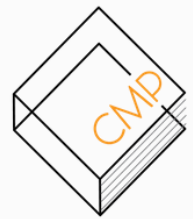


COMM 393

2020W1 Final Review Session



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Practice Problem 1

Patrick is a baker who owns a large pie-making business in Vancouver. In September 2020, he received a heads up from a client that they would be needing a large order of pumpkin pies for their staff party at the end of November. Looking for a good deal, and knowing that he would need to get all the ingredients to make the pies by early November, Patrick asks his friend Jerry, who owns a pumpkin patch, if he can buy all of the leftover pumpkins from the patch at the end of the season. Jerry agreed, and Patrick wrote up a contract which they both signed stating that Jerry will sell Patrick all the leftover pumpkins "at the end of pumpkin season" for \$1 each.

It is now November 1st, and Patrick calls Jerry asking him when he can pick up the pumpkins he purchased. To Patrick's shock, Jerry says that Patrick cannot come and pick up the pumpkins until December 1st, since Jerry tries to sell his leftover pumpkins from Halloween throughout November and ends his season at the end of November. Patrick is angry because December 1st is after the day of the client's party, and Patrick assumed the season would be over the day after Halloween, November 1st.

Jerry refuses to sell Patrick the pumpkins, and Patrick has to tell his client that he will not be able to make their pies after all. The client is very angry and ends up cancelling other orders that they have placed with Patrick.

Patrick has brought a legal action against Jerry to sue for the money he lost when the client cancelled their other orders. Will Patrick be successful? Explain fully.



Practice Problem 2

Josh decides to clean out his garage to make some room for the fancy new car he purchased. He decides to sell his motorcycle, valued at \$10,000, by posting an ad on the online sales site Gregslist. Jenny, who is looking to begin her career in motorcycle racing, responds to an ad and sets up a meeting with Josh. At the meeting, Josh and Jenny negotiate and decide that Josh will sell the motorcycle to Jenny for \$10,000, provided that Jenny can persuade her parents to loan her the money. Both parties sign a contract that clearly states that Jenny will pay Josh \$10,000 for the motorcycle within five days. Josh and Jenny decide not to include any mention of the provision that Jenny's parents must loan her the money in the contract.

When Jenny asks her parents for the loan, however, they decide not to give her the money because they think motorcycle racing is too dangerous of a sport. Jenny lets Josh know that she will not be able to buy the bike because she could not gather the money. Josh is angry, and thinking back to his COMM393 class, believes that because of the parol evidence rule, the oral agreement outside of the written contract between him and Jenny will not be considered by the court. He sues Jenny in B.C. Small Claims Court for breach of contract.

Jenny, also a graduate of COMM393, believes that she is in the right. Thinking back to the advice she received in class to never go to court without consulting a lawyer, Jenny hires a lawyer to argue her case.

Is Josh correct - will he win his lawsuit against Jenny? What difficulties will Jenny face when arguing her case? Explain.



Practice Problem 3

Chris, a scientist in Vancouver, was conducting some top-secret research on the formula of the world's most famous soft drink, Koka-Kola, on behalf of its biggest competitor BebsiCo, in an attempt to finally find the secret recipe of the Koke brand. In January 2020, Chris ordered a drum of a chemical mixture from a company in the United States called SecretRecipeSolver Inc. (SRS Inc.) to be delivered by April 1st, 2020. A contract was signed stating this, and Chris began to make preparations for his research.

SRS Inc. began immediately looking at options to ship the drum of chemicals over the border. The original plan was to send the drum by air freight to limit the shipping time, but the company decided that it was too costly and instead chose to ship it by truck. The shipment would leave on March 25th to be delivered on-time by April 1st. In between the order date and the planned shipping and delivery date, however, the COVID-19 pandemic hit North America and caused a great deal of uncertainty. On March 15th, SRS warned Chris that it seemed the government might be closing the U.S./Canada border, and if that happened, the shipment would have to be delayed since it was not considered essential, but that the company would wait and see what happened before making any decisions.

On March 21st, the border was closed by the governments of Canada and the United States. On April 1st, SRS Inc. formally let Chris know that it would not be able to fulfil the contract. Chris was not happy – he needed those chemicals to save BebsiCo! Chris decides to sue SRS Inc. for breach of contract.

a) Suppose Chris sues SRS Inc. on March 15th when he is notified the company may not be able to ship the goods on time. Will he be successful?

b) Suppose instead that Chris sues SRS Inc. on April 2nd after the contract was scheduled to be discharged. Will he be successful in his lawsuit? What if SRS Inc. argues the doctrine of frustration of contract in defence to Chris' claims? Who will be successful? Explain fully.

Practice Problem 4

Andrea has had enough of the cold and rainy Vancouver weather, and decides to rent a house and spend some time in Hawaii. Because she knew she would not be using any water in her house over the winter while she is away, Andrea hires Mario, a professional plumber, to come to her house sometime in November to drain her pipes so they don't freeze and burst for \$750. A contract is signed by both parties agreeing to this, Andrea pays the fee in advance, and she leaves for her trip.

Unfortunately, Mario the plumber got sidetracked on his quest to rescue a princess being held hostage in castle, and completely forgets to drain Andrea's pipes. Because of this, the pipes burst, flooding Andrea's basement and causing over \$15,000 worth of damage. When Andrea returns home a few weeks later, she finds her flooded basement and panics. She calls another plumber to come over and fix the pipe to stop the flooding. The second plumber comes over immediately and fixes the issue, but because of the rush job charges \$5,000 for the materials and time worked.

Andrea is furious, and sues Mario for \$20,750: the total cost of the work Mario failed to do, the damage to her basement, and the cost of the emergency plumber. In court, Mario argues that he should only have to pay Andrea \$750, since there was no way it could be foreseen that the pipes could burst. He also argues that Andrea did not have to choose such an expensive plumber to fix the issue: she could have called him, and he would have come immediately for free.

Who is correct? How much money will Mario be ordered to pay Andrea?



Practice Problem 5

It's a snowy afternoon over winter break, so Roger decides to fulfill a lifelong dream of his: learning how to ski! He decides to spend the day at a local ski hill, Goose Mountain, and buys his tickets online. During the purchasing process, he comes across a page that contains a waiver, which contains the following paragraph written in big, red, bold letters:

I, the participant, recognize that there are certain inherent risks associated with the described activities below which include, but are not limited to: skiing, snowboarding, sledding, skating, and snowshoeing. I assume full responsibility for personal injury to myself, and further release and discharge Goose Mountain Resort LP, and its employees, contractors, and agents, or any other third party, for any injury, loss, or damage arising from my use of or presence upon the facilities of Goose Mountain Resort LP, whether caused by the fault of myself, Goose Mountain Resort LP or any other third party.

I understand that by continuing in the purchasing process and using the mountain's facilities, I agree to the terms listed in this waiver and release Goose Mountain Resort LP from any legal liability.

Roger reads the first sentence of the waiver, but decides that it's too long to read. "Besides," he says to himself, "What could possibly happen to me? I'm a great athlete!"

Roger buys his tickets and heads to the mountain. He has a great day on the slopes, and is surprised at how fast he is able to learn to ski: his instructor even says he's never seen someone learn to ski as fast as Roger. To celebrate at the end of the day, Roger decides to visit the terrain park, and wants to try a simple jump off the biggest jump in the park. Roger asks his instructor if he thinks Roger would be able to do it, and he gives Roger the all-clear. Unfortunately, Roger crash-lands while attempting the jump, and breaks his neck. He decides to sue Goose Mountain, and hires the best lawyer in town to argue his case.

Suppose you are Roger's lawyer. As you are research the case, you come across an employee who was fired from Goose the day after the accident. You find out from him that he was in charge of inspecting the jump that day, and that during his evening inspection, he noticed that some of the snow on the jump had melted, making it incredibly dangerous and nearly impossible for any skier, beginner or professional, to land any jump off of it. The employee says he told his manager about the dangerous jump and recommended it be closed immediately, but the manager ignored the employee. "People pay good money to use these terrain parks," the manager had said. "I'm not going to close down our most popular jump just because you're a little scared. Get out of here!"

a) As Roger's lawyer, explain how you would argue this case in court to give your client the best chance of winning. Explain making full reference to all the applicable laws and cases learned in the course.



Practice Problem 5 (continued)

b) Regardless of your answer in Part A, assume Roger decides to sue not only Goose Mountain, but also the manager who negligently ignored the dangerous jump as well.

Suppose as well that in the case, Roger was presented with an exclusion clause that was the same as above, except the words “or its employees, contractors, and agents, or any other third party” were missing from the clause, and the sentence only read “I assume full responsibility for personal injury to myself, and further release and discharge Goose Mountain Resort LP, for any injury, loss, or damage...”

In court, the manager attempts to rely on the exclusion clause to claim that he cannot be found liable for any negligence he may have committed. Will his argument be successful? Explain.



Practice Problem 6

Carmen is a baker of high-quality French baguettes. To make her baguettes, Carmen can only use a certain type of all-purpose flour, which makes her bread fluffy and golden-brown. The flour must come from a certain type of plant, which grows only in certain parts of the world in specialized climates such as the south of France.

When Carmen's previous flour supplier went bankrupt, she went looking online for a new supplier. Carmen found an ad for the perfect type of flour she needed from a supplier called Flower Flour and More. The ad described the flour as being "all-purpose flour grown just outside Nice, in the beautiful south of France. Based on the description, Carmen ordered 100lbs of flour for her bakery. Flower Flour and More confirmed the order shortly with Carmen, and told Carmen that they would use an independent shipping company called SUP, which specializes in bulk shipping.

a) Suppose that when Carmen received the flour, she notices that it not the high quality she is used to. Upon further investigation, she realizes that the flour is not what was described by Flower Flour and More in their ad – it isn't the right type of flower, and wasn't grown in the south of France. Explain what legal remedies Carmen may have.

b) Regardless of your answer above, suppose instead that Flower Flour and More did send Carmen the correct type of flour, but when it arrived to her, it was infested with bugs, making it unusable. The bug infestation was caused by a rip in the packing of the flour, so Carmen decides to sue Flour Flower and More under Rule 5 of the Sale of Goods Act. During the court case, suppose Flour Flower and More presents evidence that when the flour was delivered to SUP, it was in perfect condition and properly packaged, meaning that the rip and the infestation of bugs must have occurred during transport. Will Carmen be successful in her lawsuit? Explain.



Practice Problem 7

Colin is having a Christmas party for himself and a few friends. As he is setting up for the party, he notices that it is starting to snow, and sees that his driveway is becoming icy and slippery. As the snow falls, Colin sees that the dangerous ice is being covered by the fresh-fallen snow, meaning anyone walking up the driveway would not be able to see that they could slip if they are not careful. Colin decides not to shovel and salt his driver. "It's too cold to do that," he thinks. "Besides, people will know to be careful walking up a snowy driveway."

One of Colin's friends, Raj, is the first to arrive. Completely unsuspecting of the ice underneath then snow on the driveway, Raj runs up the driveway to try and get out of the snow. On the way up, Raj slips and breaks both his legs, leaving him bedridden and unable to work for many months.

Raj decides to sue Colin for damages.

Will he be successful in his claim? What arguments might Colin argue in defence? Explain.



Practice Problem 8

Doug is a member of the Board of Directors of a small investment firm in Vancouver, B.C., which has assets in many different sectors. The firm decides that it wants to enter into the real estate market, and looks to purchase an apartment building as an investment. When the Board meets, it is presented with two near identical properties: both are in the same area, were built within years of each other, have the same number of units, and have assessed values that are identical to each other. The Board is asked to vote to pick which property the firm should buy.

Doug, who is also a private investor, realizes that one of the buildings is actually one that he partially owns, so if the firm chooses to buy that one, he'll make almost \$100,000 on the deal. Doug decides not to tell the Board about his ownership (he doesn't want to bias anyone's vote) and votes that the firm should buy the building Doug partially owns. The vote is close, but the Board decides to buy Doug's building by just one vote.

Suppose that after the deal closes, the investment firm finds out about Doug's ownership in the building they purchased and decides to sue Doug for breach of fiduciary duty.

Will it be successful? Doug is confident that he didn't do anything wrong – he believes the firm would have spent the same amount of money anyway buying the other property, so its not an issue. Explain fully.



Practice Problem 9

Andrew and Paul are great friends and decided to become business partners in a cacti farming company called *Cacti N' Friends*. Both Andrew and Paul contributed \$100,000 to purchase land and equipment to farm the cacti. They take equal part in management and intend to share any profits that they can make. Lastly, since they were such great friends, they agreed that any contract over \$10,000 would require both their signatures to be valid. This signature agreement was written in all of their cheques and contract templates.

Andrew was very excited when he closed a deal with Michelle's Craft Store to purchase 20,000 cacti from *Cacti N' Friends*. To grow the cacti, Andrew knew that he needed to purchase more fertilizer, so he approached Francesca's Fertilizer Company to purchase \$60,000 worth of fertilizer. Andrew knew that he needed Paul's signature to purchase the fertilizer, so he drafted up a contract with Francesca and emailed the contract to Paul.

Paul had been very busy playing Amongst Us and did not fully read through the contract before he signed his name and sent it back to Andrew. Paul did not love cacti but was excited to be the owner of a business. In fact, earlier that morning, Paul had purchased a brand-new Tezla, worth \$200,000, as his company car. Paul had scratched out the sentence ***"contracts over \$10,000 must be approved by Paul AND Andrew"*** and reassured the Tezla salesman that it was an old policy that did not apply anymore.

That morning, Andrew picked up the fertilizer from Francesca and gave Francesca a cheque. Later in the afternoon, Andrew was shocked to hear that Francesca said the cheque had bounced back and she was not able to deposit it. Andrew asked Paul if he knew why this happened and Paul told him that although they don't have fertilizer, they do have a new Tezla.

Andrew was furious. A few minutes later, Francesca had called them threatening to sue for breach of contract if they could not pay the \$60,000.

What remedies does Andrew have? What remedies does Paul have?

