THIS EXAMINATION CONSISTS OF 7 PAGES, INCLUDING THE COVER PAGE

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2023

LAW 211

Contracts

Section 2

Professor Routh

**TOTAL MARKS:** 100

**TIME ALLOWED**: 3 HOURS PLUS 20 MINUTES OF READING TIME

(You have 20 minutes of reading time. The reading time is in addition to the 3 hours of writing time. During the reading time, you may only make notes on the question sheet or in an exam booklet that is not to be marked.)

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**NOTE:** 1. This is an open book examination. You may have with you any written material you wish, including casebooks, textbooks, dictionaries, and your own notes. Laptops are only permitted for the use of Examplify/Examsoft.

2. THIS EXAMINATION CONSISTS OF 2 PARTS. PART 1 CONTAINS THREE (3) QUESTIONS RELATING TO A HYPOTHETICAL FACT PATTERN. ANSWER ALL QUESTIONS FROM PART 1. PART 2 CONTAINS TWO (2) ESSAY QUESTIONS. ANSWER ONLY ONE QUESTION FROM PART 2.

**PART – 1**

**Please carefully read the following fact pattern and answer the questions below.**

Annabella Michelle Sokorina (she/her) is an heiress of a Vancouver billionaire. She and two of her siblings have been managing their mother’s business interests in mining, transportation, and hospitality industries for the last ten years when her mother decided to retire at the age of 63. While the siblings generally worked cooperatively, Annabella often had conflicts with her siblings and her mother on differences related to their business expansion and international operations. Annabella wanted to move their mining businesses more towards sustainability and expand their philanthropic operations, but her siblings and her mother (who still owns 100% financial interests in the businesses), insisted on continuing with traditional business ideas. Because of these differences, and what Annabella saw as an irreconcilable future vision between her and her siblings and mother, Annabella decided to leave the family business in order to begin her own philanthropic operations under the name Anna Sokorina Foundation. Annabella’s foundation focused on aiding migrant children in British Columbia and orphaned children in Haiti. She is an outspoken advocate against human rights abuses and has contributed significantly to human rights causes. Annabella has recently received a prestigious international human rights award.

After receiving international recognition for her philanthropic work, Annabella wanted to have her biography written, documenting her journey from an heiress to an international philanthropic celebrity. She contacted a Vancouver-based writers’ agency, Fictive Literary Agency (FLA), looking for a writer for her book, provisionally titled *Dare*. On their webpage, FLA claims that they act as a literary agent for some of the most innovative and influential writers. FLA webpage also claims that they have had enormous success in matching aspiring authors who are short on time with creative Pulitzer-winning ghost writers. And that biography and autobiography-commissioning clients can have mental peace when engaging FLA, knowing that their book will have the support of an internationally experienced team.

Annabella reached out to FLA for the purpose of getting her biography written and published. FLA informed Annabella that they have a particularly suitable writer, Christine Christopherson (CC) (she/her) for her biography *Dare*. Christine is a sought-after biography and autobiography writer (the latter as a ghost writer). She has been engaged by FLA several times earlier and FLA’s clients have been happy with Christine’s work. Annabella contracted with FLA to engage Christine as a writer and for FLA to promote Annabella’s biography to leading publishers. Following are some of the principal clauses of the contract between Annabella and FLA:

***Agreement to write a Biography of Annabella Michelle Sokorina titled DARE between Annabella Michelle Sokorina and the Fictive Literary Agency (FLA)***

***Introduction***

*This agreement enumerates the terms and conditions under which the work specified below will be created and promoted for publication by Fictive Literary Agency (hereinafter “FLA”) of 5539 Point Grey Road, Vancouver, British Columbia, Canada, V7P 0M5.*

***Contracting Parties***

*This agreement is made between FLA and Annabella Michelle Sokorina (hereinafter “the Client”) of 8091 Boundry Road, Burnaby, British Columbia, Canada, V5P 8H3.*

***The Work***

 *This agreement pertains to the work of writing a biography of Annabella Michelle Sokorina to be titled “Dare”.*

***The Agreement***

*FLA and the Client are each referred to as a “Party” and, together, “Parties” for the purpose of this agreement.*

*The Parties hereby accept and agree to the terms of this Agreement, which are enumerated below.*

***Obligations of the Parties***

*FLA undertakes to write the biography titled Dare based on the life story of the Client to the literary satisfaction of the Client.*

*The Client undertakes to supply the narration for the abovementioned biography. It is the responsibility of the Client to supply all relevant information that may be required by FLA to write in sufficient detail the above-noted biography.*

*The Parties acknowledge that it is the sole responsibility of the Client to supply relevant and accurate accounts of her life to FLA. The Client acknowledges that there is no way for FLA to investigate the life story of the Client and that in absence of information supplied by the Client, FLA will not be able to write the biography.*

*FLA also undertakes to promote the biography Dare to leading publishers, including international publishers of non-fiction.*

*FLA is committed to finding the most suitable publisher for the biography Dare. Although FLA shall be open to suggestions from the Client, the Client undertakes to accept the decision of FLA in finding the eventual publisher for the work.*

*In consideration for the services provided by FLA, the Client undertakes to pay the amount of CAD $ 800,000 in total satisfaction of the agreement between the Parties. One half of the above amount will be conveyed in advance of the commencement of the work. The other half is to be conveyed after the completion of the work to the satisfaction of the Client.*

***Warranties***

*FLA offers no Warranties as to the suitability of its services for any specific purpose. FLA’s writing and publication promoting services are offered in good faith, but do not guarantee any specific quality.*

*FLA offers no other representations outside the written terms of this Agreement.*

***Limitations on Liabilities***

*The Client’s literary satisfaction pertains to the manner in which the biography is written, including the tone, prose, linguistic conventions, selection of expressions, colloquialism, and structure of the book.*

*The Client’s literary satisfaction does not extend to facts enumerated in the biography, for which the Client is solely responsible.*

*FLA is not liable for any factual errors made in the biography for which the Client has not supplied any information.*

*Any disagreement or dispute between the Parties will be resolved by reference to the terms of this Agreement. No cause of action will arise outside the scope of this Agreement. The Parties agree that there will be no liability under an action for Tort for any negligence in the performance of the Agreement.*

Christine does not have a direct contract with FLA’s clients. She is engaged by FLA. Her engagement by FLA is regulated by a separate contract between her and the FLA. This year Christine had been particularly busy. She has so far been contracted by FLA for twelve autobiographies and biographies. Christine would have to finish several of these works by the end of the next year (Dec 2024). Although Christine knew that she will be overwhelmed with the amount of work that she has to undertake for the next two years, the contracts were so lucrative that she refused to pass on them. While Christine was thinking of engaging the services of trainee creative writers to help her out with the different book projects, a personal friend of hers introduced her to the newest innovation in artificial intelligence, the ChatGPT and its newest version GPT-4, which can write an entire book for her that is qualitatively close to human writing.

The full-form of GPT is Generative Pre-trained Transformer, a language model that can generate (create) human-like conversational text with only some initial inputs. However, the language model is also known to make mistakes. The cost of the GPT-4 subscription is much less than what would be required to employ trainee creative writers. Christine tried the GPT-4 on two new short articles she was working on and the outcome was generally satisfactory for her. She then decided to use the GPT-4 to write some of her projects, including the biography of Annabella, which FLA commissioned. What Christine hoped to do was to create the initial draft of the book with the help of artificial intelligence and then review it herself before submitting it to FLA. Accordingly, Christine instructed GPT-4 to create a biography for Annabella Sokorina, sharing some preliminary information on Annabella she received from FLA.

That Christine started using artificial intelligence to write her literary work was not known to FLA. She failed to disclose her new writing strategy to the Agency. Unbeknownst to FLA, Christine submitted one biography, created by GPT-4 and revised by her, to the Agency. FLA is currently looking for a publisher to get the biography published. When her GPT-4 based creation went unnoticed by FLA, an emboldened Christine created Annabella’s biography with the help of the same strategy. However, her review of Annabella’s biography was casual, not careful. Christine submitted the first draft of the biography to FLA and FLA sent it to Annabella for a first reading.

A paragraph on the first page of the biography reads as follows:

*Annabella Sokorina is a wealthy heiress of a Vancouver billionaire. Born in 1599, she spent her formative years in Vancouver in remarkable privilege. She is a business prodigy and attended the prestigious Willson School of Business at the age of 15. After the death of her father, Annabella had serious disagreements with the rest of her family on her inheritance and dissociated herself from the family business. After dissociating herself from her billionaire father’s business, she has created a multi-million-dollar empire, primarily by deceiving banks, financial institutions, and wealthy investors. Sokorina specialized in creating fake financial documents and forged wire transfers. Her modus operandi included misleading her targets by the use of these fake documents and inducing them to lend large amount of cash to her, which she never returned. Sokorina was eventually arrested by RCMP in Vancouver through a sting operation. After a criminal trial, she was sentenced to 10 years in prison. After the time in prison, she changed her name to Ann Sokor. Widely celebrated as a con artist, her life has been immortalized by Hollywood through several films bearing her first name.*

When Annabella read this, she was furious and traumatized. She started worrying that this version of the manuscript may have already been sent to a publisher by FLA or the writer. She was particularly stressed about the potential of this false account to damage her professional and personal reputation as a philanthropist. She received this manuscript on a Friday and wrote several emails and made numerous phone calls to FLA during the weekend, but she could not get hold of someone to report the deeply damaging account in her biography. She has become very distrustful of FLA and does not want to continue the business relationship with FLA. Irrespective of whatever corrective action FLA adopts, Annabella is interested in annulling the contract.

**Q. 1. Annabella has come to you for consultation on her course of action. Please advise Annabella of her options to annul the contract with FLA. Refer to authorities (decided cases) in support of your advice. [35 Marks] [If you assume facts, state so clearly]**

**Q. 2. Annabella is also interested in knowing whether she is entitled to any damages from FLA. Please advise her of her potential remedy, if any. (You do not have to calculate damages in answering this question.) [25 Marks] [If you assume facts, state so clearly]**

**Q. 3. Please read the following additional part of the fact pattern and answer the question below.**

While Annabella was negotiating her contract with FLA, the Agency insisted on retaining an exclusive contract for future writing opportunities with Annabella. FLA informed Annabella that normally for biographies FLA accepts 8% of Royalty payments from future book sales. However, in return for Annabella’s exclusive contract – not only for the present writing opportunity but also for future writing projects – FLA was aggregable to reduce the Royalty percentage to 4% of sales for all future projects. In order for FLA to do so, Annabella is not allowed to approach any other writer or publishing agency in North America for 30 years. As a new client to the publishing endeavour, Annabella assumed that this is how things are done in the writing and publishing industry. Although she felt uncomfortable with FLA’s exclusivity proposition, she ended up consenting to it. The contract also incorporated a liquidated damages provision in breach of this exclusivity. In breach of the exclusivity clause, Annabella will be liable to pay liquidated damages to FLA, which will be the entirety of the profits she makes from Royalties from her future publishing activities.

**Annabella wants to know whether she is bound by the exclusive future rights clause of the contract. She is also interested in understanding whether she will forfeit all her future profits if she breaches the exclusive future rights clause. Please advise her on both of those issues. [20 Marks] [If you assume facts, state so clearly]**

**PART – 2**

**Q. Please answer one of the questions from the following two: [20 Marks]**

**1. The Doctrine of Mistake sits uneasily with the foundational principles of the Law of Contract. Write an essay either supporting or opposing the above proposition.**

**2. *Peevyhouse v. Garland Coal & Mining Co.* (Okla S. C. 1963) overcomes the anomaly introduced in Common Law damages principle by *Groves v. John Wunder* (Minn. S. C. 1939). Please write a reasoned commentary on the above assertion.**

**END OF EXAMINATION**