

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

FINAL EXAMINATION – APRIL 2020

LAW 419C.001
Individual Employment Law

Adjunct Professors McLean & Mitha

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 100

WRITING TIME ALLOWED: 3 HOURS
PREPERATION TIME ALLOWED: 10 MINUTES

Preparation Time has been given to download/print/set up for your exam once the exam has been made available online through Canvas. This time cannot be used for writing exam answers. All exam answer uploads will be monitored to ensure that typing of answers only occurred for the allotted Writing Time.

This is an open book examination, meaning that you can refer to class notes, casebooks and other class readings. The use of library books is not permitted.

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question.

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EXAM NOTES:

1. This examination consists of 7 questions.
2. ANSWER ALL QUESTIONS.
3. Assume the applicable laws of British Columbia and the federal laws of Canada apply in all circumstances.
4. COVID-19 has caused enough disruption in our lives. For purposes of this exam, disregard the pandemic in your answers.
5. Good luck. Stay Safe. Be Kind.

Question 1 (5 points)

Dee Jay has worked as the afternoon show host on CFUN radio network for the past 11 years. On March 10, 2020, Dee was fired without cause and offered 2 weeks' wages if she signs a full release. She calls you several days later and says getting her job back is the most important thing in the world, next to the ability to rock on.

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

Question 2 (20 points)

Benjamin Dover has worked as a Yoga Instructor for the past ten years and last week, was offered a senior position with Go With The Flow, a company which owns and operates Yoga Studios across the country.

Ben is scheduled to start work on May 1, 2020 and has been given a draft employment agreement. The contract reads as follows:

Welcome to Go With The Flow Ben. It's not a stretch to say we hope you have a long and rewarding career with us. Below are the terms of your employment:

1. You will hold the position of Vice-President of Yoga Course Development. You will work out of the Vancouver head office, starting on May 9, 2020.
2. The first 6 months of your employment will be a probationary period and we can terminate your employment at any time during this period without notice of pay in lieu of notice to you.
3. You will receive an wage of \$35.00 per hour. Due to summer slow-downs, you will not be paid in July and August but you will still have to be in the office. Be sure to stretch your savings accordingly.

4. As you are in a Vice-President position, your hours of work will vary greatly. However, if you work more than 45 hours in a week, you will receive overtime.
5. For sanitary reasons, you have to provide your own yoga mat and cleaning supplies should you teach any classes.
6. After 2 years of employment, you will be eligible for unpaid parental leave of 52 weeks.
7. Vacation is important – you will receive 3% vacation pay during the first 6 years of your employment. After 6 years, you will receive 5% vacation pay. If you would like to take time off, we will review this with you after 2 years of employment.
8. Given the Christmas season can be one of our busiest times, employees are required to work holiday hours from December 15-24, 2020. Expect to be in the office from 8:00 am to 8:00 p.m. on each of those days.
9. You agree that should you leave our employment for any reason, you will not contact any clients of the company for any reason, for at least 12 months after your employment ends.
10. If you wish to leave, we require 6 months advance notice. Yogis are hard to find.
11. Yoga students can be a flakey bunch. If you come to work but a class is cancelled, you will not be paid for the “down time” between classes. You only get paid when you are actually working ☺.
12. Our founder observes “Yogic Freedom Day” which we take as a paid holiday on July 20 each year. As a result, we don’t take Canada Day off and it’s a work day.
14. At any time, after 6 months of employment, we can fire you for any reason by paying you 2 weeks’ wages for each completed year of employment, to a maximum of 6 weeks wages.

As our President is travelling, no rush with this contract – so long as you get it to us within a week of your starting work it’s all good.

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

Question 3 (10 points)

Bud Hygai had worked with Beyond Beleaf since November of 2018 as a sales associate. Beyond Beleaf is a licensed distributor of marijuana. In January of 2019, Bud was diagnosed with a hearing disorder and, by July of 2019, he was using hearing aids.

In September of 2019, his boss told him that having an employee who appeared “deaf” was bad for the brand and terminated his employment. Bud received \$2,000 in gift cards from his boss and nothing else. Bud took the gift cards but did not sign any release.

(a) What, if any, remedies is Bud entitled to receive under statute?

Question 4 (20 points)

Since 1995, Phil Landerer has worked as the night janitor at Kerry's Berries, a fruit packaging plant near Kelowna, British Columbia. Kerry's Berries is owned by Kerry Wrasp, the current CEO of the company and a married woman.

Phil graduated from grade 11 and after a series of failed musical pursuits, managed to get a job with Kerry's Berries. He makes \$45,000.00 per year. In contrast, Kerry has been the CEO for 15 years and earned over \$300,000.00 in 2019. There are only 3 other fruit packing plants in the province.

In late 2018, Phil was cleaning the executive boardroom when Kerry entered the room. She had been working late pricing strawberry futures. Kerry and Phil began to talk and in short order, Phil found himself taken with Kerry's knowledge of exotic fruits. Similarly, Kerry discovered Phil had previously played in a grunge band in Toronto and had written the hit single “Sweet Cherry” which, incredibly, Kerry's father had used in a radio jingle in 1987. One thing led to another and Phil and Kerry began a sexual relationship.

By February of 2019, Phil was upset that Kerry would not even consider leaving her spouse. To placate Phil, Kerry offered him a \$5,000.00 a year raise during the company's annual performance review process. This kept Phil happy for awhile but by September of 2019, he was growing more frustrated. Matters came to a head on November 13, 2019, when Phil barged into Kerry's office and demanded that she leave her spouse immediately. Unfortunately, Kerry was a conference call with the Board of Directors and, in short order, an investigation was commenced by the company.

When confronted by the company, Kerry immediately confessed to the affair and her poor judgment. She explained that for over 30 years she had served the company with distinction and this momentary lapse of judgment would never be repeated. She blamed her lack of judgment on the discovery that Phil had written “Sweet Cherry” – she had grown up listening to the song.

Similarly, Phil admitted the affair but explained that the affair was Kerry's idea and he felt he had no choice but to go along with it so that he wouldn't lose his job.

The company fired both Kerry and Phil for just cause. Because this is an exam and we can ignore conflicts of interest, they both come to you for advice about what, if any, recourse they have against the company.

- (a) Do Kerry and Phil have any claim against his employer for wrongful dismissal under the common law? Explain why or why not. (10 points)**
- (b) Assuming Kerry and Phil have viable claims for wrongful dismissal, what damages, if any, could each of them recover under the common law. Should their damage awards be different? (10 points)**

Question 5 (25 points)

Sue Fehrshurr was employed with Wiley Co. for 11 years as a research assistant, helping to develop new products. In January of 2020, ACME Industries announced that they were going to acquire all of the assets of Wiley Co. on March 31, 2020.

On February 15, 2020, Sue received a letter from ACME saying that her employment with ACME would start on March 16, 2020. She finished her last day with Wiley on March 17, 2020 and started work the next day with ACME, along with 302 other employees of ACME.

Unfortunately, on her second day of employment, Sue was told her employment was being terminated due to restructuring. She learned of this when the company sent a courier to her house and delivered a letter to her home. The letter explained that because she had only worked for Wiley for two days, she was a probationary employee and the company did not owe her anything.

Sue was devastated and called the company to discuss the termination. Unknown to her, her boss recorded the call and later sent it around to the senior management team as “valuable lesson” in how to deal with troublesome employees.

Sadly, several senior managers kept the recording and used excerpts of Sue pleading for her job in a Tic Toc video called “Please Don’t Fire Me!” which went viral, attracting over 22,000,000 views over the next two weeks. When Sue called her boss to complain, he told her it was beyond his control. Sue told him many of her friends had seen the video and had recognized her voice. Her boss laughed and told her it was great for business and, in fact, the company was planning on using the video in future advertisements.

Sue calls you to discuss her options.

- (a) Does Sue have a claim for damages against ACME? Why or why not? (5 points)**
- (b) Does Sue have a claim against Wiley Co.? Why or why not? (5 points)**
- (c) Assuming Sue has a claim for damages, beyond damages for lack of reasonable notice, what other damages could she could likely recover during the reasonable notice period? (10 points)**

- (d) Under the *Employment Standards Act*, what notice is Sue entitled to upon termination of her employment from ACME? Explain (5 points)

Question 6 (10 points)

In 2016, Ronald Drumph commenced employment with Stand Tall, a manufacturer of shoe lifts. Ronald was not the smartest salesman in the company, but he somehow managed to sell massive amounts of product in 2016, 2017 and 2018.

In March of 2019, Ronald was unhappy with his pay and began to look for work. He was contacted by Need-A-Lift, a direct competitor of Stand Tall, and was offered employment with the company, starting September 1, 2019.

Ronald remembered he had a written contract and sent it to Need-A-Lift for them to review. The contract stated, in part:

For 6 months after your employment, you agree that you will not compete with the following companies anywhere in Canada:

- Shorter No More
- Need-A-Lift
- Hello Up There

Need-A-Lift told Ronald not to be concerned about the contract and he commenced employment with Need-A-Lift on September 1, 2019

On August 24, 2019, Ronald was contacted by Ted's Short and Taller, a national department store chain. They indicated they wished to place an order for 15,000 shoe lifts. Ronald told them he was pretty busy, but that he would get back to them in a few weeks. On September 6, 2019, he contacted Ted's and secured an order for 20,000 shoe lifts. His new bosses at Need-A-Lift were thrilled as this one sale helped Ronald meet his sales target for the year.

Stand Tall calls you and asks what they can do about this?

- (a) Can Stand Tall pursue any remedies against Ronald? On what basis and what are the prospects for success?

Question 7 (10 points)

Rhonda Prenneur graduated from UBC in 2002 with a business degree and, in short order, developed a computer program which could, using publicly available data, predict sales volumes for grocery stores. She called the program "Appetite" and began selling it to grocery stores across Canada.

By 2008, Rhonda had over 30 customers, but by far and away her best customer was the Eat More chain of grocery stores, which had over 400 stores across Canada and accounted for roughly 40 percent of Rhonda's business. Rhonda continued to service her customers but by 2018, Eat More was taking up more and more of her time, approaching half her business.

In June of 2018, Rhonda developed dental issues and spoke with the President of Eat More about her difficulties. He suggested that the company could place Rhonda on its benefits plan and by September of 2018, Rhonda was receiving full medical and dental benefits from Eat More.

In November of 2019, the President of Eat More met with Rhonda at a holiday reception and asked if she would consider working from Eat More's head office in Richmond, British Columbia, so that the company could reach her quickly. Rhonda agreed and began working from the Richmond office in January of 2020. Eat More did not charge her anything for the use of the office.

On March 31, 2019, Rhonda called the President of Eat More to discuss a new contract, but the President surprised Rhonda, telling her that Eat More had just signed a new deal with Frugal, a large US company, for a new software solution. The President told Rhonda that, effective April 30, 2020, her contract with Eat More would be terminated.

While Rhonda explained that one month's notice was not fair, the President replied that as a contractor, he did not owe her even the one month and that she should be grateful.

(a) What remedies does Rhonda have against Eat More, if any? (10 points)

END OF EXAMINATION