



commerce
undergraduate
society

COMM 393: COMMERCIAL LAW FINAL REVIEW SESSION

BY: GABRIEL CHEUNG



TABLE OF CONTENTS

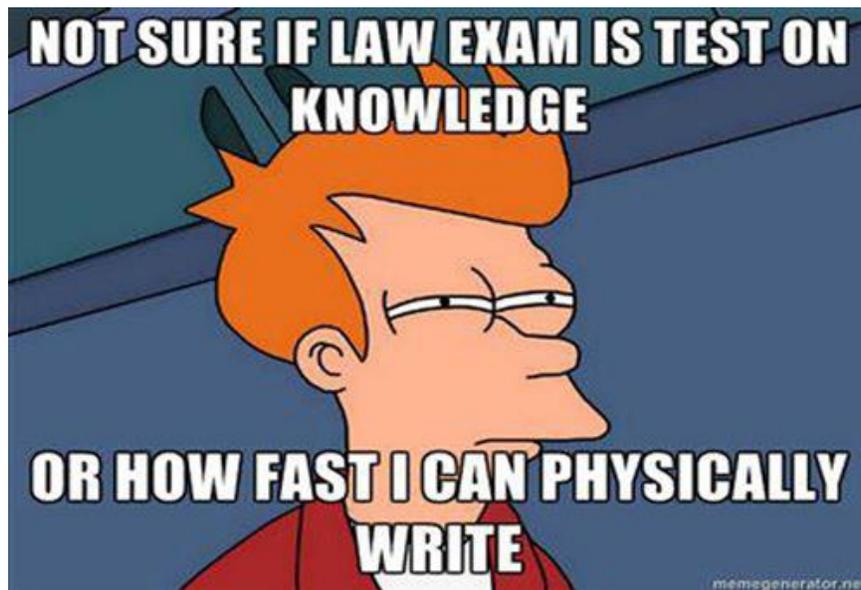
- I. Introduction
- II. General Advice
- III. Exclusion Clauses
- IV. Sale of Goods
- V. Privity of Contract
- VI. Negligence, Contributory Negligence and Vicarious Liability
- VII. Negligent Misstatement
- VIII. Fiduciary Duty
- IX. Agency
- X. Sole Proprietorships
- XI. Partnerships
- XII. Corporations
- XIII. Pre-Midterm Topics List
- XIV. Wrap-Up



INTRODUCTION

Gabriel Cheung, Sauder BCom '18

Accounting and Marketing Co-op



GENERAL ADVICE

Cases

- Be sure to review your case briefs and notes
- Refer to your course outline and make sure you know the law that applies to each particular case
- Then, when you practice, write out the law and apply it when you answer questions

Legal Reasoning Framework

- (READ AND IDENTIFY): Make sure you slowly read the case question and identify the topic that you are being asked to tackle.
 - ISSUE: What is the legal problem you are being asked to solve? (Usually at the end of each paragraph)
 - LAW: Give a clear statement of the legal principle learned in this course. State the source if it is a case you have studied in class.
 - APPLICATION: Look back to the facts and apply the law to those facts. Develop arguments for BOTH sides!
 - CONCLUSION: Decide what the outcome would likely be. If it is debatable, say so and give reasons as to why.
-
- Memorize and Practice, Practice, Practice!



Question 1:

Meryl's Merchandise is a retail store owned by Meryl that sells an assortment of different products. Meryl has signed a contract with a company, Stephanie's Supplies (owned by Stephanie) for some office equipment to be paid in a year. A year later, Meryl's Merchandise is incorporated to Meryl's Merchandise Inc., and Meryl does not pay back the money that she owes to Stephanie. Stephanie decides to sue Meryl for the money, but Meryl says that she can't do that as only Meryl's Merchandise Inc. is liable and not her own assets since she incorporated the business. If Stephanie chooses to pursue a lawsuit, who is liable to pay for the money owed to Stephanie, Meryl's Merchandise Inc., or Meryl?



Question 2:

Danielle is a student at UBC. Recently, Danielle is suffering from a headache so she goes to see Dr.Phil. She explains to him that she has a headache and that this is affecting her ability to study for her final exams.

Dr.Phil examines Danielle, and asks her questions about her headache such as how long has she had it for, did she take any medication before seeing him, where is the source of the pain, etc., along with examining her medical history and doing the proper tests to assess her current condition.

After his examination Dr.Phil determines that based on Danielle's symptoms she is suffering from a normal tension headache which will pass over time, and recommends rest and to drink lots of water.

Danielle is satisfied with this diagnosis and goes home. A week later, her headache has still not gone away and Danielle has developed a cold which she believes was the cause of the original headache.

She blames Dr.Phil for this misdiagnosis and wants to sue him for medical malpractice as she claims that professionals such as doctors should always be accountable for the mistakes that they make. Would Danielle be likely to succeed in her claim?



Question 3:

Bill Nye loves buying the latest new gadgets. He goes to Best Buy (an electronics store) and wants to buy a new Bluetooth speaker to play music in his mansion. Bill finds a salesperson and tells them that he is looking for a Bluetooth speaker to play music with at home. The salesperson recommends Bill buy one of their Bose Bluetooth speakers. Bill tries out the Bose speaker, but decides to buy a Beats by Dre Bluetooth speaker instead as he likes the sound more.

Bill tries out the Bluetooth speaker in his house, but finds that the bass of the speaker is a bit too strong for his liking. Additionally, Bill thinks that he might have a faulty product made of cheap material as the aluminum casing dented when he placed it down despite the speaker description listing that it is super durable.

- 1) Bill determined that the Beats speaker was not suited for his purpose; would Bill have a case for refunding the product if he took it to Best Buy?
- 2) Bill determined that the Beats speaker was not very durable after using it for a short while, would Bill have a case for refunding the product if he took it to Best Buy?
- 3) Independent of the two scenarios above, Bill manages to get a refund for the Beats speaker, and orders a new Beats speaker that is currently out of stock at Bill's location, but is ready to ship from Best Buy's warehouse and will arrive at Bill's mansion in two weeks. However, a week later, the speaker somehow gets lost during the shipping process and Bill never receives the speaker. Bill wants a replacement speaker from Best Buy but they refuse to provide him with one. If Bill sues Best Buy for damages, what is the likely outcome of this situation?

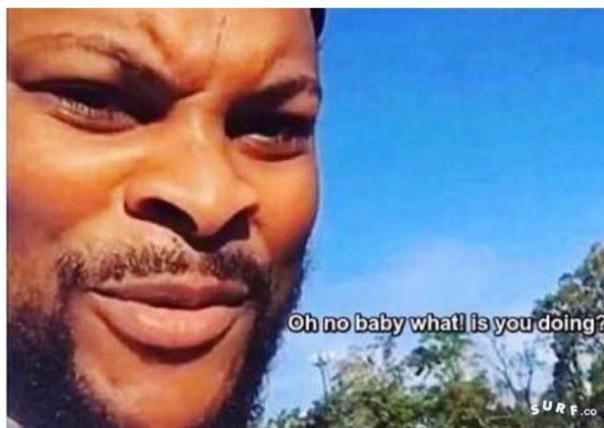
Question 4:

Nick and Dan are two recent BCom graduates that have formed a business together named "Lit Sushi." Nick and Dan agreed verbally that they are business partners and shall split the profits of the business equally.

One day, as a seafood supplier was negotiating terms with Lit Sushi, Dan decided to speed up the negotiation process without telling Nick by lying about the falsifying info regarding the number of customers that Lit Sushi serves in a year. The seafood supplier finds out about this and sues Lit Sushi for fraudulent misrepresentation.

Assume that Lit Sushi is held liable for damages. What type of partnership are Nick and Dan conducting and who will be held liable for the damages?

when your partner lies to your
supplier



Question 5:

Homer Simpson goes to Escape It, an escape room in Vancouver, BC. He decides to try out the under the sea escape room. A new employee, Milhouse, says that common practice is for escape room participants to sign a waiver form to excuse Escape It of any potential liabilities in the case of injury. He explains to Homer that this is merely a formality and there is nothing really in the under the sea escape room that could cause any harm.

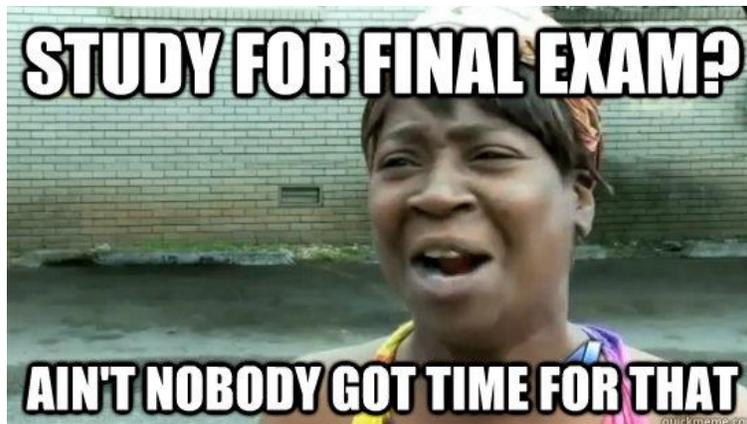
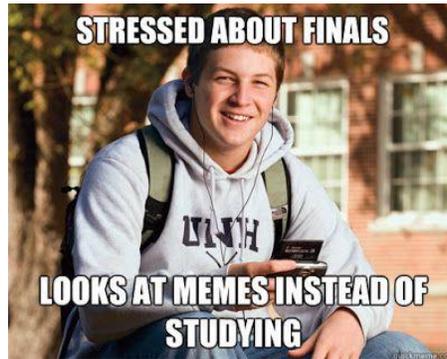
Hearing this, Homer signs Escape It's waiver with the following terms which are clearly stated in red, bold print:

I recognize that there are certain inherent risks associated with the described activity and I assume full responsibility for personal injury to myself, and further release and discharge Escape It for injury, loss or damage arising out of my use of or presence upon the facilities of Escape It, whether caused by the fault of myself, Escape It or other third parties.

Homer completes the waiver, and is having a fun time trying to crack the mystery of the under the sea escape room. However, in the escape room, it is a bit dark, and Homer bumps his head on a chandelier which causes a minor bruise. Homer is angry with Escape It, and wants to sue Milhouse and Escape It for damages. Will Homer be likely to succeed in his claim?



BREAK TIME!



Question 6:

Trump and Pence are warehouse workers for Huge Wall Shipping (HWS), a shipping company. Canadian Goods (CG), a retail store chain, is one of HWS's customers. HWS has a clause with CG stating that "the warehouseman's liability is limited to \$50 unless specifically stated otherwise."

Trump and Pence are handling the latest shipment of goods for CG on behalf of HWS, and accidentally damage a single 80" 4k HD TV that costs \$5,000 while performing their normal warehouse duties. CG is furious, and wants to sue Trump and Pence for damages. Trump and Pence thought that due to the liability clause that their employer signed with CG, that they would be exempt from paying the full cost of the TV.

What is Trump and Pence's defense in this situation, and how much will they likely have to pay?



Question 7:

Steven and Ying are planning to sell their house in Vancouver and contact a realtor, Andrew. Steven and Ying think that \$1.5 million is a fair price for their house; they wish to list it at this price. Andrew, having knowledge of the housing market, knows that Steven and Ying could really sell their house for \$1.75 million if they wanted to, but decides to keep quiet and agrees that \$1.5 million is indeed a fair price. Andrew decides to buy the house for himself and then flip it for a higher price without letting Steven and Ying know. Andrew manages to buy the house for \$1.5 million, and then sells it a month later for \$1.75 million. Steven and Ying later find out about what Andrew did and are angry that he abused his position as a realtor to take advantage of them. Steven and Ying want to sue Andrew for the \$250,000 of profit that he got from flipping the house.

What legal concept applies to this scenario? Explain the responsibilities of Andrew's role in this situation and how he infringed upon them (Hint: Accounting, Care, Confidentiality, Disclosure, Loyalty, Obedience, don't have to use them all).



Question 8:

Kermit's Fishing Equipment is owned by an owner named Kermit. Gonzo is looking to buy some fishing equipment and visits Kermit's store. Kermit figures that Gonzo does not know much about fishing equipment, so he decides to exploit this opportunity and take advantage of him.

Kermit sells Gonzo some old and semi-used fishing equipment at the same retail price as new fishing equipment and tells Gonzo that this is the best equipment that he has in the whole store.

Gonzo goes fishing and finds that the fishing equipment breaks almost immediately and threatens to sue Kermit.

Kermit tells Gonzo that his business is a corporation, Kermit's Fishing Equipment Ltd., and that he can sue if he wants to but his business barely has any money. Gonzo questions whether the business really is a corporation, (the name on the awning is just "Kermit", and the name on the top of the receipt is just "Kermit's Fishing") but is unsure of what to do. Who is liable if Gonzo wishes to sue Kermit's Fishing Equipment?

When you're a professional but
you can turn hood real quick



Question 9:

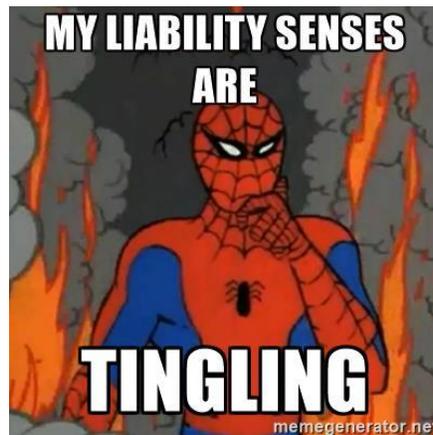
Gabriel is a student at UBC who is interested in finding some basic investments to invest his money in. Tai Lopez is an incredibly successful businessman and financial consultant, and is willing to share some of his knowledge with Gabriel. Tai examines Gabriel's current stock portfolio and recommends to Gabriel that he simply has to invest in Lamborghini (LAM) and this will guarantee him excellent returns for the future. Tai claims that he has been very successful at investing money in Lamborghini. Gabriel trusts Tai for sound financial advice, and invests \$5,000 into LAM. Gabriel's friend Steve has a conversation with Gabriel about this stock Lamborghini, and he also decides to follow Tai's advice and invest \$5,000 into LAM. Tai later checks the historical performance of LAM, and finds that the stock price for Lamborghini has actually gone down in recent years, but is stubborn in his outlook for the future and does not provide Gabriel with any more information. One month later, Gabriel and Steve lose all but \$1,000 of stock value in LAM, and they feel that they were cheated by Tai as they are not getting the excellent returns that he was promised and think he is a fraud. Gabriel and Steve both want to sue Tai for damages, would Gabriel be likely to succeed in his claim? Would Steve be likely to succeed in his claim?



Question 10:

Vince is hired as a salesperson for BBB. He goes door to door selling vacuums. On one sale, he tells the customer that he can also give them financing for the vacuum (he cannot, BBB does not offer financing). He tells the customer to sign a contract that he quickly writes himself on a napkin and has the customer sign for the financing. Vince signs the napkin to accept.

The customer defaults on the loan and Vince starts calling them at home and at work for them to pay it back. The customer calls BBB headquarters and they tell the customer that Vince had no authority to give a loan and that he was acting fraudulently and that therefore BBB has no liability. Is BBB correct in assuming that they have no liability?



PRE-MIDTERM TOPICS LIST

- I. The Constitution Act & Charter of Rights and Freedoms
- II. Intent, Offer, Writing & Acceptance
- III. Consideration & Promissory Estoppel
- IV. Capacity
- V. Legality
- VI. Misrepresentation
- VII. Undue Influence, Duress and Unconscionability
- VIII. Parol Evidence Rule
- IX. Discharge of the Contract
- X. Breach of Contract & Damages
- XI. Miscellaneous Topics
 - a. Courts Systems and Procedures
 - b. Sources of Law
 - c. Alternate Dispute Resolution
 - d. Interpretation

WRAP – UP

