

**FACULTY OF LAW**  
**FINAL EXAMINATION – APRIL 2006**  
**LAW 410: CONTRACTS (BUCKWOLD)**

**TIME ALLOTTED: 3 hours**

**CODE NUMBER:** DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS OR BOOKLETS. A list will be circulated and your name is to be entered opposite a number on that sheet. That number will be your code number FOR THIS EXAMINATION ONLY AND SHOULD BE ENTERED ON EACH EXAMINATION BOOKLET.

**INSTRUCTIONS:**

1. This examination paper contains 8 questions (one having four subparts) on 5 pages. Check to ensure that it is complete before starting.
  2. Answer **ALL** questions.
  3. Questions are not of equal value. Suggested times are given for purposes of general guidance only. Apportion your time wisely.
  4. This is an **OPEN BOOK** examination.
  5. The value of this examination in calculation of your final grade depends upon your performance. If you get a higher grade on this examination than you did on your December mid-term, the mid-term will be ignored and your final grade will be based entirely on your grade on this examination. If your grade on the mid-term is higher than your grade on this examination, your mid-term grade will count towards 30% of your final grade and the grade on this examination will count towards 70%.
  6. Cell phones, beepers, pagers, laptop computers and related equipment are strictly forbidden. These items must be turned off and stowed.
  7. Adhere to the time limitation imposed on this examination strictly. Failure to stop writing at the end of the examination may lead to a deduction of grades or a failure to accept the examination paper.
  8. To avoid disturbing your classmates, please do not leave the room during the final 15 minutes of the examination.
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**PART A (Total Marks: 60 – Maximum Suggested Time: 1 hour & 50 minutes)**

After 10 years working in the camera department at FutureShop, 29 year old Ann Andrews decided to open her own camera store on Whyte Avenue in Edmonton. After a few months' operation, the store was proving to be so successful that Ann decided to install a system that would fully computerize her business to facilitate its expansion. To that end she contacted Bill Bilson, who had been manager of the FutureShop at which Ann had worked through most of her 10 years of employment.

Like Ann, Bill had struck out on his own and had been successfully operating Tech-Know-How Ltd. (TKH), his own computer software development, system design and installation company, for the past year. As President and CEO of the company, Bill is its authorized representative for all legal purposes. Although Bill himself is not an expert in computer software systems, the company employs graduates of the University of Alberta's Computer Engineering program and contracts with outside consultants for some projects. Bill told Ann that TKH could custom design a software system that would integrate and automate all aspects of her business, including product ordering, inventory control, shipping, customer billing, payroll and general accounting. All of this could be accomplished by creating a business intranet using the relatively new computers Ann had already purchased for her business.

Bill also told Ann (orally) that he could guarantee that the system would work flawlessly, and that it would increase efficiency and reduce her wage and accounting costs by at least 25%. In response, Ann said "That would be fantastic. You know that I have a lot to learn about creating good business systems and I'll never really understand computers. I can't tell you how great it is to know that I can count on you to give me what I need."

Although Ann is very knowledgeable about cameras, she knows very little about either business management or computers. However, she completely trusted Bill to give her good advice. She knew that Bill had more than 20 years of business management experience at FutureShop and in his own company as well as extensive knowledge of computers and computer systems, though he was not himself a computer programmer. In addition, he had become a good friend, advisor and something of a father figure to her while they worked together.

Ann signed a two-page standard form contract for the purchase and installation of the software system from TKH without reading it. The contract provided for an immediate down payment, a second payment upon installation of the system and a final payment after three months of successful operation. It included the following provision:

This document constitutes the entire contract between the parties hereto. The Seller makes no promises or representations regarding the system and/or equipment purchased hereunder other than as expressly contained herein. Neither the Seller nor the Seller's servants and employees are liable for loss or damage of any kind, however caused, arising from the design, installation or use of the system and/or equipment purchased.

Because TKH was unable to keep up with all the work it had undertaken, Bill contracted with Ruth Rutherford, a free-lance programming consultant, to design Ann's system.

Ann arranged to have the system installed in the first week of December, 2005, in the expectation that it would help her through the rush of the pre-Christmas season. As it turned out, the system crashed after two days' operation leaving her, over one of the busiest shopping seasons of the year, with no functioning electronic sales or support systems whatsoever. As a result, she found it necessary to bring in additional staff and to pay her regular staff to work overtime to keep up. As it turned out, the system was not designed to operate properly on the hardware Ann currently owns, as it should have been. She will either have to purchase new computers or a new program to achieve her objectives.

Bill has taken the position that the difficulties with the program are Ruth Rutherford's responsibility and that any compensation to which Ann might be entitled should come from Ruth.

Ann has come to you for legal advice regarding her rights as against TKH and Ruth Rutherford, respectively. It is obvious that the system delivered by TKH has not performed "flawlessly", nor will it reduce her wage and accounting costs without further substantial investment on Ann's part. Respond to the following questions, offering reasons for your answers. Read all three questions before writing your answer. You are NOT expected to consider the potential quantum of any damage award that might be recoverable by Ann in connection with any of these questions.

**Marks**

- 15** 1. What arguments might Ann raise in support of an action for a court order setting aside her contract with TKH and restoring to her the money she has already paid to the company? Consider all feasible alternatives, and offer your view as to the likelihood that any such argument would succeed. You may assume for purposes of this discussion that the price Ann agreed to pay for the software system was 15% higher than she would have had to pay another supplier for the equivalent system.
- 5** 2. In order to determine whether Ann might succeed in claiming damages from TKH for breach of contract, consider the following:
- 5** a. Are Bill's oral statements regarding the performance of the software system to be provided by TKH contractual terms?
- 5** b. Might the parole evidence rule affect the success of Ann's action for breach of contract?
- 20** c. Is the limitation of liability clause reproduced above likely to give TKH an effective defence to an action for breach of contract?

- 5 3. Assuming that Ann were in a position to succeed in an action against TKH for breach of contract, is she obliged to pay the final (and largest) installment owing on the purchase of the software system?
- 10 4. Assume that Ruth Rutherford was negligent in her design of Ann's software system, and is potentially liable to Ann for damages in tort. Assume further that Ann knew at the time of contracting with TKH that it occasionally sub-contracted work to outside consultants, but did not know whether an outside consultant would be employed in connection with her project or not. Can Ruth rely on the limitation of liability clause in the contract between Ann and TKH as a defence to an action by Ann?

**PART B (Total Marks: 20 – Maximum Suggested Time: 35 minutes)**

In February of 2005, Ike's Bikes Ltd. (Ike's Bikes) entered into a 5 year contract with Canadian Cycles Ltd. (CCL) under which Ike's Bikes was given the sole right to sell CCL recreational bicycles in the northern region of Alberta. The contract provided that CCL would not sell CCL recreational bicycles to any retail or wholesale dealer other than Ike's Bikes within the identified geographic area. Ike's Bikes agreed to make all reasonable efforts to market and sell the bicycles delivered by CCL under the contract. In November (2005) Cathy Corman, who represents CCL in its dealings with Ike's Bikes, told Ike Ivorson (owner of Ike's Bikes) that due to his terrific sales record with CCL recreational bikes that summer, CCL was prepared to expand his exclusive dealership rights to include its high-end line of racing bicycles. Ike was delighted at this news, and the contract was amended by the addition of CCL racing bicycles to the clause describing the products covered by the contract. In preparation for the significantly larger volume of business anticipated to result from this development, Ike invested \$200,000 in the expansion and redesign of his bike shop. The work started in January of 2006 and was completed by April 1, in time for cycling season. On February 15 while visiting his store, Cathy told Ike that CCL had changed its mind and was giving the exclusive sales and distribution rights for its racing line of bikes to Designer Cycles Inc.

Ike has approached you for your advice with respect to his company's ability to enforce CCL's promise to give it the exclusive right to sell their racing bicycle line. Offer your opinion regarding the likely success of an action by Ike's Bikes on the basis of either:

**Marks**

- 10 5. Breach of contract, or
- 10 6. Promissory estoppel.

\* **NOTE:** You are NOT expected to consider the potential quantum of any damage award that Ikes Bikes might recover.

**PART C (Total Marks: 20 – Maximum Suggested Time: 35 minutes)**

Evelyn Everson owns and operates a large cattle ranch in Alberta. Late in 2004, she decided to apply to the federal government for formal certification as an organic beef producer. Certification would dramatically increase the exportability of her beef, generating revenues that would enable her to invest in a significant expansion of her herd. Evelyn believed that the growth in her herd that would follow from certification would require her to employ a full time veterinary technician. After an extended search for a suitable candidate, she interviewed and decided to hire Alvin Alberts for the job. Alvin expected to complete his training in veterinary technology at the end of May, 2005. On February 1, 2005, Evelyn and Alvin agreed that Alvin would work for Evelyn for an initial term of 1 year, starting June 1, at a salary of \$5,000 per month, on condition that Evelyn's application for certification was granted by May 15. Although Evelyn commenced the application process on February 8, she had not received a decision by May 15. Evelyn immediately notified Alvin that, although she hadn't yet received the certification, she wanted to employ him anyway and said that he would start work on June 1, as they had agreed. To her astonishment, Alvin said that he had changed his mind and wasn't willing to work for her.

Assume it is now June of 2005. Evelyn is considering commencing an action against Albert for breach of contract. Answer the following, providing reasons for your conclusions. Your answer should be limited to consideration of Evelyn's likely ability to establish Alvin's liability for breach. You are NOT expected to consider the potential quantum of any damage award that she might recover and you may assume that an award of specific performance would not be granted.

**Marks**

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| <b>10</b> | 7. Is the agreement between Evelyn and Alberta a contract?   |
| <b>10</b> | 8. If the agreement is a contract, can Evelyn's enforce it notwithstanding the fact that certification was not obtained by May 15? |

**- End of Exam -**