

UNIVERSITY OF BRITISH COLUMBIA
SAUDER SCHOOL OF BUSINESS/ COMM 393 - COMMERCIAL LAW

MIDTERM EXAMINATION FEB 2016

BE SURE TO RECORD YOUR NAME, STUDENT NUMBER, SECTION# BELOW.

You must return BOTH the exam and answer booklets!

FIRST NAME _____ LAST NAME _____

STUDENT NUMBER: _____

[select the appropriate one '√']

	McINTOSH COMM393 Section 202 Monday & Wednesday 10:00-11:30
	McINTOSH COMM393 Section 206 Tuesday & Thursday 11:00-12:30
	COX COMM393 Section 201 Monday & Wednesday 8:30-10:00
	COX COMM393 Section 203 Monday & Wednesday 1:00-2:30
	COX COMM393 Section 204 Monday & Wednesday 2:30-4:00
	SALZBERG COMM 393 Section 205 Tuesday & Thursday 9:30-11:00

[select the appropriate one '√']

	COX BUSI 393 Section 201 Wednesday 6:30-9:30 PM
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UNIVERSITY OF BRITISH COLUMBIA
SAUDER SCHOOL OF BUSINESS

COMMERCIAL LAW

MIDTERM EXAMINATION FEBRUARY 2016



Time: 90 MINUTES

Value: 60 MARKS (time assigned to each question is shown)

All questions must be answered. USE PEN ONLY.

Instructions:

- (a) Identify the legal issues raised in the questions.
- (b) Then discuss these issues, incorporating into the discussion, the relevant materials studied in the course. The source of any legal principles stated should be identified.
- (c) Attempt to resolve each problem into a solution, although the method and reasoning are more important than the conclusion reached.
- (d) Facts not stated may be assumed but the necessity for making the assumptions and their relevance should be clearly established in your answer.
- (e) This examination is designed to reveal skill in recognizing legal problems, understanding of materials studied in the course, and the ability to use those materials in handling new situations.
- (f) In the following questions, assume that the parties are of full age and capacity unless otherwise described, and that the transactions take place in British Columbia.

COMM/BUSI 393 MIDTERM EXAMINATION FEBRUARY 2016

QUESTION 1: 20 MARKS 30 MINUTES

Brad advertised land that he owned in Seattle, Washington for sale in the Vancouver newspaper at a price of \$1 million. You are a real estate developer in Vancouver and are very interested in acquiring this property. On September 19 you called Brad on the phone and asked if \$1 million was his lowest price. Brad replied saying that he would only sell if offered “the right price”.

On September 20th you emailed Brad agreeing to pay \$900,000 for the property. You further explained in the email that he had until 11:00pm September 25th to decide. Brad received this email on September 22nd.

Brad then wrote you an email back agreeing to sell the land to you for \$975,000. The email outlined further terms, one of which was that the agreement would be governed by the laws of the State of Washington, U.S.A., and that you consent to the exclusive jurisdiction and venue of the courts of Washington in all disputes arising out of this contract. The email also said that you had until 2:00pm November 6th to decide. This email was read by you on November 4th.

At 10:00am on November 6th, you sent a letter by mail agreeing to pay \$975,000 for the land and agreeing to all other terms proposed by Brad. This letter was lost in the mail and Brad never received it.

On November 4th, Brad received an offer from another developer named Pegasus Corp. to purchase the property for \$985,000. That same day Brad sent an email to you saying that he could not sell you the land because he had received a better price from Pegasus Corp. This email was read by you on November 6th at 1:30pm. Having heard nothing from you, Brad accepted the offer from Pegasus Corp. to purchase the land, in writing, for \$985,000 on November 5th.

a) 10 marks 15 minutes

You are furious and are preparing to sue Brad for breach of contract. You say that you had a contract with Brad as of 10:00am November 6th. You also say that Brad cannot revoke his offer because he had promised to keep the offer open until November 6th at 2:00pm. Are you correct? Explain the arguments that you and Brad will make based on the applicable law studied in class.

b) 2 marks 3 minutes

Pegasus Corp. says it has a contract with Brad as of November 5th. Is this correct? Explain fully.

c) 3 marks 4.5 minutes

Assume for this question that you and Brad have a contract for the purchase and sale of the land in Seattle. Due to a financial downturn in the Vancouver real estate development market you are unable to come up with the \$975,000 by the completion date (the date when title to the property and the purchase price are exchanged by the parties). Brad has commenced an action against you for breach of contract in Seattle, Washington in accordance with the terms of your contract. You think travelling to Seattle is highly inconvenient; you don't recall reading the governing law and jurisdiction terms contained in his offer and argue that since you had no specific notice of those terms that they should not be binding. Are you correct? Explain fully.

d) 5 marks 7.5 minutes

For this question assume the following facts. Assume that you and Brad met at a local bar to discuss the sale of the land he advertised. After 6 hours of drinking by Brad (you do not drink alcohol) Brad told you that he thought you were "the besst friend he'd ever had" and that he really wanted you to have the property. He said he would sell you the property for \$100, saying that he really didn't need the money and wanted to "live a murr moooodest life" (he was slurring and having trouble with his balance). You said, "Yippee!" and quickly handed Brad a crumpled \$100 bill. The bouncer saw Brad swaying from side to side and asked him to leave since he was too drunk. You put Brad in a taxi, giving the driver Brad's address.

The next morning you called Brad to talk about putting your deal in writing however Brad had no recollection of the night before and insisted on returning the \$100 to you. Do you and Brad have a contract for the sale of the property? Explain fully.

QUESTION 2: 20 MARKS 30 MINUTES

Pool Construction (PC) agreed to build a pool for Eva at her home. PC and Eva signed a written contract stating the dimensions of the pool and its depth and setting the price at \$40,000. While building the pool, PC realized that it would be more costly than anticipated. PC was losing money on this project. PC approached Eva and explained that it could not go on with the work unless Eva agreed to pay an additional \$10,000. Eva agreed in writing to pay the extra \$10,000. PC continued with the job because of Eva's promise. When the pool was completed, Eva paid PC \$40,000 but refused to pay the extra \$10,000.

a) 5 marks 7.5 minutes

PC is now suing Eva for the extra \$10,000 saying that she should be bound by her written promise. Will Eva have to pay the extra amount? Explain fully.

b) 10 marks 15 minutes

Explain the doctrine of promissory/equitable estoppel. Do you think it would apply to help PC in this case? Explain fully.

c) 5 marks 7.5 minutes

What could PC have done differently to ensure that Eva's promise to pay the extra \$10,000 was legally enforceable?

QUESTION 3: 20 MARKS 30 MINUTES

Sara Zhou is a CPA who lives and works in Vancouver for the firm of Tried and True Accountants of Canada (T&T). T&T is a large partnership of accountants with branch offices and clients across Canada. In 2010 when Sara joined the firm as partner, she signed a partnership agreement which stated, among other things, the following:

In recognition of the necessity for the protection of T&T, upon severance of a partnership connection with T&T, Sara will not, for a period of 2 years following the date of severance, enter into competition with T&T in Canada. "Competition" shall mean performing services for any client for which T&T had performed any services within the period of 5 years preceding the

severance of Sarah's connection with T&T. "Services" includes accounting, auditing, tax or financial management, or any service ordinarily considered as coming within the practice of public accountancy.

While working at T&T, Sara had a client named Steven Sly who had retained Sara to find ways to evade taxes for him. Sara thought she knew of several techniques that would escape the notice of Income Tax Authorities and agreed to do this work for Sly. Sly agreed in return to pay her 50% of the money she saved him in taxes.

Recently, Sara has resigned from T&T and has formed a business of her own as a CPA in Vancouver. She immediately started to work for clients for which she had worked while at T&T.

a) 10 marks 15 minutes

T&T is threatening to sue Sara for breach of the non-competition agreement in their partnership agreement. Sara says that these agreements are never enforced by courts and in any event she did not solicit business from clients – they came to her of their own free will. Is the non-competition clause binding? Give full reasons with reference to legal principles.

b) 3 marks 4.5 minutes

Sara saved Sly \$50,000 in taxes and Sly refuses to honor his agreement with her. Sara intends to sue Sly for \$25,000. Will she be successful in her claim? Give full reasons with reference to legal principles.

c) 7 marks 10.5 minutes

Sarah is worried because T&T is threatening to sue her for damages for breach of the non-competition agreement. She has just learned that the Crown has launched an investigation into her potential breaches of the Income Tax Act. The Chartered Professional Accountants Association of BC (CPAA) is threatening disciplinary action. Sara needs to hire a lawyer.

- List the 3 main ways lawyers charge for their services (3 marks)
- Are Sarah's fears that she may be subject to a criminal action, a civil action and a professional disciplinary action reasonable? What is the purpose of the civil action and who commences it? What is the purpose of the criminal action and who commences it? What might the CPAA have the authority to do in these circumstances? Explain fully (4 marks)

<p>THE LAW IN ITS SOCIAL AND BUSINESS CONTEXT</p>	<p><u>Sources of Law</u> Textbook 3rd edition: 10-20, 22-30 Textbook 4th edition: 1-4, 9-12</p> <ul style="list-style-type: none"> • Common Law v. Civil Law • Statute and Precedent <p><u>Court Systems and Procedures</u> Textbook 3rd edition: 32-46, 187-188</p> <p><u>The Constitution Act and the Charter of Rights and Freedoms</u> Textbook 4th edition 13- 18</p> <p>LIEBMANN V. CANADA CB 438</p> <p><u>Alternate Dispute Resolution</u> Textbook 3rd edition: 46-49, 438-443</p>
<p>FORMATION OF A CONTRACT</p>	<p><u>Intent, Offer, Acceptance and the Writing Requirement</u> Textbook 3rd edition: 54-68, 70-73, 90-91, 185-186, 421-422</p> <p>Textbook 4th edition: 101-103, 70-86, 152-157, 234-236</p> <p>R V. 279707 ALBERTA LTD. CB 506 RUDDER V. MICROSOFT CORP. CB 510 MONTANE VENTURES V. SCHROEDER CB 517</p>
<p>FORMATION OF A CONTRACT CONT'D</p>	<p><u>Consideration</u> Textbook 3rd edition: 76-92 Textbook 4th edition: 90-101</p> <p>CALIGUIRI V. TUMILLO CB 522 TULSA HEATERS INC V. SYNCRUDE CANADA LTD CB 526</p>
<p>FORMATION OF CONTRACT CONT'D</p> <p>GROUND UPON WHICH A CONTRACT MAY BE SET ASIDE</p>	<p><u>Capacity to Contract</u> Textbook 4th edition: 111-114</p> <p>INFANTS ACT - Supplement RE COLLINS CB 532</p> <p><u>Legality of Object</u> Textbook 3rd edition: 220-233 Textbook 4th edition: 114-127</p> <p>MAKSYMETS V. KOSTYK CB 537 PHOENIX RESTORATIONS LTD V. BROWNLEE CB 540</p> <p><u>Misrepresentation</u> Textbook 3rd edition: 201-205 Textbook 4th edition: 141-143</p>

	<p>COLLINS V. DODGE CITY EAST CB 548 WEINMAN V. BRINKMAN CB 552</p> <p><u>Undue Influence, Duress and Unconscionability</u> Textbook 3rd edition: 205-209 Textbook 4th edition: 143-147</p> <p>BUCKWOLD WESTERN LTD V. SAGAR CB 557</p>
<p>INTERPRETATION OF THE CONTRACT</p>	<p><u>Interpretation</u></p> <p>Textbook 3rd edition: 96-102, 107-110 Textbook 4th edition: 162-164, 167-170</p> <p>BKDK HOLDINGS LTD V. 692831 BC LTD. CB 562 BLACKSWAN GOLD MINES LTD V. GOLDBELT RESOURCES CB 567</p>
<p>THE PAROL EVIDENCE RULE</p>	<p><u>Parol Evidence Rule</u></p> <p>Textbook 3rd edition: 103-107 Textbook 4th edition: 165-167</p> <p>GENERAL TIRE CANADA V. AYLWARDS LTD. CB 576</p>