



NATIONAL COMMITTEE ON ACCREDITATION

SAMPLE EXAMINATION

CONTRACTS LAW

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Contracts Law Sample Examination

Question 1 (25%)

Harvey Smith builds condominiums. He sells units in those condominiums off the plans. In the standard form agreement he uses in contracts for the sale of units, the following clauses appear:

[The builder] may vary or modify the plans and specifications pertaining to the Condominium and the Unit.

This document constitutes the entire agreement between the parties and the purchaser warrants that the [builder] has made no representations, oral or written, that add to, vary or contradict the terms of this agreement.

Mary Jones sees an advertisement for one of Harvey's condominiums in her local newspaper and she asks to see a prospectus. In the prospectus (and this is repeated in the contract), the specifications call for each unit to have twenty-three windows of a certain size. In her discussions with Harvey, Mary conveys to him her particular pleasure that the units will have so many large windows. She loves a bright living space with plenty of light and gets depressed easily in rooms with no windows.

After thinking about it overnight, Mary calls Harvey and tells him that she will purchase one of the units. Harvey invites her to come to his office and sign a contract. He tells her that he uses a standard form contract that has been carefully vetted by a lawyer specializing in condominium building contracts, a true statement. On the basis of that, Mary decides that she does not need to consult a lawyer and goes to Harvey's office to sign the contract. It is a twelve page document. It is in the same typeface as this exam. Harvey says that she should feel free to take her time to go through the contract if she wishes, though reiterating his earlier statement that it has been vetted by a lawyer. Mary decides not to bother reading the contract through but asks Harvey just to go over with her the clauses relating to matters such as the windows, the flooring, and the plumbing. This he does, and Mary is satisfied. She then signs the contract.

Six months later, Harvey calls to tell Mary that her unit is ready for occupation. When she goes to inspect the unit, to her horror, she discovers that instead of twenty-three windows, the unit has only fourteen and that these are two thirds the size of the original window specifications. She immediately tells Harvey that she will not be carrying through with the deal and asks him to return the substantial partial payment that she has already made. Harvey retorts that the contract gives him the power to vary the specifications in the contract and that cost considerations forced him to do so in this case.

Mary storms out and goes immediately to her lawyer with the contract. You are articling with Mary's lawyer and he asks you for an opinion on whether she has any basis for repudiating the contract or, failing that, claiming damages from the builder. Provide him with that opinion and, in discussing damages, deal with the principles on which damages would be calculated in a case such as this.

Question 2 (25%)

The City of Winnipeg issues a Request for Proposals (or call for tenders) (“RFP”) for the provision of all the City’s polling or public opinion sampling requirements over the next three years.

The RFP contains no provision with respect to the amount of service that will be required under the contract. Bidding is conducted on the basis of the price quoted by the bidders for two sample but hypothetical polling tasks. With respect to work under the RFP, the contract provides that the successful bidder will be the City’s sole provider of polling services for the five year period, subject to the negotiation of contracts for specific tasks by reference to the prices quoted by the successful bidder for completion of the sample, hypothetical tasks. All bidders are required to submit a bid deposit of \$10,000, and the RFP specifically provides that a bid once made is irrevocable. The RFP also contains provisions to the effect that the City is not obliged to accept the lowest or any bid and also provides that the City has the option to accept non-conforming bids.

Hazen Polling Services (“Hazen”) submits a bid in response to the RFP and pays the requisite bid deposit. However, two days later, it discovers that it has just obtained a lucrative contract for all of the Liberal Party of Canada’s polling requirements for the next five years. Given the uncertainty as to how much work the City of Winnipeg contract might entail and resource limitations, Hazen decides to withdraw from participation in that RFP and notifies the City’s Procurement Department.

You an articling student with the City’s legal department and the City Solicitor asks you for an opinion on whether the City can hold Hazen to its bid and, if not, whether Hazen can seek the return of its bid deposit. Provide that opinion identifying any possible impediments to the City enforcing either of those rights, given the terms of the RFP and general principles governing tendering on contracts.

Question 3 (25%)

Elena Richards, who has recently arrived in Canada, enters into a contract to provide housekeeping services on a live-in basis for Maud White, a wealthy Canadian industrialist. The contract is for two years and includes a list of the tasks that Elena will perform, including cooking meals for Maud and her guests. The wages, though Elena does not know this at the time of entering the contract, are about 25% below the average for such work in the City in which Maud lives.

After working for Maud for two months, Elena learns of the wages that others in her position are earning. She bides her time in approaching Maud about this. Then, on the morning of a Saturday, on which Maud is having a dinner party for other industrialists which Elena will be preparing, Elena confronts Maud with this fact. She also states that unless her wages are increased immediately, she will be quitting on the spot and irrespective of the dinner party.

Maud is frantic. Housekeepers are in short supply and she also knows that it is too late to secure a replacement chef for that night’s occasion. As a consequence, she irritably agrees to Elena’s demands and says that she will increase her wages by 33% per cent. Elena is satisfied and goes about her work.

When her monthly pay day comes around, Elena notices however that the cheque is still for the originally agreed upon amount. When confronted, Maud apologizes stating that it was an oversight and that she will give Elena the balance in her next wage cheque.

A further month passes and again Maud pays Elena at the old rate but this time tells Elena that she will not be getting the increase. "You were wicked to take advantage of my situation the day of the dinner party and have no basis for holding me to that agreement". Elena storms out vowing never to return. Immediately, she consults the senior partner of the law firm at which you are articling.

The senior partner has now asked you to provide her with an opinion on whether Elena has a claim for the extra wages for the past two months and possibly also a claim for damages based on the remaining time under her two year contract with Maud. Provide that advice.

Question 4 (25%)

Maud White, the wealthy Canadian industrialist has decided that it is time for her elderly mother to leave the Vancouver home in which she has lived for the past 55 years and move into a smaller condominium unit. After securing her mother's approval to this course of action, she goes on the search for suitable condominium units and eventually finds one overlooking English Bay. It has spectacular views and seems suitable in every other respect.

When Maud tells her mother about this, her mother is just delighted, and more so after she sees the unit. Maud therefore purchases the condominium for her mother and tells the current owners, the Smiths, that this is what she is doing. As a matter of mutual advantage, however, the completion of the transaction is put off for six months. During the waiting period, Maud's mother becomes increasingly attached emotionally to the idea of moving into the condominium.

Three days before the completion of the transaction, the Smiths call Maud and tell her they will not be going through with the deal. Mr. Smith's employment transfer to Toronto has fallen through and they will be remaining in Vancouver. Maud is totally dismayed by this and her mother more so. Indeed, the mother's mental anguish is such that the day after hearing the news, she has to be hospitalized for clinical depression.

Maud approaches the senior partner of the law firm at which you are articling for advice. Is there any way that she can secure specific performance of the contract and, if not, damages for breach as well as her mother's disappointment and mental state? She tells the senior partner that she has found another unit in a neighbouring condominium for \$45,000 more. However, the unit is two floors lower and does not have quite the same view of English Bay. Maud is also unsure of whether her mother would be happy with anything other than the Smiths' unit.

Your senior partner asks you for an opinion on the questions raised by Maud - her entitlement to specific performance and, in the alternative, damages including something for her mother's suffering from the actions of the Smiths. Provide that advice.