

Write Your Exam Code Here: _____

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**THIS EXAMINATION CONSISTS OF 5 PAGES (INCLUDING THIS PAGE)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

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

FINAL EXAMINATION – December 2019

**LAW 416.001
Labour Law**

Professor: Colin Gusikoski

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

- NOTE:
1. This is an open book examination.
 2. There are six PARTS to the examination.
 3. PARTS I, II and III are fact scenario questions with two questions in Part I, and one question in both Parts II and III.
 4. PART IV consists of one long answer question.
 5. PART V consists of two long answer questions. Only answer one of the two questions.
 6. Part VI has three short answer questions. Answer all the short answer questions.
 7. The value of each question out of 100 is indicated. Also, provided is an estimated time, calculated on the basis of the value of the question as a percentage of 180 minutes, with additional time allocated to questions that require more reading.
 8. You may assume any additional facts that you think are necessary to answer a question, but you should state clearly any assumptions you have made. Do not make assumptions that have the effect of avoiding relevant legal issues. Unless otherwise stated, assume that the jurisdiction is British Columbia.

THIS EXAMINATION CONSISTS OF 9 QUESTIONS

PART I Fact Scenario (25 marks – 45 minutes)

You are a lawyer working for RWDSU (“Union”). A Union organizer has been trying to organize the employees of a fitness gym in Yaletown called Steve Nice Fitness World (“SNFW”). The Union organizer tells you that she can only sign cards of personal trainers and has signed 20 of the 25 personal trainers there. She asks you for an opinion on whether the Labour Board would issue a certification for a bargaining unit of personal trainers only.

SNFW has four different classifications of employees. There are administrative employees, sales staff, group fitness instructors and personal fitness instructors.

There are 25 personal trainers. Personal trainers largely train individuals in one-on-one work out sessions. The personal trainers are paid both hourly rates and session rates. They are paid hourly rates at minimum wage when they are scheduled to meet and assist with members of the gym and provide free personalized assessments for members to assist with their health fitness goals. However, each time they provide an actual personal training session to a member of the gym they get paid commission. A customer pays \$100 for each personal training session. SNFW keeps \$50 per session, gives \$40 to the trainer and \$10 to the individual who signed up that member to the training session. The \$10 would go to either a member of the sales team, or the personal trainer, whomever signed the member up for the personal training session.

Of the 25 personal trainers, 6 provide both group fitness classes and personal training sessions, but most personal trainers solely provide personal training sessions and free personalized assessments.

There are 15 group fitness instructors who teach a class of many individuals at one time. The group fitness instructors provide a range of classes from yoga to hour long intensive workouts. Group fitness instructors are only paid a commission for each class they teach. Anyone who signs up for a group fitness class pays \$40. SNFW keeps \$20 for each member attending a group fitness class. The remaining \$20 is split between the group fitness instructor who earns \$15 from each member and \$5 which is split among the entire sales team. If there are 10 members in a group fitness class, the instructor earns \$150 for that session and the sales team would share a commission of \$50. All employees designated as group fitness instructors only provide group fitness classes.

There are 6 members of the sales team. The sales team place phone calls and engage in other efforts to secure members for the gym and, in addition, sign up members for either group fitness, or personal fitness classes. The sales team employees work entirely on commission. They receive a 10% commission for each member they sign up with a gym membership. Additionally, the sales team receive \$10 for each member who they schedule into a personal training session and \$5 for each member they schedule into a group fitness class.

There are four (4) administrative employees in the workplace. These employees rotate positions between staffing the front desk or performing data entry in an office. The data entry is mostly scheduling individuals in for sessions taught by the instructors and settling payment, either in person or over the phone.

Continuation of Part I...

Question #1 (20 marks – 36 minutes)

Advise the Union whether or not a proposed bargaining unit of personal trainers could present any difficulties and what those difficulties might be.

Question #2 (5 marks – 9 minutes)

Advise the organizer on possible strategies to circumvent or alleviate the risk that a bargaining unit of personal trainers might be inappropriate.

PART II Fact Scenario (20 marks – 36 minutes)

The following facts and definitions are a continuation from the scenario set out in Part I

The organizer for the Union eventually files an application for certification. After receiving notice, the SNFW CEO sends an email to the Yaletown manager, Joe Hill, requesting a 1:00 pm phone call to discuss the application. The Yaletown manager is upset and worried about how the application will be perceived at head office. To prepare for the telephone conference, Mr Hill calls his most trusted personal trainer, Randy Gatzka, a person who he socializes with.

Joe asks what Randy knew about the organizing drive. Randy, states that he knew nothing about the organizing drive. Joe then asks Randy what the issues were in the gym and why people would turn to the Union instead of approaching him. Randy replies that he believes the personal trainers should be paid a higher percentage of the commission. Joe thanks Randy and tells him the information will be helpful for his conversation with the CEO.

Randy then proceeded to rotate through the gym telling everyone about his conversation with Joe Hill and further stating that the CEO was “super pissed” and “heads are going to roll”.

Shortly after 1:00 pm, Joe Hill cancels the Power Yoga class and calls all employees into the yoga studio. Joe tells the group that he wants everyone at SNFW to feel like they are part of a family. He said that the CEO is upset, but that things can be worked out so that everyone can be a family again. Joe then says that he has heard that the personal trainers would like to receive more commission on their training sessions. He said that the Yaletown location is not a money maker and could be shut down if profitability did not improve. But, in an “effort to keep the Steve Nice family together”, he announces that the CEO agreed to boost the commissions of the personal trainers and group fitness instructors by \$5 per session starting next month.

Question #3 (20 marks – 36 minutes)

As the Union lawyer, provide the organizer your opinion on any possible complaints with respect to the conduct described.

PART III Fact Scenario (15 marks – 27 minutes)

On November 20, 2019 SkyTrain workers voted 96.8 per cent in favour of job action after months-long negotiations between their Union (CUPE 7000) and their employer (Translink). Translink is fearful of job action and the CEO, Irene Lori, requests a meeting with you, employer counsel, at its head offices in the building it shares with VanCity in the office building just above and connected to the SkyTrain station at Main Street and Terminal.

You meet Irene at a Starbucks at the bottom of the VanCity office building which shares an entrance with the SkyTrain entrance. Irene is focused on getting a contingency plan before the Union issues 72 hours' notice of its intent to strike. It is important to Irene that her managers not have to deal with a picket line on their way to work.

Question #4 (15 marks)

Provide Irene Lori with an opinion on the various legal options available to prevent or limit picketing at the head office located at the Main and Terminal SkyTrain station.

PART IV Essay Question (15 marks – 27 minutes)**Question #5 (15 marks – 27 minutes)**

British Columbia's *Labour Relations Code*, was recently amended to adopt certain recommendations made by a *Labour Code* review panel. Choose one of the changes to the *Labour Code* which you view as problematic. Describe, why you view the change as problematic or deficient and how the legislature could address your concerns.

PART V Essay Questions (10 marks – 18 minutes)

Answer only **one** of the following questions (10 marks – 18 minutes):

Question #6a

The Labour Board has said that it prefers larger, more all-encompassing bargaining units. However, the Board will still certify a bargaining unit that is an appropriate unit. Describe some circumstances where the Board's preference for larger bargaining units is relevant to the law and policy of the *Labour Code*.

OR**Question #6b**

Describe how the BC *Labour Code* encourages free collective bargaining between an employer and a union and give three examples of how labour boards have constructed general rules to facilitate collective bargaining and the theory behind how those rules are meant to facilitate collective bargaining.

PART VI Short Answer (15 marks – 27 minutes)

Question #7: (5 marks – 5-10 minutes)

During class we reviewed various tests demarcating the difference between an employee and an independent contractor. Provide a factor which you view as unhelpful in today's economy and explain why you view this factor as unhelpful.

Question #8: (5 marks – 5-10 minutes)

Describe what is unique about the last offer vote (section 78) in the *Labour Code* and give your opinion about whether it is a useful policy tool.

Question #9: (5 marks – 5-10 minutes)

Describe why, in your view, the Labour Relations Board should be concerned with industrial stability.

END OF EXAMINATION