NOTES:

1. This exam is open book. Students may bring in the course’s textbook, instructor’s slides, self-prepared course outlines, and any student-prepared notes, but nothing else. No books, commercial outlines, or other texts are permitted.

2. This exam has two questions, worth a total of 100 points. The first question is worth 75 points and the second, 25 points.

3. If anything in any question seems ambiguous or erroneous to you, say so clearly in your answer and indicate any assumptions you are making to resolve the alleged ambiguity or error in order to address the question. If you feel additional information is required to answer a question, please indicate the additional information you feel is necessary and explain why that additional information is necessary.

4. The fact pattern takes place in a hypothetical jurisdiction that follows the legal directives applicable in the province of British Columbia; these include the relevant provisions of the Law and Equity Act [RSBC 1996]. You should not assume that any other statutes pertaining to contracts have been adopted in this jurisdiction, unless the question tells you otherwise for purposes of that question. Much like BC, when relevant and appropriate, this jurisdiction uses the law of other jurisdictions as a persuasive authority.

Good Luck!
Doogie Howser is a successful doctor who recently celebrated his 30th birthday. Despite his being a rising star in the world of medicine, his social life has been on the empty side. Because he spent many years studying medicine, he did not make many social contacts outside of his professional circles. Celebrating his 30th birthday was a wake-up call for him, and he decided that it was time to look more seriously for a long-term partner, perhaps with an eye to having kids in the future. After a few unsuccessful dates—which were arranged by his colleagues—he was drawn by an advertising campaign to a company named Two of Us, whose motto is: “Because two is always better than one.”

Looking at the company’s website, Doogie learned that Two of Us is not intended to be a dating service but, rather, as their website states, “It is a matchmaking service in the traditional sense.” In exchange for a one-time fee, Two of Us promises to help people to establish “personal relationships” by analyzing their personal data and matching them with eligible persons.

Doogie was ambivalent. He consulted his friend and colleague, Dr. Ben DeLaCreme (in short, Dela). Dela, who was aware of Doogie’s failed attempts to find a partner, thought that going to Two of Us was a great idea and even offered to accompany Doogie on his visit. Dela thought that since Doogie was a bit socially awkward and a bit naïve, it would be better for him to go with Doogie. Doogie was grateful to Dela; thrilled, he scheduled an appointment with Two of Us’s representative.

Two days later, Doogie and Dela went to Doogie’s appointment in Two of Us’s office, located next to the hospital they worked in. They were greeted by an attractive man named Michal Visage. Visage led them to his office and asked Doogie about his social life and what brought him to Two of Us. Doogie elaborated about his previously unsuccessful dates and his feelings of loneliness. He stated that he was looking for a guy like him—someone with a more or less similar level of education, a successful career, and somewhat similar interests.

Visage listened sympathetically and then explained to Doogie how Two of Us worked. If Doogie signed up for the services, he would be required to fill out a detailed biographical questionnaire and submit a recent color photograph. After evaluating Doogie’s information, Two of Us would match Doogie to appropriate bachelors from the Two of Us “date bank.” Visage further explained that the price of this service was 5,000 CAD for three months. In that time period, Two of Us would provide at least five suitable matches—although, typically, the service provides more.

Dela had a set of questions. He asked how Two of Us assures the quality of candidates. Visage stated that the company screens its members and performs a criminal background check on each. He further explained that they have a network of employees who recruit and screen high-level, single, and wealthy potential romantic partners throughout Canada and promised that they had such wealthy, successful persons as active clients. “We also have a few people who work in the medical industry—who would be perfect for Doogie,” he added. That was exactly what Doogie wanted to hear. He immediately told Visage: “Sign me up.”
Visage printed out the Two of Us Social-Contacts contract and filled in Doogie's name on it. Doogie read the contract, which appeared exactly as follows:

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Two of Us Social-Contacts Contract

1) **Doogie Howser** ("Client") agrees to pay 5,000 CAD (the "Fee") to Two of Us ("Agency"), payable at the end of the three-month period of this contract.

2) Agency agrees to provide Client with at least five appropriate social contacts during the three-month period of this agreement. For purposes of this agreement, "social contact" is defined as a person eligible and appropriate for a social relationship with Client and satisfactory within Client’s social cohort. All social contacts will be interviewed personally by Agency.

3) Client understands that the nature of the services performed by Agency are such that there are innumerable reasons for Client to be dissatisfied with the introductions arranged by Agency. Client is solely responsible for the outcome of all introductions, selecting which introduced candidates to pursue a relationship with, and Client understands that the performance of Agency's services is deemed satisfied upon the arrangement of the introductions. Client releases Agency, its employees, officers, members, managers, agents, representatives, and independent contractors from any and all claims, actions, causes of action, loss, and liability resulting from any and all introductions, regardless of the reasons therefore, including claims for personal injury.

4) The Fee paid by Client shall only pay for Agency’s services and in no circumstances will the Fee cover any expenses that Client may encounter during an introduction or any follow-up dates, including, but not limited to, admission costs, costs for food/beverages, costs for personal hygiene, clothes, and any other associated cost(s) for any dates.

5) Client agrees to complete a five-page biographical questionnaire provided by Agency and to provide a recent photo.

6) The period of this three-month agreement is from December 3 to March 3.

Signatures:

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Doogie and Visage each signed the contract. Doogie and Dela left the office with a spring in their steps. Later, at home, Doogie completed the questionnaire and sent it to Two of Us with a recent photo. Doogie then waited for his phone to ring.

When Visage received Doogie’s questionnaire, he realized that the men he had in Two of Us’s date bank were not great matches. He then expanded the terms of the search, looking more broadly to find suitable men.

During December Doogie received no calls at all. But in January he received calls from five men contacted on his behalf by Two of Us. Four of them were as follows:

1. Donald Grump, a wealthy real-estate developer. In their meeting, Doogie felt that Donald was too superficial and was disgusted by his xenophobic comments.
2. Laila McQueen, a family doctor who had three drunk-driving convictions and an outstanding criminal warrant in Alberta.
3. Ted Sail, a college-educated paralegal who earned a good salary at a major law firm. Though they had a pleasant dinner, Doogie felt no chemistry with him.
4. Drake Ramoray, a good-looking young actor who played the role of a doctor in a soap opera and as a result had some basic knowledge of medicine.

The fifth man, Thorgy Thor, whom Doogie met on February 1, seemed like Doogie’s dream guy. Thorgy was three years older than Doogie and was already making a name as a rock-star surgeon. He was especially good looking, and, during the first twenty minutes of their meeting, he acted like a thorough gentleman. Doogie, excited about the promising date, ordered his favorite wine from the menu, a Chateau Acid Betty, costing 350 CAD for a bottle. However, after a short talk it became apparent that Thorgy was under the impression that they were meeting to discuss medical research that they could conduct together. When Thorgy learned that Doogie was gay and that Doogie believed that they were on a romantic date, Thorgy was very upset. Apparently Thorgy, while in denial about it, was a bit homophobic. Dramatically, he dumped a glass of red wine over Doogie; the wine spilled over Doogie’s fancy shirt (a Versace worth 1,500 CAD) and Thorgy stormed out of the restaurant. Poor Doogie had to pay for the restaurant bill, which, along with the tip, was 700 CAD. In a later phone call with Two of Us, it became clear that the Agency made an administrative mistake in matching the two together, and that Thorgy, who was their client, too, had been identified as straight.

On March 1, Doogie went to the dry cleaner to salvage his precious shirt. The dry cleaner tried, for a cleaning fee of 100 CAD, to take out the wine stain. He was unsuccessful, but told Doogie that had he brought in the shirt a few days after the incident, he (the dry cleaner) would have been able to take out the stain. However, because a month had gone by since the event, the stain had gotten so absorbed into the shirt’s material that it was too late now to remove it.

On March 3, Doogie received a bill from Two of Us for 5,000 CAD. He immediately sent them a letter that states:

Dear Two of Us,

I owe you nothing. I was completely dissatisfied with each of the social contacts you sent; nothing was as promised. Indeed, I am going to sue you for my losses, including for the pain and suffering in spending my time with loser after loser, for the
happiness I would have had if you had introduced me to my desired relationship, as promised, and for all my other injuries and losses.

You will hear from my counsel soon.

Signed,

Dr. Doogie Howser

Questions:

Two of Us has received Doogie’s letter and seeks the services of your law firm. The managing partner is trying to decide whether to take the case. He asks you to write a memo specifically addressing the following:

1) Discuss Doogie’s arguments in support of his claim that he “owes [Two of Us] nothing,” and evaluate the likelihood that he will prevail. In your memo, explain what kind of legal arguments Doogie is likely to make and what defenses Two of Us can reasonably invoke.

2) Assuming Doogie were to prevail, which damages is he likely to recover? Discuss the remedies available to Doogie if he wins.

Final Facts:

As you’re leaving his office, the partner also hands you a printout of the following province statute, passed last year:

Aware of abuses in the dating services industry, the legislature of BC enacts the following law:

1) As used in this chapter, a dating services contract is any contract with any organization that offers dating, matrimonial, or social referral services by any of the following means:

   (a) An exchange of names, telephone numbers, addresses, and statistics.

   (b) A photograph or video selection process.

   (c) Personal introductions provided by the organization at its place of business.

   (d) A social environment provided by the organization intended primarily as an alternative to other singles bars or club-type environments.

2) Any contract for dating services entered into under willful and fraudulent or misleading information or advertisements of the seller is void and unenforceable.

The partner says to keep the statute in mind when writing your memo in case you deem it relevant to your analysis and worth discussing.

- Assume that the province has no operative parol evidence rule.
In my article, "The Puzzle of Family Law Pluralism," I wrote (internal citations omitted):

Classical contract theory posits a regulatory apparatus grounded on the clear intent of the parties to enter into the contract and, once a valid contractual obligation is created, holding the parties strictly to their bargain. In other words, the rules of classical contract theory make “contractual liability hard to assume and hard to escape once it is assumed.” …

In effect, the principles of classical contract theory give individuals considerable power regarding their commitments while taking that power from the courts. … Rather than use a case-by-case approach to inquire into the contract’s fairness, classical theory is grounded in stability and predictability. The trade-off for this is that such a system binds individuals to their bargain with very limited regard to the fairness of the deal, changed circumstances, relative bargaining power, or specific circumstances of the case.

Evaluate the extent to which Canadian contract law embeds and manifests the principles of classic contract theory. How far, if at all, has Canadian contract law moved from the principles of the classic contract regime? Make sure to illustrate your discussion with examples from the course materials.

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