

General Moot tryout problem for 2022-2023

The Coca-Cola Company (Coke) offers its products to a wide range of buyers, from national grocery chains like Loblaws to local neighbourhood corner stores like the one run by Henry Dillard, the Tasty Corner (TC).

To simplify its business, Coke uses pre-printed form contracts that contain its standard terms. One of these terms, clause 12, is a contract termination clause allowing Coke to terminate the agreement, with 30 days' notice, for any reason. If the other party wishes to contest the termination, it may do so only via arbitration in the province or state where the complaining party resides. Clause 12 explains that Coke will cover reasonable arbitration costs, but only after the hearing and only after the arbitrator releases the decision to the parties.

The Pepsi-Cola Company has similar products to Coke but charges slightly more per product. Its contracts, however, do not include a term similar to clause 12 of the Coke contract.

Henry Dillard finally decided on Coke because the price point per product offered him a more considerable profit margin, and he preferred Coke products. But before Henry Dillard signed the contract with Coke to receive 500 bottles of 600ml Coca-Cola bottles, 400 bottles of Dasani 500ml plain water bottles, and 200 bottles of 600ml Sprite bottles, he reached out to a local family law firm, just steps from TC. He met with lawyer Tory Martin, who often shopped at TC to pick up coffee and treats for her office.

The meeting between Henry Dillard and Tory Martin took approximately one hour. During the meeting, Tory went over the contract and explained its terms to Henry. Tory charged \$300 for the consultation and explanations. Tory conceded to Henry that the contract terms look straightforward but that she's not exactly a commercial contracts specialist. Nevertheless, Henry was satisfied with the advice to sign the contract.

The signing meeting between Henry and a Coke representative was cordial. Henry forthrightly declared (perhaps to appear like an experienced businessperson) that he looked over the contract with his lawyer and anticipated a fruitful relationship with Coke. Feeling confident enough to sign the contract (and knowing that a corner store that doesn't carry Coca-Cola products is unusual), Henry Dillard signed the contract with Coke on TC's behalf.

Three months into the contract, Coke notifies TC that it is terminating the contract, effective 35 days from TC receiving the notice of termination. Although Coke offered no reason for the termination in the notice, Henry called Coke and was told that the reason Coke was terminating the agreement was that another corner store was opening down the street from TC. This corner store forms part of an extensive network of corner stores (LNC) across the province and insists that its stores have exclusive rights to sell Coke products within geographical areas. Unfortunately, due to TC's proximity to the new store, Coke could not sell to both, so chose to sell only to the new store. A sound, if not cold, business decision.

Henry Dillard is friends with a few other independently owned neighbourhood corner stores that have all received similar termination notices from Coke. It turns out LNC is making a push to “corner” the neighbourhood corner store business. Henry wants to band together with these other victims (strength in numbers) to form a class action against Coke but remembers clause 12 in his contract.

Henry read about a recent decision from Canada’s Supreme Court in *Uber v Heller*, 2020 SCC 16, and wonders if the majority's opinion, which relied on unconscionability, might work to his advantage to strike out clause 12.

Instructions: Please argue for or against whether clause 12 of the contract is unconscionable, relying on the opinion in *Uber v Heller*.