



commerce  
undergraduate  
society

# COMM 393: COMMERCIAL LAW MIDTERM REVIEW SOLUTIONS

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## THE CONSTITUTION ACT & CHARTER OF RIGHTS AND FREEDOMS

Solution:

The issue is whether or not Hillary can sue ABC under the Charter of Rights and Freedoms. While Hillary could argue that she has been discriminated under Section 15 of the Charter, the Charter does not apply to relationships between employers and employees (unlike *Liebmann v. Canada*). It only applies to government legislation imposing upon the Charter. However, it is possible for Hillary to bring her claim under the Human Rights Code, and she would most likely succeed in doing so.



## INTENT, OFFER, WRITING & ACCEPTANCE

Solution:

A) The issue is whether there is a contract between Patrick and Spongebob. In order for there to be a contract, there must be the six elements of a contract. It is clear there is intent between the two parties. The offer that exists is the one on Oct.5<sup>th</sup> by Spongebob. The consideration is the mutual exchange of promises to buy and sell the car. The tricky part here is the acceptance. Under the Postal Acceptance Rule, it applies when the offerer sends his reply by mail. The contract is thus made when Spongebob posts his letter of acceptance on October 11<sup>th</sup>, 2016, which is before the October 12<sup>th</sup> deadline. As a result, yes, there is a contract between Patrick and Spongebob.

b) The issue is whether there is a contract between Patrick and Mr. Krabs. In order for there to be a contract, there must be the six elements of a contract. It is clear there is intent between the two parties. The offer that exists is the one on Oct.10<sup>th</sup> by Mr. Krabs. The consideration is the mutual exchange of promises to buy and sell the car. There is also the acceptance part as Spongebob accepted Mr. Krabs' offer on the day of the deadline. As a result, yes, there is a contract between Patrick and Mr. Krabs.

c) The issue here is what would Patrick's legal rights be if Spongebob did receive Patrick's revocation letter until Oct.15<sup>th</sup>, 2016? The law that applies here is revocation by mail is complete when it is received and not sent. The Postal Acceptance rule only applies to acceptance and it is not the basis for the revocation rules. Applying this to the current



situation, there is still a contract as Spongebob accepted the offer before the revocation was in effect (offer accepted Oct.11<sup>th</sup>, but offer was not revoked until Oct.13<sup>th</sup>). If Spongebob received the revocation letter on a later date, Patrick would still be bound to the contract as Spongebob accepted the contract before it was revoked by Patrick.



## CONSIDERATION & PROMISSORY ESTOPPEL

Solution:

a) The issue here is whether or not Francine is obligated to pay ACW \$1000. Contracts require consideration, which is an exchange of promises between the two contracting parties. As ACW did not promise anything extra in return for Francine's \$1000, there is no consideration so Francine is not obligated to pay the \$1000 to ACW.

b) The issue here is whether Arthur can have a successful claim for the \$1000. The law that applies to this question is that of the Doctrine of Promissory Estoppel. If a contract is already in place, one party is relying on the promise of the other party their detriment, and the Doctrine is being used as a defense, it could potentially be applied to the situation. In this case, ACW relied on Francine's promise that she would pay the \$1000 in order for them to complete the contract. However, it would not be possible for ACW to have a claim for the \$1000 as they are using the Doctrine as a sword and not a shield (unlike Tulsa or Duke's). Therefore, their \$1000 is forfeit.



## CAPACITY

### Solution:

The issue here is whether Buster can retrieve his \$20 deposit. The law that applies here is that of the Infant Act. Buster is considered to be a minor as he is in Grade 7 so he was less than 19 when the contract was made. Under the Infant Act, a contract made with an infant is unenforceable against the infant, but enforceable by the infant against the adult. Applying this, the contract made by Elmwood City Bikes with Buster is unenforceable as Buster is an infant (similar to RE Collins). Therefore, the conclusion is that Buster will be able to retrieve the \$20 deposit and not be bound by the terms of the contract.



## LEGALITY

### Solution:

The issue here is which party is more likely to be correct under the law? The law that applies here is the concept of legality and competition clauses. Generally, restrictive covenants such as a non-competition clause are prima facie void and therefore unenforceable. Restrictive covenants can only be enforced if the employer can show it is reasonable and neither against the public interest nor proprietary interest. The court will look at the time frame, geographical area, reason and scope.

Applying this to our question, public interest is not jeopardized as there are lots of bubble tea places in Richmond for customers to choose from. In terms of proprietary interest, Yum Yum Boba did not want Mr. Bubbles to operate or work under another bubble tea establishment as he could have used the knowledge and skills he learned at Yum Yum Boba to compete with them. Additionally, the courts would most likely interpret the time frame and geographical area of this clause to be unreasonable. Ten years is definitely an excessive time and the Lower Mainland is a fairly large area to restrict Mr. Bubbles from competing in. This competition clause could be seen as unduly restrictive (similar to Phoenix Restorations v. Brownlee), and it is unlikely that the courts would enforce this competition clause. Thus, Mr. Bubbles would have a strong enough claim that the competition clause is non-binding.



## MISREPRESENTATION

Solution:

a) For this question, the issue is whether or not Mr. Read could sue Mr. Crosswire for fraudulent misrepresentation. Under the law, fraudulent misrepresentation is where a false statement is made by a seller to deliberately attempt to mislead a buyer into a contract with the seller. In this particular case, Mr. Crosswire claimed that he honestly thought that there were no issues with the car (unlike *Collins v. Dodge City*). It would be up to Mr. Read to prove that Mr. Crosswire knew about the faulty engine and sold it to him regardless. The conclusion is that Mr. Read would most likely not be able to sue Mr. Crosswire for fraudulent misrepresentation, but it is possible that he could make a case for innocent misrepresentation.

b) Innocent representation is when the maker of a statement honestly believes that the statement they made is true, but in reality it is false. Negligent misrepresentation is when the maker of the statement is negligent or careless in making the statement but it is unintentional. Under innocent misrepresentation the only remedy is rescission, though for negligent and fraudulent misrepresentation you can get rescission or damages. However, the right to rescission for land is lost once the title passes.



## UNDUE INFLUENCE, DURESS AND UNCONSCIONABILITY

Solution:

A) The difference between undue influence and duress is that undue influence is a **mental** domination that one party has over the other, while duress is a **physical** domination of one party over the other. The key point here is that the weaker party must be robbed of his./her free will in entering the contract.

B) Standard commercial pressure (as seen in *Buckwold v. Sagar*) is commercial pressure that is generally part of the signing of contracts, while undue influence is the mental domination of one party over another, as described above. It is hard to determine whether or not undue influence exists, but the courts look for evidence that the weaker party was robbed of their free will when entering the contract, or undue influence can be presumed to exist under unequal power relationships such as a lawyer/client.

C) Three relationships where undue influence is presumed to exist include: An employer/employee, a doctor/patient, and a lawyer/client.

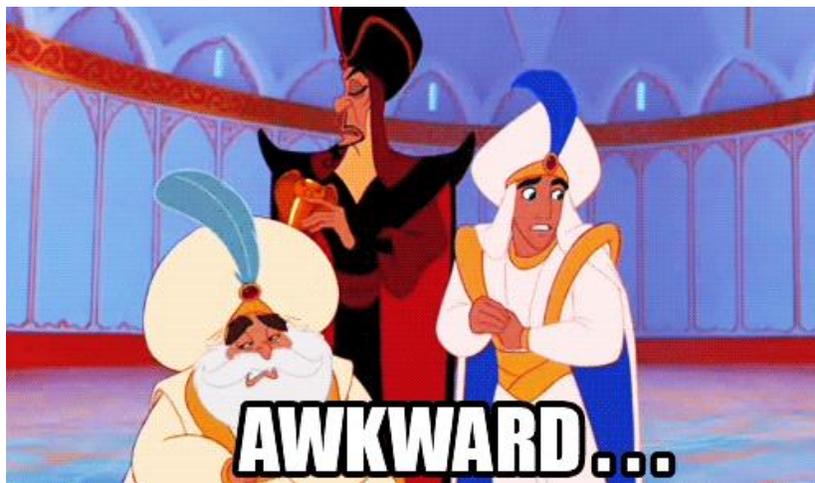
D) If undue influence is presumed, you should recommend your client to seek independent advice.



## PAROL EVIDENCE RULE

### Solution:

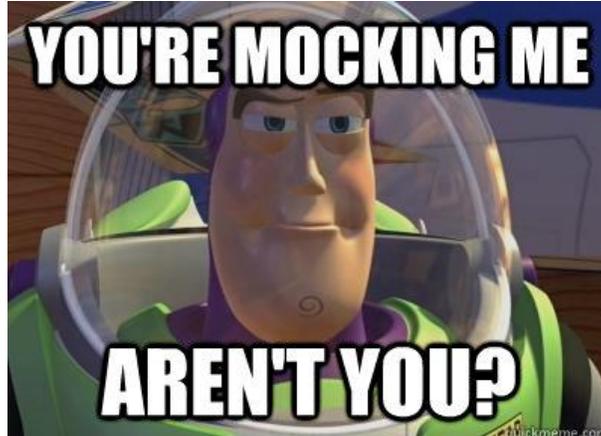
The issue here is whether Aladdin can bring a claim against Kumon. The law that applies here is the Parol Evidence Rule. It is a rule preventing a party to a written K from later using parol evidence to add to, subtract from, or modify the final written contract. The Parol Evidence Rule says that the court will not admit evidence of a prior oral term that adds to, varies, alters or contradicts a final written agreement (see *General Tire Canada vs. Aylwards*). However, in this case the parol evidence could be admitted due to the misrepresentation of an important fact. The important fact in is the six minimum working hours which induced Aladdin to enter the contract. Thus, Aladdin would likely be successful in his claim against Kumon.



## DISCHARGE OF THE CONTRACT

### Solution:

The issue here is whether WSS has a viable defense against Buzz. The law that applies here is frustration. Frustration is an unforeseeable event, beyond the control of the parties and without fault by either, that happens **AFTER** the contract is made and makes the contract impossible to perform or radically different than intended. In this particular question, the snowstorm would be a supervening event that makes performance impossible by WSS as they were snowed in **AFTER** the contract was made so they were unable to shovel Buzz's walkway (unlike *Saturley v. Lund*). Therefore, WSS can claim frustration to discharge the contract and would not be held liable to Buzz for damages.



## Further Help

