might be awarded to Dustin Beaver if he is successful in defending himself against this lawsuit, and explain the difference. If Beaver files several court applications during the course of the proceeding but loses each one, will he be entitled to recover the costs of those applications in the ordinary course because he was the ultimate winner at trial? Why or why not? What would it mean for Jim Snorton's if it filed an application for an interlocutory order that was ultimately granted, and the court ordered that it receive costs from Beaver in any event of the cause, payable forthwith? If the outcome of the trial is different, as in Dustin Beaver loses at trial, what would happen if Dustin Beaver offers to settle the case for \$500,000 but Jim Snorton's rejects the offer and insists on proceeding to trial but only receives a \$265,000 judgment after trial? Cite all applicable rules of court and explain your answers.

Question 14 (4 points)

14. Identify and discuss two significant ethical/professional responsibility issues that were raised during this course.

THIS IS THE END OF THE EXAMINATION