THIS FINAL EXAM CONSISTS OF SIX (6) PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE EXAMINATION

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2018

LAW 211.004
Contract Law

Professor Carol Liao

TIME ALLOWED: 2.5 Hours

NOTES:

1. This exam is open book. Students may bring in the course text, instructor handouts, course outlines, and any student-prepared notes, but nothing else. No library books or other texts are permitted.

2. This exam has six (6) questions, worth a total of 100 marks.

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.

4. If you feel additional information is required to answer a question please indicate the additional information you feel necessary and explain why it is necessary.

Good Luck!

END OF EXAM INSTRUCTIONS
An archaeological site on Triquet Island in BC’s Central Coast has been identified. Carved wooden tools and small charcoal flakes within an old hearth were unearthed and sent for carbon dating where they were found to be over 14,000 years old, affirming the oral histories of the Heiltsuk First Nation.¹

A majority of endangered archaeological sites are on private property and vulnerable to destruction at the whim of their owners. The Shuri Archaeological Conservancy (SAC) is a non-profit society established in 1999 in West Vancouver that is dedicated to acquiring and preserving the province’s endangered archaeological sites. SAC identifies important sites located on private property, then partners with third parties to acquire the property by purchase or gift, and manages the archaeological site as part of a long-term plan.

SAC has become a powerful and influential organization as many of its supporters comprise of West Vancouver’s political elite. At the annual 2016 SAC black tie gala, SAC president Chadwick Jordan announced that SAC had raised $1.0 million to support archaeological initiatives on Wakanda Island, an island neighbouring Triquet, which is suspected of containing artifacts that predate the Ice Age.

Under pressure from SAC, the Central Coast Regional District (the District) has agreed to buy property on Wakanda Island with the intention of excavating the site and then eventually turning the site into a public museum and park. Due to severe budget constraints, the District is only willing to purchase the land if SAC agrees to fund the excavation and management of the archaeological site in accordance with an agreed upon excavation plan.

The landowner is keen to have the land designated as a park and is willing to sell the land to the District for $2.5 million, even though its market value is $3.0 million. And SAC, in light of its successful fundraising campaign, is willing to fund the excavation work and, in recognition of its funding, be named on a plaque installed in the future museum and park. The excavation actually will not increase the market value of the land because damage from the excavation will ultimately decrease the amount of the property on which there could be development (the size of the available building envelope will decrease). The District and SAC hire a team of geophysicists and environmental engineers to design an excavation plan that ensures the best possible outcome in terms of safety, budget, and process, called the “Wakanda Island Excavation Plan” (WIEP). The WIEP includes the removal of underground pipes that run across the land, which are blocking access to the deeply buried site.

On December 1, 2016, the private landowner, the District, and SAC entered into a contract where: (1) the District will purchase the land for $2.5 million from the landowner, ensure permits will be obtained for excavation, and designate the land as a park following the excavation; and (2) SAC agrees to excavate the land in accordance with and to the standards set out in the WIEP. The agreement also provides that there will be a brass plaque installed at the museum and park acknowledging SAC’s contributions.

¹ This part of the fact pattern actually occurred.
On the same date (December 1, 2016), SAC enters into a contract with the Nakia Heritage Archaeology Company (Nakia) for the fixed price of $500,000 under which Nakia agrees to complete the excavation work specified in the WIEP. Nakia will begin the excavation work on April 1, 2017. Nakia expects to make a net profit of $100,000 on the contract after expenses.

Although SAC had supposedly “raised” $1.0 million for the excavation, in fact, this amount only reflected donor commitments. Several important donors have not yet made payments as promised. Chadwick Jordan (the president of SAC) had thought that these were firm commitments, but after consulting with the law firm Lawdon Lunsell, Chadwick found out that these types of donor commitments are rarely legally enforceable.

Chadwick was deeply concerned by the possibility of the project failing. Although his family was well known in West Vancouver, there was little left of the Jordan fortune due to some past litigation and he could not make up the funding gap himself. His thoughts immediately turned to his lover, Angela Boseman. Chadwick and Angela have been having a secret affair for almost a year and Chadwick thought that he could convince her to help out SAC. Since beginning of their affair, Angela has been serving as the volunteer executive director of SAC. The Boseman family is also very wealthy. Chadwick thought that since major donors payments were forthcoming, if he could find a way to fund the project until donor funds were received later in the spring, everything would be fine. All he needed was for Angela to guarantee a bank loan to SAC.

On Valentine’s Day at the West Vancouver Union Club where most of West Vancouver’s political elite frequented, Chadwick told Angela about the problems with the donors and how that “if you truly care for me” she would help him out. Angela did not like the idea of acting as SAC’s guarantor but Chadwick said the bank would never look to her for payment because SAC would be receiving the donor money soon. When Angela said she did not think it was a good idea because her husband would not like the idea, Chadwick said it would be even worse if the project failed and “everything including our affair became public.” This statement surprised Angela. Knowing how unpredictable and vindictive Chadwick could be, and not wanting their secret to come out, she reluctantly agreed that she would co-sign on the loan.

The next day, Chadwick and Angela went to the Winston Bank where they met with Florence Freeman, the bank manager. Angela told Florence (who has been Angela’s banker for the past ten years and is also a member of the Union Club) that, in light of SAC’s short-term funding gap and the importance she placed on her volunteer leadership of SAC, that, of course, the Boseman family, as a leading West Vancouver family, would stand behind SAC. Angela confirmed that she was willing to provide a personal guarantee to the bank for $250,000 for the SAC loan. Florence certainly had no worries about the ability of Angela to pay out on the guarantee given the Boseman family fortune and her knowledge of Angela’s financial situation.

Under the terms of the loan agreement, Winston Bank would loan SAC $250,000 on May 1, 2017, with a full repayment on August 1, 2017. As Chadwick explained to Florence, this would allow SAC to make its first instalment payment to Nakia under the excavation contract and then repay the bank when it received donor payments.

In the February 21, 2017 edition of the West Vancouver Coogler, an online local gossip blog, it
was reported that Chadwick Jordan and Angela Boseman had been seen in the backrooms of the Union Club in a very compromising position. This story confirmed what had essentially been an open secret—everyone knew that Chadwick and Angela were having an affair—but no one spoke of it publicly, until now that is. With the publication of the affair, however, everyone felt entitled to react and shame, particularly given Chadwick and Angela’s spouses who were both well-known politicians. Being able to openly discuss the sordid details of the affair became the talk of the Union Club.

The scandal soon had a ripple effect. Major donors that Chadwick had been counting on to make payments in spring and summer 2017 stated that they were cancelling their commitments and would no longer be associated with SAC. On February 27, a very embarrassed Angela met with Florence at Winston Bank to tell her that she would not be honouring her personal guarantee for the $250,000 loan.

In early April 2017, SAC receives more bad news. Nakia discovers several of the pipes needing to be removed in order to fully access the site were constructed with harmful asbestos cement. Asbestos contamination experts were brought in and advised that it would cost at least $200,000 to safely remove and dispose of the asbestos laden concrete.

**Question One (18 Marks, 27 Minutes)**

Florence Freeman of Winston Bank has come to you for advice. Under the loan agreement with SAC, the bank is obligated to transfer SAC $250,000 on May 1, 2017 provided the bank has an enforceable personal guarantee for the $250,000 loan to SAC. You should assume that the guarantee provided by Angela was provided under seal and meets all the requisite formalities for a sealed document, thus, on its face, the guarantee would appear to be enforceable. Since Winston Bank is only required to make the loan to SAC provided the guarantee is enforceable, please advise Florence whether Angela Boseman’s guarantee to the bank is enforceable.

**Question Two (20 Marks, 30 Minutes)**

The contract between SAC and Nakia does not address what happens in the event contaminated materials are found during the excavation. The contract simply provides for the excavation in accordance with the WIEP, which in turn calls for the removal and disposal of the concrete pipes that are blocking the excavation. The geophysicists and environmental engineers had relied on old planning documents in the municipal archives, which specified the dimensions of the concrete pipe that had been installed in the late 1940’s. No one, including the geophysicists and engineers, had any reason to think that the concrete pipes used on Wakanda Island contained asbestos because such pipe was not used in British Columbia in the 1940s or 1950s. It turns out that the pipes had randomly been obtained by a previous owner as war surplus from the Canadian Royal Navy base in Kitsilano in 1947. On April 8, 2017, SAC takes the position that Nakia is required to remove and dispose of the pipe under the construction contract, as agreed under the contract. **Must Nakia complete the restoration work including the removal and disposal of the asbestos pipes? Please advise Nakia.**
Question Three (18 Marks, 27 Minutes)

Assuming that the District purchases the land, SAC fails to complete the excavation, and that SAC is in breach of its contractual obligation to the District to complete the excavation, what damages can the District claim against SAC?

Question Four (15 Marks, 22 Minutes)

The land remains unexcavated for the next several months. With unexpected help from an anonymous donor, the District decides it has enough funds to continue on with the Wakanda Island project, this time by hiring an excavation team directly. They have asked you to advise them on their invitation for tenders for the extraction work on Wakanda Island. The District is very concerned about liability, particularly if it decides to cancel the project or if it wants to choose an excavation team whose tender does not meet all the technical requirements of the tender. The District plans to use the following language in its tender documentation: “Except as expressly and specifically permitted in these Instructions to Proponents, no Proponent shall have any claim for compensation of any kind whatsoever, as a result of participating in this Request for Proposals, and by submitting a Proposal each Proponent shall be deemed to have agreed that it has no claim.” The District asks for your advice on this provision. What would you advise?

Question Five (14 Marks, 21 Minutes)

The District has now chosen its team, Ramonda Excavation Experts Inc. (Ramonda). Ramonda is thrilled as they spent a considerable amount of money preparing a competitive bid, and this contract with the District will mean all the difference in the future of their business. The contract between the District and Ramonda is signed December 2017 to excavate the site for $650,000, which includes the removal of the asbestos pipes. Excavation is to begin in the spring. Ramonda hires ten new employees in anticipation of the project. On March 15, 2018, a week before the excavation is scheduled to begin, the BC Government passes new environmental health and safety regulations that prohibit the removal of materials containing asbestos, where those materials have been underground for more than 20 years. The regulation was enacted because environmental scientists have agreed that keeping such materials buried and undisturbed poses the least risk to human and environmental health. Is the contract between the District and Ramonda enforceable? Please advise Ramonda on her legal options.

Question Six (15 Marks, 22 Minutes)

Chadwick has had a string of bad luck. He decides that wearing his lucky suit may help him get back on track. He drops off his suit to be dry cleaned at Marvel’s shop, telling Marvel cheerily, “This is my lucky suit – make sure you take care of it!” with a smile. Chadwick receives a piece of paper with the name of the shop and the pickup date printed on the front. On the back, the paper says: “Subject to conditions, see website.” There are no other signs or information in the shop. Chadwick looks at the ticket, sees the pickup date for his suit and puts it into his pocket. Marvel loses the suit and relies on the conditions posted on the store website, stating that all
liability and claims for damage are limited to $50. **What is Chadwick’s best legal argument if he wants to claim for the full cost of the suit? Please advise him on his legal options.**

**Epilogue:**

A month later, Chadwick discovers a very valuable metal, vibranium, buried under his house. He donates a significant portion to SAC, who went on to help preserve many archaeological sites that held the beautiful histories of First Nations peoples on Wakanda Island.

Have a great summer.

- END OF EXAMINATION -