

# COMM 393

**2020W1 Midterm Review  
Session**

**Answer Key**



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## Practice Problem 1 (Court Systems and Procedures, Charter of Rights and Freedoms, Alternative Dispute Resolution) – Answer

### Related Cases:

- Liebmann v. Canada

**a) Issue:** Will Dave be successful in his ageism suit against Tom Hortons for \$50,000 in small claims court?

**Law:** 1. In British Columbia, only suits that are seeking damages of less than \$35,000 can be brought in Small Claims Court

2. As seen in the case *Liebmann v. Canada*, Section 15 of the Canadian Charter of Rights and Freedoms states that “every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability. The case also shows us that the Charter applies only to the government or in instances government decision making. The Charter does not apply in private business relationships.

**Application:** 1. Since Dave is looking for damages greater than \$35,000, his case is not eligible to be heard in B.C. Small Claims Court.

2. An employment contract like the one Dave and Tom H were engaged in would be considered a private business relationship that has no direct government involvement, so Dave would not be able to bring his claim of ageism under the Charter.

**Conclusion:** Dave will not be successful in his lawsuit. If Dave refiled his lawsuit in B.C. Supreme Court and brings his claim under another statute like the B.C. Human Rights Code, he has a much better chance of being successful.

**b) Mediation** a form of alternative dispute resolution where a neutral third-party helps the parties resolve their differences. The mediator generally does not issue a binding decision, but assists the parties in coming to their own mutually agreed outcome, although there is nothing stopping the parties from continuing to court if no agreement is made. Some advantages of mediation include its flexibility, its speed compared to trials, the ability to choose a mediator, and that it is usually less damaging to relationships.



## Practice Problem 2 (Intent, Offer, Acceptance, Consideration, Legality, Writing, Capacity) – Answer

### Related Cases:

- Carlill vs. Carbolic Smoke Ball Company
- Livingstone v. Evans
- Hood v. Enwin Utilities Ltd.
- Infants Act
- Caliguiri v. Tumillo
- Dukes Cookies v. AMS of UBC
- Maksymetz v. Kostyk
- Law and Equity Act

**a) Issue:** Do Jasmine and KMPG have a legally binding contract?

**Law:** For there to be a valid contract in place, all the necessary 7 elements of a contract must be present. Thus, for the court to declare that Jasmine and KMPG have a contract they must find, on the balance of probabilities, that there are the elements of intent, offer, acceptance, consideration, capacity, and legality.

### Intent

**Law:** For a contract to be binding, all parties to a contract must have intent to be bound by their promises – there must be a mutual meeting of the minds. Intent is presumed to exist in business and commercial relationships (*Carlill v. Carbolic Smoke Ball*). If either party attempts to rebut the presence of intent, the court would look at the outward conduct of both parties and make a decision.

**Application:** An employment contract is a business relationship, so it is clear that intent is present in this case. If either Jasmine or KMPG attempt to rebut the fact that there was ever intent here, the court will likely find that the outward conduct of the parties showed there was intent. It can be presumed that before Jasmine received her offer, she had to apply for the job, complete questionnaires or tests, and go through rounds of interviews, so the court will take these actions as proof both parties had intent to enter into a contract.

**Conclusion:** Intent is more likely to be found in this case by the court.

### Offer

**Law:** An offer can be defined as a proposal with a description of a promise, plus intent. For an offer to be binding, both parties must be clear on at least three terms: the parties, exchange, and subject matter. An offer should also set out terms and how long the offer



**Application:** An email was sent by KMPG on September 27<sup>th</sup> offering Jasmine the position, and that offer likely included details on the parties, exchange, and the subject matter.

**Conclusion:** It would appear that there is an offer in this case.

#### Offer, Part 2

**Law:** As seen in the *Livingstone v. Evans* case, the existence of a counter-offer (a change to any of the terms in an original offer) causes the original offer to lapse.

**Application:** Because Jasmine did not accept the offer via email like KMPG had requested, and instead responding through snail mail, Jasmine effectively presented a counter-offer even though she had “accepted” the original offer before the deadline. Since the existence of a counter-offer causes the original offer to lapse, the only offer currently on the table is Jasmine’s counter-offer to KMPG.

**Conclusion:** Since Jasmine has presented a counter-offer, she has rejected KMPG’s original offer and KMPG must accept her counter-offer for there to be a valid contract.

#### Acceptance

**Law:** Acceptance is present in a contractual relationship when there has been an unequivocal acceptance of all the terms of the contract, without change, in the manner requested or implied by offeror. Until all the terms of the contract have been accepted, there is no valid contract. The *Hood v. Enwin Utilities Ltd.* case lays out the postal acceptance rule, which states that if a firm offer is made by mail or the offer stipulates acceptance by mail, and acceptance of the offer is to be by mail, then acceptance is effective at the date of posting the mail (i.e. the moment a properly addressed letter is dropped in a mailbox).

**Application:** In this case, Jasmine did not accept KMPG’s original offer because she chose a different method of acceptance than the one presented in the offer, thus creating a counter-offer. Jasmine’s claim that she accepted the contract on October 2<sup>nd</sup> is false: the postal acceptance rule is only valid if the offer stipulates (or leaves open the interpretation) that it must be accepted by mail. Since KMPG’s offer instructed Jasmine to accept the offer by email, the postal acceptance rule does not apply.



**Conclusion:** There is no indication in this case that Jasmine accepted KMPG's offer, or that KMPG accepted Jasmine's counter-offer either. A party is not obligated to let the other party know that they are choosing to reject an offer - it is okay for KMPG to simply let the offer lapse. The postal acceptance rule also does not apply in this case, since Jasmine chose to accept the offer in a manner different from the one given in the offer.

#### Consideration:

**Law:** Consideration is the mutual exchange of promises (bilateral) or a promise in exchange for an act or service (unilateral) (*Caliguiri v. Tumillo*). All parties must receive some benefit for there to be valid consideration, and if there is not consideration on behalf of both parties then the agreement is simply a gratuitous promise, which is not enforceable by law unless signed under seal or except under certain remedies of equity (*Dukes Cookies v. AMS of UBC*). Consideration need not be restricted to the payment of money, and does not need to be a fair exchange of equivalents.

**Application:** In this case, there appears to be a mutual exchange of promises between the two parties. KMPG promises to provide Jasmine with a compensated job as an Audit Associate, and Jasmine promises to give KMPG exclusive use of her time and talents as an accounting genius.

**Conclusion:** There appears to be valid consideration in this case.

#### Capacity

**Law:** Capacity is the competence (ability) to enter into contract, and parties must be capable to understand the effects of that contract. Example of groups that lack capacity include children (*Infants Act*), the insane, and the intoxicated.

**Application:** There is no indication that Jasmine was a child (she just graduated from university), insane (she seems very nice), or intoxicated (her celebrations with her friends were a dry event), when she attempted to accept the contract.

**Conclusion:** The court will likely find capacity to be present in this case.

#### Legality

**Law:** A contract must be legal to enforceable, and must not violate either a statute or offend public policy. Most illegal contracts are considered completely unenforceable, meaning a court will provide no remedy and refuse to help any party that knowingly entered into an illegal agreement. (*Maksymetz v. Kostyk*)



**Application:** Here, the contract in question is simply employment contract. There is little chance of it containing any illegal clauses.

**Conclusion:** The contract is legal!

### **Final Conclusion:**

In this case, it would appear that KMPG and Jasmine do not have a valid contract. This is due to the fact that, although the elements of intent, offer, consideration, capacity, and legality are present, there has been no acceptance of an offer. Since Jasmine did not accept KMPG's original offer and present a counter-offer instead, which KMPG chose to reject, there is not a valid contract and KMPG is free to offer the job to their second choice.

**b) Issue:** Is an unsigned letter accepting an employment offer legally valid to fulfill the acceptance element of establishing a contract?

**Law:** The *Law and Equity Act* states that only "a contract respecting land or a disposition of land [of greater than three years]" and "a guarantee or indemnity" are the only two contracts that must be "in a writing signed by the party to be charged" to be enforceable.

**Application:** Since this contract has nothing to do with either a land sale or lease of more than three years or a guarantee/indemnity, then any "reasonable" form of an unequivocal acceptance of all the terms of the contract would suffice. In this case, the letter Jasmine sent (whether signed or unsigned) would fulfil the acceptance element.

**Conclusion:** KMPG is incorrect – just Jasmine neglected to sign her letter does there cannot be a contract between them; a unsigned letter is a "reasonable" and legal form of acceptance. In this case, there is not a contract because Jasmine actually presented a counter-offer, rather than accept KMPG's offer.



## Practice Problem 3 (Consideration) – Answer

### Related Cases:

- Dukes Cookies v. AMS of UBC
- Caliguiri v. Tumillo

**a) Issue:** Will Christy be successful in her suit? Is Frank legally obligated to pay the extra \$10,000?

**Law:** Any agreement by two parties to modify any term(s) of an already-existing contract would be considered, in-itself, another contract that must also contain the necessary contractual elements to be legally binding (intent, offer, acceptance, consideration, capacity and legality). If any one of those elements are missing, then the contract is not valid. In cases where contracts are amended after the fact, the element that is usually missing is consideration (*Dukes Cookies v. AMS of UBC*). Consideration is the mutual exchange of promises (bilateral) or a promise in exchange for an act or service (unilateral) (*Caliguiri v. Tumillo*). As seen in the *Dukes Cookies v. AMS of UBC* case, all parties must receive some benefit for there to be valid consideration, and if there is not consideration on behalf of both parties then the agreement is simply a gratuitous promise. This gratuitous promise is not enforceable by law unless signed in writing under seal or the original contract is mutually abandoned, where the parties agree to “rip up” their original contract and enter into a brand new one.

**Application:** In this case, the promise for Frank to pay the extra \$10,000 is an amendment to the original contract. This amendment appears to be a gratuitous promise on the part of Frank, rather than a contractual obligation, due to the absence of “new” consideration by Christy. Since she is not providing anything in return for Frank’s increased payment, and the contract was not signed under seal or mutually abandoned, the gratuitous promise is unenforceable and Christy will not be successful in her suit.

**Conclusion:** Frank is correct, and he is not legally obligated to pay Christy the additional \$10,000.





**b) Issue:** Is Christy's friend correct that, because of equitable/promissory estoppel, Frank is required to pay her the additional \$10,000?

**Law:** Equitable estoppel is a doctrine of equity that allows gratuitous promises to sometimes be enforceable, if certain conditions are met. These conditions and an example of where equitable estoppel was argued successfully was in the *Dukes Cookies v. AMS of UBC* case. For a party to successfully argue equitable estoppel, the following conditions must be met:

1. There must be a pre-existing legal relationship or contract between the parties.
2. This existing legal relationship or contract is mutually modified by a gratuitous promise, being made by one party to the other. This promise can be express or implied by conduct. It could also perhaps be a promise that the strict rights under the contract will not be insisted upon.
3. The promisee relies on the promise and alters his/her/its conduct so that it would suffer some detriment or hardship if the promise is not lived up to.
4. If the promisee is using this argument as a defence to some claim or argument made by the promisor (as a "shield" and not as a "sword").

If all of the above conditions are met, then equity will enforce the gratuitous promise. In other words, the promisor is estopped (prevented) by the courts from denying the promise.

**Application:** In this case, while it does appear the three of the conditions to argue equitable/promissory estoppel are present, one of the conditions is not. Here, Christy is attempting to use the doctrine as a "sword" in an attempt to receive payment from Frank. This is not permitted, since equitable estoppel can only be used as a "shield" in defence against a promisor.

**Conclusion:** Christy's friend is wrong (and needs to retake COMM393) – Frank is not required under the doctrine to pay the additional money.



## Practice Problem 4 (Capacity) – Answer

### Related Cases:

- Re Collins
- Infants Act

**Issue:** Is Emma able to sue Goose Mountain because the contract she signed the contract agreeing not to sue Goose Mountain when she was a minor?

**Law:** For a contract to be valid, each of the parties signing must have the capacity (the competence or ability) to enter into contract, and parties must be capable to understand the effects of that contract. In B.C., one example of a party that lacks capacity to enter into contracts are infants. The B.C. *Infants Act* defines as minors children who have not reached the age of 19. Section 19 of the Act says a contract made by a minor is unenforceable against the minor but is enforceable by the minor against an adult, and is voidable at his/her opinion. The only contracts that are enforceable against minors are those specified by statute, those affirmed by the minor upon attaining the age of majority, those performed or partially performed by the minor within one year of reaching the age of majority, those not repudiated by the minor within one year of reaching the age of majority, or those where the courts has given a minor the capacity to enter into a contract (*Re Collins*).

**Application:** While it is true that Emma did enter into the employment contract while she was a minor and that normally contracts cannot be enforced against a minor, the *Infants Act* does provide exceptions. Here, it appears that when Emma turned 19 (the age of majority), she did not repudiate the contract within one year of turning 19, so she allowed the contract to come into force. Additionally, Emma also at least partially performed part of the contract within a year of turning 19 by working for Goose in exchange for compensation, so the contract is now valid and she cannot sue Goose.

**Conclusion:** Goose Mountain is correct: Emma is unable to sue the mountain, even though she signed the contract as a minor, because she did not repudiate the contract and partially performed part of it within a year of her turning 19.



## Practice Problem 5 (Legality) – Answer

### Related Cases:

- Phoenix Restorations Ltd. V. Brownlee

**Issue:** Can Molly work at Science Rules! or is she bound by the restrictive covenant with Business Student Wellness Massage?

**Law:** Restrictive covenants in employee contracts are considered prima facie void unless proven 'reasonable' by the party that is seeking to rely on the clause. To determine if the contract is enforceable, the courts will look if it is reasonable with respect to public interest given the nature and location of the business. The courts will also look if it is reasonable to protect the parties in the contract, in particular the proprietary interests of the employer, and if the geographical, scope, and time limitations are reasonable. If the restrictions are too broad on any of these criteria, the covenant will be struck down as being void and illegal (Phoenix v. Brownlee).

*Would the enforcement of the covenant be contrary to public policy?*

- Would this limit competition given the nature and location of the business?
- Would this deprive the public of some special service?

*Is the covenant reasonable to protect the parties in the contract?*

- Is there a proprietary interest to protect?
- Is the geographical limitation reasonable?
- Is the time restriction reasonable?
- Is the scope reasonable to protect the employer's goodwill?

Courts will not rewrite or reduce a covenant to make it enforceable so it will be declared void.

### Application:

We must first assess whether the enforcement of the restrictive covenant would be contrary to public policy. Given the nature of a massage parlour at UBC, enforcing the contract would not limit the competition in the area as there are many other massage parlours within proximity of UBC. It would also not deprive the public of a special service as Business Student Wellness Massage can easily hire another licenced massage therapist to replace Molly.

Now, we will look at whether the covenant is reasonable to protect Business Student Wellness Massage and Molly. Business Student Wellness Massage wants to protect its clients, the business students. However, by working at Science Rules!, Molly would not be interacting with the business students as she would be massaging science students.



The 20 km geographical restriction is reasonable since the massage parlour served UBC students and the time restriction is reasonable as 5 months can be a standard massage treatment period for clients.

The scope of “massaging or providing any wellness services” is broad as Molly only provided massages at the Business Student Wellness Massage. According to the Phoenix v. Brownlee case, the courts will not enforce a non-compete clause if a non-solicitation clause will suffice.

### **Conclusion:**

Although the enforcement of the restrictive covenant would not be contrary to public policy and appears to be reasonable in terms of the time and geographical restrictions – the scope and the protection of proprietary interest is not reasonable.

Business Student Wellness Massage wants to protect their clients (business students) but since Molly will be massaging science students at Science Rules! – there is no conflict and the courts will not enforce the restrictive covenant.



## Practice Problem 6 (Misrepresentation) – Answer

### Related Cases:

- Collins v. Dodge City East
- Werle v. Saskatchewan Energy Inc.
- Mackay v. Cesar
- Buckwold Western Ltd. V. Sager

**Issue:** What type of remedy is available to Liz and Rob? Can Liz and Rob get their contract with Jim rescinded by arguing misrepresentation? Or will they only be able to receive damages?

**Law:** Legally, a misrepresentation occurs where there is a false statement made pre-contractually by a representor, of a material fact, which induces the representee to enter into a contract with the representor and the representee's reliance must have been detrimental to the representee in the sense that damages resulted. There are three types of misrepresentations:

1. Innocent: where the maker of the statement honestly believes the statement is true but nevertheless it is false.
2. Negligent (*Collins v. Dodge City East Ltd*): where is a misregistration is unintentional but careless. This arises where a special relationship exists between the parties, giving rise to a duty of care. The maker of the statement must have acted negligently in making the representation; the maker must have fallen below the requisite standard of care required of a professional making such a representation.
3. Fraudulent (*Werle v. SaskEnergy Inc.*): where the maker of the statement deliberately tries to mislead the other party. A fraudulent misrepresentation can occur by commission or by omission.

For all three types of misrepresentation, an acceptable remedy is rescission (except in the case of a land transaction where the title of the land has been passed to an innocent purchaser for value), and for negligent and fraudulent misrepresentation a party may also sue for damages in place of rescission

**Application:** In this case, it would appear that Jim committed fraudulent misrepresentation, since he knew without a doubt that someone died in the home, and that Rob would not buy the house if he knew that. As a result, he lied to induce Liz and Rob to enter into the contract. In normal circumstances, this would entitle Liz and Rob to either damages or rescission of contract, whichever they choose. Because the contract has to do with land, however, and the title was passed to innocent purchasers for value (Liz and Rob), they are not entitled to rescission in this case, only damages.



**Conclusion:** Since this case involves land that has been passed on to an innocent purchaser for value, Liz and Rob will only be able to sue for damages, and not rescission of contract.

