THIS EXAMINATION CONSISTS OF 3 PAGES

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THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2022

LAW 211

Contracts

Section 4

Professor Joel Bakan

**TOTAL MARKS**: 100

**TIME ALLOWED**: 1 HOUR

plus 10 minutes of reading time

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

2. ANSWER ALL QUESTIONS.

THIS EXAMINATION CONSISTS OF 1 QUESTION

QUESTION I

**TOTAL**

**MARKS**

**100**

Piers Island is a Gulf Island just off Swartz Bay ferry terminal on Vancouver Island. Approximately 200 people live on the island, which is governed by the Piers Island Association (PIA). BC Ferries recently cut its service to the Island as a cost-saving measure, leaving islanders – at least those who do not own boats – without access to and from the Island. Through the PIA, the islanders take matters into their own hands. The PIA buys a boat, named the *Have Mercy*, and asks Jane, an islander, to pilot a shuttle service between the island and the mainland (the trip takes approximately 10 minutes each way). Jane is a part-time tugboat captain who works, usually in the evenings, for Pushy Tugboats Inc. Her employment contract with Pushy forbids her from being employed on any vessel not owned by the company. To get around this problem, the terms of her agreement with the PIA state that she is not *employed* by PIA, but rather engaged as an independent contractor. The contract between Jane and the PIA stipulates that,

Clause 1. Jane, an independent contractor, agrees to pilot the *Have Mercy* between Swartz Bay and Piers Island. In exchange for her services Jane will receive from the PIA a flat fee of $200 per day. For further clarification, the PIA is neither Jane’s employer nor agent.

The PIA distributes a standard-form agreement to all homes on the island and asks people to sign and deliver it to the PIA’s office, with a fee, in order to subscribe to the shuttle service. The document includes the following clause:

Clause 3. In lieu of discretionary tipping, each subscriber agrees to pay a compulsory gratuity to Jane of $10 each month.

The shuttle service is a smashing success, with most of the island’s residents subscribing to it. It gets quite busy, and Jane begins to feel stressed out from working so hard, while still having to work for Pushy in the evenings. She tells the PIA that it’s all too much, and that she may have to quit operating the shuttle. The PIA, hoping to induce her to stay, offers to raise her daily fee by $50. Jane happily accepts the new arrangement, which is never formalized in writing, and, in reliance on it, quits her job as a tugboat captain, believing that with the extra $50 a day she can now get by with just the one job.

The next day, on her first run, Jane is overcome with a sense of giddiness, brought on by relief at having quit her job at Pushy. As she approaches the dock at Swartz Bay she says to her passengers “Watch this!”. She veers in front of a large on-coming ferry and swerves out of its way at the last moment. The ferry swerves too, and its wake fiercely rocks the *Have Mercy* throwing some passengers out of their seats. Sam, one such passenger, suffers some bruises and mental anguish~~.~~

**Discuss the following:**

1. After the incident, the PIA tells Jane it has decided not to pay her the extra $50 per day. Jane sues to enforce the PIA’s promise to pay the extra $50 per day. How likely is it that she will succeed? **(75 marks)**

1. Sam refuses to pay the gratuity to Jane that is stated in Clause 3. Jane sues Sam for the amount owing. Will she succeed? **(25 marks)**

**END OF EXAMINATION**