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THIS EXAMINATION CONSISTS OF 8 PAGES (INCLUDING THIS PAGE)

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**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION – APRIL 2019

**LAW 419
INDIVIDUAL EMPLOYMENT LAW**

Professors McLean & Mitha

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

- NOTE:
1. This is an open book examination.
 2. ANSWER ALL QUESTIONS.
 3. Assume the laws of British Columbia and the federal laws of Canada apply in all circumstances.

THIS EXAMINATION CONSISTS OF 8 QUESTIONS

Question 1 (5 points)

Care-Less Rentals operates a car rental business that operates a rental kiosk and lot at the Vancouver International Airport. The kiosk and lot is open 24 hours a day. Employees who work at the counter frequently work alone during the night, and Care-Less is concerned about employee safety and the security of the car lot. There have also been reports of employees sleeping behind the kiosk during these overnight shifts.

To address these concerns, Care-Less wishes to install video surveillance to monitor the kiosk and car lot.

- (a) **What factors should Care-Less consider in deciding whether and how best to implement surveillance in the workplace to ensure it is privacy compliant?**

Question 2 (20 points)

Elmer Flax was hired by Great Grain Inc. ("GGI") in January of 2002 to service as its Vice-President of Marketing and Social Engagement. In this role, Elmer reported directly to the President of GGI and had approximately 30 direct reports, primarily marketing managers across Canada and in other countries.

While Elmer signed an offer letter when he started in 2002, it was silent on what, if anything, he would receive if his employment was terminated without cause.

GGI is Canada's largest exporter of grain products Elmer travelled almost weekly to meet with potential clients and advertising agencies in different countries. He was also responsible for GGI's social media feeds, including hosting a weekly podcast and YouTube video series called "Flax on Grains" which, bizarrely, received tens of thousands of views each week.



In 2018, Elmer was 58 years old and he received the following compensation:

- base salary of \$300,000.00;
- extended medical and dental benefits; and
- use of a company vehicle.

In March of 2018, GGI was acquired by Absorbil Corporation, a company based in the United Kingdom. As part of the acquisition, Elmer, along with every other senior executive, was provided with a Long-Term Incentive Plan ("LTIP") which provided, in part:

3.01 PAYMENT OF INCENTIVE: Provided the Employee is not terminated by GGI on or before March 1, 2019, GGI shall pay the Employee, less any appropriate withholdings, the amount of \$450,000.00, which payment shall be made by March 31, 2019.

In January of 2019, Elmer was called to a meeting with the President of GGI. He was told that the Board of Directors of GGI had decided make several changes to the marketing department, effective February 1, 2019. These changes included:

- hiring a Canadian Director of Marketing to oversee all marketing functions within Canada; and
- removing Elmer from the "Flax on Grains" video series and hiring Brandee Barley and Geoff Wheatling, two social media influencers, to host a new YouTube series called "The More You Grow: Great Grains."

Elmer was upset at these changes and met with the President but was told he could "Like it or lump it!" Beginning in February, Elmer was required to stop doing social media work for the company, including the YouTube videos. He received countless emails of support but, despite his protests to the President, GGI would not change its mind.

On February 15, 2019, Elmer could take no more. He packed up his personal effects, left the office, and sent an email to the President stating that he believed he had been terminated by the company and demanded compensation. The President responded on February 18, 2019, telling Elmer that GGI had accepted his resignation, effective February 15, 2019 and that no monies were payable.

Elmer comes to you seeking advice about his potential claims against GGI.

- (a) Does Elmer have a claim for damages against GGI? Why or why not? (10 points)**
- (b) Assuming Elmer has a claim for damages, give your opinion on his entitlement to reasonable notice and what compensation he could likely recover during the reasonable notice period. (10 points)**

Question 3 (5 points)

Gus Stamping has worked as a mail carrier for 3 years with Canada Post. Last month, due to the fact people no longer send letters, Gus was terminated without cause on April 1, 2019. Gus was devastated, as he was the 4th generation in his family to have worked as a mail carrier.

- (a) What, if any, remedies does Gus have under statute? Explain your answer.**

Question 4 (10 points)

In 2009, Tina Greenleaf commenced employment as a warehouse supervisor with Bark Bites Ltd., an organic dog food company. Bark Bites produces snacks made, in part, from discarded grass clippings. Tina now makes \$53,000.00 per year, lives in Coquitlam and is 35 years old.

After the 2018 drought and wildfire season, Bark Bites could not secure enough grass clippings in British Columbia to manufacture products. On January 31, 2019, Bark Bites advised Tina and 54 other employees at its Coquitlam warehouse that their employment was being terminated on a without cause basis, effective April 1, 2019.

Tina was devastated but, on April 4, 2019, received a call from her Uncle, who manages a sod farm in Chilliwack. He offered Tina full-time employment starting immediately at an annual salary of \$50,000.00. Tina considered the offer but, as she hated driving on highways, told her Uncle she was going to pursue a claim for wrongful dismissal against Bark Bites.

- (a) What, if any, damages is Tina entitled to receive under statute?**
- (b) Assuming Tina is entitled to common law damages for wrongful dismissal, has her conduct impacted the amount of damages she could receive? Why or why not?**

Question 5 (15 points)

Gus Phillip works as a gas station attendant at Acme Fuels. He has been an exemplary employee and worked without issue until November of 2018. At that time, he developed an allergy to gasoline: if gasoline came in contact with his skin, his skin would blister and, by the end of a shift, the smell of gasoline would give him a painful headache.

On November 30, 2018, Gus visited his doctor and obtained a letter, confirming that he was required to wear gloves at all times at work and that he should be allowed to take a 15 minute break every 2 hours to leave the workplace and get “fresh air” to avoid headaches. Gus provided the letter to his boss, Mr. Slick.

On receiving the letter on December 1, 2018, Mr. Slick, met with Gus and told him that gloves made Gus look “creepy” and clashed with the ACME company uniform. He also told Gus there was no way Gus could take a 15 minute break every 2 hours, as that would leave only one other employee in the gas station for that time and customers might be delayed in completing their purchases.

Gus was upset and told his co-workers about Mr. Slick’s response later that day. Unfortunately, his co-workers found Gus’ allergies and use of gloves rather comical, and that evening, they wrote a song called “Gloved Up Gus” which mocked him. The co-workers posted the song to Spotify.

Gus learned of the song on December 3, 2018 and again met with Mr. Slick. When Gus entered the office, he heard the song playing on Mr. Slick’s computer. Mr. Slick turned to Gus and said “This is a great song, it’s really funny!” Gus asked Mr. Slick if he was going to do anything about the recording and his boss laughed again and said “It’s just a silly joke. The only thing I’m going to do is play it again!” Gus told his boss he was feeling sick and left the office.

On December 4, 2018, Gus went to his doctor who confirmed that he should be placed off work for 2 weeks due to stress and his allergies.

On December 5, 2018, Mr. Slick emailed Gus and told him that unless he was at work the next day, the company would be terminating him for just cause. Gus was too upset to respond and ignored the email.

On December 7, 2018, Mr. Slick emailed Gus again. The email confirmed that Gus’ employment had been terminated for just cause. Mr. Slick also attached a video in which Mr. Slick and Gus’ co-workers were dancing in the workplace and singing “Gloved Up Gus”. The video ended with Mr. Slick saying “See you later Gloved Up Gus!”

On December 8, 2018, Gus went back to his family doctor. His doctor diagnosed Gus with depression caused, in part, by the video sent to him by Mr. Slick.

Until last week, Gus had not intended on seeking any redress from ACME. But on April 8, 2019, he bumped into an old high school friend who had just taken an exhilarating employment law class at an unnamed Canadian law school. The friend suggested Gus obtain legal advice.

- (a) Does Gus have any claim against his employer under the British Columbia *Human Rights Code*? Explain why or why not. (5 points)**
- (b) Does Gus have any claim against his employer for wrongful dismissal under the common law? Explain why or why not. (5 points)**

- (c) Assuming Gus does have a claim for wrongful dismissal, what damages, if any, could Gus recover under the common law. (5 points)

Question 6 (20 points)

Amber Leight has been offered employment in Vancouver with Western Traffic Systems, as a Research and Design Assistant. She will be responsible for designing the company's next generation of "smart" street signs for use across Canada.

Amber started work on April 1, 2019. On April 4, 2019, the company gave her an employment agreement which contained the following terms:

Welcome to the Western Traffic Systems family! While we hate formalities, before we can say "Go!" on your employment, we need you to read and Sign Off on the following terms and conditions of employment:

1. You shall receive a monthly salary of \$15,000.00. We deposit this on the 30th of each month to your bank account, less deductions.

2. You are also eligible to participate in our profit sharing plan. The plan provides that you may receive up to 5 percent of company profits, as determined by the company in its sole discretion. So work hard and watch the money flow like traffic!

4. As a salaried employee, you are not entitled to overtime. You may be required to work in excess of 40 hours per week, depending on workload.

5. In the summer months, we have "Install Weeks" where we perform the majority of our sign installations. During those weeks, you will be expected to work the following schedule:

Monday – 9:00 am to 4:00 pm
Tuesday – 9:00 am to 4:00 pm
Wednesday – 8:00 am to 2:00 pm
Thursday – 8:00 am to 2:00 pm
Friday – 8:00 am to 4:00 pm
Saturday – 8:00 am to 6:00 pm
Sunday – 8:00 am to 6:00 pm

6. If "Install Weeks" are scheduled outside of the Lower Mainland, you will be reimbursed for up to 50% of your daily expenses.

7. Given our busy summer schedule, vacations may only be taken in December or January. You will be entitled to receive 2 weeks' vacation after completing one year of employment.

8. We are supportive of our employees' families – that's why we give you 5 days a year to cover any sickness, family responsibility or, heaven forbid, bereavement

leave. If you require additional days beyond that, you will have to obtain the approval of the President.

9. Should you become pregnant, we will provide you with up to 6 months off after the birth of your child, with pay. After six months, you are required to return to work, otherwise you agree repay any monies received while you were on maternity leave.

10. You agree that should you leave our employment for any reason, you will not work in the street sign business for 12 months for any company based in British Columbia, Alberta, Saskatchewan or Manitoba.

11. Companies like ours are constantly changing. You agree that we may have to change your job duties at any time and, should we go down that road, you will not yield but give us the green light to make those changes.

12. Nobody likes to think about firing an employee, but if we have to send you down the road, you agree that we may terminate your employment:

(a) during the first 4 months of your employment, without notice or pay in lieu of notice;

(b) at any time, for just cause; or

(c) at any time after the first 4 months of your employment, without just cause on providing you with 1 weeks' notice for each completed year of employment, to a maximum of 7 weeks.

Time to get moving - please sign and return a copy of this agreement to us by close of business today!

(a) Advise Amber of any legal issues or concerns raised by the terms of the contract which she should be aware. Where appropriate, identify legislative or common law support for your advice. (20 points)

Question 7 (10 points)

Ima Grape was hired by Vernon Fresh Fruit Inc., a manufacturer of fruit juices, in 1989 and worked as the Plant Manager. Ima and the founder of Vernon Fresh Fruit had a "handshake agreement" – Ima did not have a written contract of employment.

On March 1, 2019, Ima was told that all of the assets of Vernon Fresh Fruit were going to be sold to Big Juice Company, based in Toronto, Ontario on March 31, 2019.

On March 18, 2019, Ima attended work and was taken to a meeting room. She met with a Mr. Peel of Big Juice Company and was presented with a new employment agreement with Big Juice Company, effective April 1, 2019.

The agreement promised her a 10% raise in salary, but included a 3 month probationary clause and only 1 week's annual vacation. She was told to think about the offer and get back to Mr. Peel by March 21, 2019.

Ima calls you on March 22, 2019 seeking advice.

- (a) What issues arise from the asset sale to Big Juice? (5 points)**
- (b) If Ima accepts employment with Big Juice but is fired 2 months later, what remedies, if any, can she pursue against Big Juice? (5 points)**

Question 8 (15 points)

Karen Phreefall is a professional parachute instructor. In 2013, she responded to an advertisement on WorkHereNow.Com for qualified parachute instructors to provide training to students at the Gravity Matters School of Parachuting in Richmond, British Columbia.

Commencing in August of 2013, Karen began providing parachute lessons to students for a flat rate of \$500 per student. Each student receives 4 hours of training and a one hour “flight and jump” with Karen. Karen receives payment every week remits her own income taxes. Gravity Matters is her only source of income. She uses her own parachute and computer equipment but is provided a Gravity Matters branded pick-up truck which she uses to commute to and from work and to jump sites.

Gravity Matters is a small business and does not have any formal employee manuals or policies. However, all parachute instructors in Canada, including Karen, have received training and certification from the Canadian Parachuting Association, which includes training and policies on pre-jump checklists.

In December of 2018, Karen was conducting a “flight and jump” with a student, Mark Plummet. Unfortunately, on that day, Karen had been distracted by a catchy song on Spotify called “Gloved Up Gus” and failed to check the battery level for the Automatic Activation Device (“AAD”) in Mark’s parachute container. The AAD is designed to automatically deploy a reserve parachute if it senses the main parachute has not been deployed by a certain altitude.

Mark and Karen proceeded with the “flight and jump” and, fortunately, Mark did not live up to his name and the jump concluded without incident. After the jump had ended, Dan Shoot, the owner of Gravity Matters called Karen into his office and asked her if she had checked the AAD before Mark’s jump. Karen could not actually remember, but responded “Of course, I always do that!” Dan showed her that the battery on the AAD was depleted and told Karen “I can’t believe you missed that – that’s a critical safety issue. You are done here as an instructor!”

Karen was told to pack up her belongings and leave immediately. After considering the matter over the winter, she calls you seeking counsel.

- (a) What is the proper classification of Karen’s relationship with Gravity Matters? Explain. (5 points)**
- (b) Assuming Karen was an employee, did Gravity Matters have just cause to terminate her employment? Explain. (10 points)**

END OF EXAMINATION