

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

FINAL EXAMINATION – APRIL 2021

LAW 436

Restitution – Unjust Enrichment

Assistant Professor Samuel Beswick

TOTAL MARKS: 80

(8:50 AM Pacific Daylight Time) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM Pacific Daylight Time) **WRITING (INCLUSIVE OF READING) TIME ALLOWED:
3 HOURS**

8:50-9:00 AM Preparation Time (Exam writing not permitted) – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

9:00 AM Exam Writing Time – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

12:00 PM Exam Upload Time – Submit your exam in Exemplify no later than 12:00 PM.

PROFESSOR BESWICK'S INSTRUCTIONS

This exam has two sections:

Section 1 is a problem question. You must answer this question. It is worth 40 marks.

Section 2 contains six essay questions. Answer two questions only from this section. Identify at the beginning of your answer the question letter that you are answering. Each question is worth 20 marks each.

This exam is worth 80% of your final grade. The remaining 20% is the class participation grade.

Your answers do not need to go beyond the content that we covered in class. All the best!

LAW 436, Spring 2021

SECTION 1

You must **answer this question**. It is worth 40 marks.

The Provincial Government of British Columbia owns a condominium complex in Kitsilano called Pineapple Plaza, which it operates as affordable social housing for local residents in need. Sandy Cheeks is one of the long-term residents of Pineapple Plaza. She rents #401 Pineapple Plaza from the Province for \$1,500 per month.

In January 2019, Sandy's minimum wage job hours were cut back. She found it increasingly difficult to pay her bills and so Sandy planned to move in with her sister who owns a home in East Vancouver. In order to help with her finances, Sandy wanted to sublet her apartment. She checked her rental agreement and saw it said nothing about subletting. In order to ensure she wouldn't be doing anything wrong, Sandy called the Province's Social Housing Department Helpline and explained her situation and her plan to the helpline operator. The operator, quite imprudently, told Sandy that if her rental agreement said nothing about subletting then it was probably fine to do so.

On 1 February 2019, Sandy agreed to sublet #401 Pineapple Plaza to Pearl Krabs, a student at the Allard School of Law. They agreed the rent would be \$2,500 per month and that Pearl would move in on 30 February 2019. They also agreed that Pearl would pay the first month's rent in advance that same day, along with a deposit of \$1,250. They downloaded a standard-form sublet agreement that they found on the internet, filled it in with these terms, and signed it. Pearl then executed an Interac payment to Sandy in the amount of **\$3,750**.

The same day that Sandy received Pearl's payment, Sandy transferred **\$2,000** to the Province to pay off outstanding "NEIGHBOUR DISRUPTION FINES" that the Province in its capacity as building manager had levied against Sandy over the past several years for walking too loudly in her apartment in a manner that disrupted her downstairs neighbour, Squidward Tentacles. Sandy used another **\$900** to pay off credit card bills. Finally, since she had found a solution to her financial troubles, Sandy decided to treat herself and her sister with a special high tea brunch at the Fairmont Hotel the following week.

The morning of the brunch, Sandy had slept in. She frantically dressed and had to rush to make it to her reservation on time. As she opened the door to leave her apartment, Sandy encountered a man in overalls with some tools standing in her doorway. Sandy

thought he was there to test the fire alarms (having seen a building notice that fire alarm testing would be happening that day). The man started to introduce himself, but Sandy cut him off, saying, “Yes, I know, you can come in and do your thing. I have to rush out, I’m late. Close the door when you’re finished. Thanks. Bye!”

The man in Sandy’s doorway was not, however, there to test the fire alarms. He was Patrick Star, of Pat’s Furniture Refurbishment. He was at Pineapple Plaza to refurbish the tatty old rocking chair of Squidward Tentacles. Unfortunately, Pat the furniture refurbisher had gone to the wrong floor and knocked on #401 instead of #301. When Sandy let him in, Pat had assumed he was in the right place, particularly since he could see Sandy’s beloved old scratched-up wooden rocking chair in the living room. With Sandy out to brunch, Pat got to work fixing the chips and scratches, sanding old paint off the wood, and applying a new coat of mahogany stain. After four hours, Pat left an invoice on the table for **\$600** for his services and closed the door behind him.

Sandy enjoyed a delightful high tea with her sister for which Sandy paid the **\$200** dining bill. Upon returning home, Sandy discovered her rocking chair was looking impressively brand new and there was an invoice addressed to Squidward Tentacles on her table in the amount of \$600.

Meanwhile, that same day Pearl attended a property law class that shocked her. She was learning about the *British Columbia Social Housing Act* when she discovered section 123 of the Act, which provides:

British Columbia Social Housing Act

123 Condominiums owned by the Province of British Columbia may not be sublet by tenants to any person, and any such purported sublet agreements are void and of no effect.

Realising that Pineapple Plaza was a “condominium owned by the Province of British Columbia”, and that her arrangement with Sandy infringed section 123, Pearl called Sandy to explain that she would not be able to move into #401 Pineapple Plaza after all. She asked Sandy to return her \$3,750.

Sandy did not return any money to Pearl and she did not pay Pat’s invoice.

Last month, the Court of Appeal of British Columbia, in an unrelated case, held that the Province had no power to issue “NEIGHBOUR DISRUPTION FINES” and that such fines were *ultra vires* and void.

You are a judges' clerk and these matters have recently come before your judge. Your judge asks you to advise **whether Sandy is entitled to restitution from the Province, and whether Pat and Pearl are entitled to restitution from Sandy. Identify in your advice whether any of the parties have plausible defences.**

SECTION 2

Answer **two questions only** from this section. Identify at the beginning of your answer the question letter that you are answering. Each question is worth 20 marks each.

- a. Why should or shouldn't we choose the "middle path" (as Justice McLachlin described it in *Peel*: ¶8) when assessing the proper scope of the law of unjust enrichment in Canada?
- b. Professor Lionel Smith concludes: "The juristic reasons approach is not inherently better than reasons for restitution, but nor is it worse." ¶349. Do you agree?
- c. To what extent is a plaintiff's entitlement in Canadian unjust enrichment "capped at the amount of his loss if this is lower than the amount of the defendant's gain" (as Professor Charles Mitchell intimates: ¶401)?
- d. In *ILWU Canada Local 502 v Ford*, 2016 BCCA 226, [24], Garson JA said, "it might be argued that money had and received has been subsumed in the law of unjust enrichment." Has it been, and should it be, subsumed?
- e. Should courts be amenable to unjust enrichment plaintiffs "side-stepping" limitation periods (an issue raised in *BNSF Railway*: ¶201) in the interests of justice?
- f. A waiter mistakenly brings you some garlic bread in a restaurant that was meant for the next table. You think it's a free starter and eat it. Do you have to pay for it and, if so, how much?

END OF EXAMINATION