THIS EXAMINATION CONSISTS OF 4 PAGES

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THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2023

LAW 211.004 T2

Contracts

Section 4

Professor Joel Bakan

**TOTAL MARKS**: 100

**TIME ALLOWED**: 2.5 HOURS

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**NOTE:** 1. This is an open book examination.

 2. ANSWER ALL QUESTIONS.

THIS EXAMINATION CONSISTS OF 2 QUESTIONS

**QUESTION I**

**Total: 70 marks**

Eco-Freak Builders is a small construction company located in Surrey, British Columbia. A partnership between Yasmin and Sky, the company is known for its zero environmental footprint pre-fab garden sheds. When the sheds are featured in *Home and Garden Magazine*, Eco-Freak catches the attention of mega-retailer Home Hub. The latter company’s Richard Effing calls Yasmin and Sky to discuss selling their sheds in Home Hub stores. The timing couldn’t be better as, due to Yasmine and Sky’s business inexperience, Eco-Freak is on the verge of bankruptcy. “We really have no choice,” Yasmin tells Sky, after putting Richard on hold for a moment. “It’s either play ball with Home Hub or we go out of business in a few months. Without this deal we’re done.” They decide to say ‘yes’ to Richard, and return to their call to tell him.

Richard invites Yasmin and Sky to his downtown Vancouver office to do the necessary paperwork. When they arrive, he presents them with a deal document comprised of one legal size sheet with 15 clauses on the front, and more than a dozen on the back, all in small font and faint print. “There isn’t time to go over this whole thing,” Richard says. “I have to get home to make my kids dinner, so I’ll point out a few things.”

He draws their attention to three key clauses:

1. Eco-Freak agrees to supply Home Hub with 5 pre-fab units each week, in exchange for payment of $500 per unit.
2. Eco-Freak can terminate the agreement with one year’s notice, and Home Hub can terminate with one month’s notice.
3. Home Hub will not sell any product in its stores made by any manufacturer other than Eco-Freak that is identical or closely similar to the pre-fab sheds.

“Now, I really have to go,” says Richard. “Sign the agreement, and my secretary will see you out. She can reach me on my cell if you have any questions.” Yasmin and Sky sign the agreement. Had they read the back of it, they might have seen clause 19:

19. This entire agreement, including clause 3, is subject to Home Hub’s “Hub Deal” policy, which will be provided for review upon request.

And had they requested the policy and read it, they might have seen this passage:

*Home Hub has an unrestricted right to develop and market its own “Hub Deal” products, even if those products are identical or closely similar to any supplier’s product, and regardless of any contractual terms with suppliers.*

When Eco-Freak’s pre-fab sheds appear in Home Hub stores, they are a huge success, and they quickly become very profitable. Home Hub decides to create its own version of the shed, market it as “Earth Shed” – part of its “Hub Deal” brand – and sell it for half the price of Eco-Freak’s sheds. Once they are in Home Hub stores, Earth Shed sales boom and Eco-Freak shed sales plummet to almost nothing. No longer making money from Eco-Freak sheds, Home Hub gives Eco-Freak the one-month notice required by clause 2 to end the agreement.

Eco-Freak responds by suing Home Hub for creating and marketing Earth Sheds in breach of clause 3. Home Hub defends by claiming clause 19 permitted it to create and market Earth Sheds. Eco-Freak claims clause 19 should not be enforced. “We would never have signed that contract if we had known about clause 19,” Yasmin tells Sky, who agrees. “It effectively allows Home Hub to steal our product.”

**Discuss the following**:

1. When the case goes to court, Eco-Freak argues that clause 19 should not be enforced because:
2. Yasmin and Sky were not aware of the clause when they signed and therefore did not consent to it. **(20 marks)**
3. Clause 19 is unconscionable. **(20 marks)**
4. **Assume the following factual scenario (different from the one above).**

Several days before Eco-Freak and Home Hub entered the Eco-Freak shed deal, Surrey City Council enacted a new by-law that, among other things, limited manufacturing operations on Eco-Freak’s property to 4 hours per day. Neither Sky or Yasmin was aware of the new by-law when they signed the agreement. Once they learned of it, they knew Eco-Freak could not go ahead with the deal, as each shed required eight hours to manufacture, meaning they would not be able to provide Home Hub with five sheds each week. Yasmin and Sky tell Richard that, unfortunately, Eco-Freak has to pull out of the deal. “Are you kidding?” he responds. “You should have found out about the by-law before you signed the contract.” Eco-Freak cannot produce sufficient quantities of sheds and fails to make the required deliveries. Home Hub sues Eco-Freak for breach of contract.

1. How plausible is Eco-Freak’s defense that the contract is void (or voidable) for mistake? **(15 marks)**
2. What might Eco-Freak argue if the by-law had been changed several days *after* the contract was entered rather than before? **(15 marks)**

**QUESTION II**

**Total: 30 Marks**

 **Prompt:**

“The judiciary has increasingly endorsed a trend to move away from a rigid insistence on the idea that since people are *free* to contract as they wish (which has, of course, never been true to more than a limited extent), the contracts they enter into are sacred. There is now more of a recognition of the economic and psychological realities of contracting.”

Ben-Ishai and Percy*, Contracts: Cases and Commentaries* (10th ed.) (2018)

**Discuss in relation to ONE of the following:**

1. Consensus ad idem

**-OR-**

1. Unconscionability

**-OR-**

1. Mistake

 **-OR-**

1. Frustration

**-OR-**

1. The Duty of Good Faith

  **-OR-**

1. Public Policy

**-OR-**

1. Any combination of the above

**END OF EXAMINATION**