

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

FINAL EXAMINATION – DECEMBER 2020

LAW 416.001
Labour Law

Colin Gusikoski

EXAM PASSWORD: Mn6Nuf
RESUME CODE: ABB31D

TOTAL MARKS: 100

(8:50 AM PST) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PST) **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.

This is an open book examination.

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. Do not email your professor or anyone else about this while the exam is in progress.

ACADEMIC INTEGRITY

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. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

CONFIDENTIALITY REGULATIONS – READ CAREFULLY

As this exam is being written off-campus and is unsupervised, any communication whatsoever (including, but not limited to in person, telephone, e-mail, text, social media, etc.) concerning the contents of this examination with anyone (other than the Student Services staff of the Allard School of Law) is strictly prohibited.

In the event any information comes to your attention regarding a breach of these regulations (by others, or inadvertently by you), please immediately contact Student Academic Services (studentservices@allard.ubc.ca) and make full disclosure.

A breach of these regulations may constitute student misconduct, and you may be subject to penalty or discipline under UBC's Academic Misconduct policies.

What Do I Do If:

- **I cannot access the exam questions on Canvas**

If you experience technical difficulties accessing the exam questions on Canvas, email studentservices@allard.ubc.ca and the exam questions will be emailed to you. Please provide your phone number when emailing Student Services.

- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

If you experience technical difficulties with Exemplify at the very beginning or during an exam, you may attempt to solve your problem/reboot your computer **BY YOURSELF**. You are **STRONGLY** encouraged to spend **NO MORE THAN 5 minutes** attempting to do so. You will **NOT BE GIVEN ANY EXTRA TIME** to complete the exam. **If your attempt to solve the problem is unsuccessful**, or if you choose not to make such an attempt, you **MUST** immediately **begin hand-writing** your exam answers with pen on lined paper. **You may NOT type your exam answer in word-processing software.**

When you have finished writing the exam, you must upload the exam answers that you completed in Exemplify (if you are prompted for a Resume Code, it is on the coversheet of the exam questions). Email Bernie Flinn, flinn@allard.ubc.ca, for help with this. Please provide your phone number in the email. Bernie or another IT Support staff person will then help you to upload any answers that you typed in Exemplify.

You must also upload to Canvas your hand-written exam answers into the "Exam Answer File Upload (Word Processor or Hand-written ONLY)" folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file should be named, and the coversheet of your answers should be titled with:
Your Exam Code, Course Number, Name of Course, and Instructor Name
i.e., **9999 LAW 100.001 Law of Exam Taking – Galileo**

- **I'm experiencing technical difficulties EXITING and UPLOADING the exam**

If you experience any difficulty exiting and uploading your Exemplify exam answers, you must wait until the allocated time period specified on the coversheet of the exam has ended, then email Bernie Flinn, flinn@allard.ubc.ca, and he or another IT Support staff person will help you to upload your Exemplify exam file. Please provide your phone number in the email.

If you have approved accommodations to type your answers using Word Processing Software, and experience difficulties uploading your exam answer file to Canvas, email your exam answer file to studentservices@ubc.ca.

- **I fall ill in the middle of an exam, or am otherwise interrupted such that I'm unable to continue writing my exam**

Please stop writing, note the time that you stopped, and email studentservices@allard.ubc.ca immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

LAW 416.001 EXAM NOTES

1. This is an open book examination.
2. There are **five** PARTS to the examination.
3. PARTS I and II are fact scenario questions with one question in Part I, and two questions in Part II.
4. PART III consists of one long answer question.
5. PART IV consists of two long answer questions. Only answer one of the two questions.
6. Part V has two 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 reflection.
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.

PART I Fact Scenario (20 marks – 35 minutes)

A unionized company named Pamphlets Are Us (“PAU”), specializes in the design and creation of pamphlets. PAU is a small business, only employing 8 people, all of whom are unionized. Its customers are mostly in the retail clothing sector and includes such big brands as Sears and Hudson’s Bay. There is one marketing and sales position, 4 graphic design artists and 3 people who print the designs on various pamphlets on any paper type, including heavy cardboard.

The marketing and sales position is held by an employee with a degree in marketing and has worked in various fields of print advertising her whole career. The 4 employees who utilize computer software to design the pamphlets all have graphic design degrees and utilize one major program: Pamphlet+. Finally, the individuals who work in the print section have high school diplomas but have a great deal of knowledge of the industry and the best suppliers for varying degrees of product.

Due to Covid-19, PAU’s customer base significantly eroded. Because of the concern over surface transmission of the coronavirus, sales for PAU declined to near zero almost immediately after lockdowns were issued. The owner was unable to sustain ongoing expenses and had to seek creditor protection under relevant legislation.

Once in creditor protection a number of offers were made to purchase the assets of PAU. The most favorable offer was from Box It Up (“BIU”), a box supply company currently enjoying a substantial increase in sales, as it was the main supplier to Amazon. BIU’s business is in the midst of a dramatic expansion and needs additional, well trained staff to assist its operations in BC.

BIU took over the building of PAU, purchased all the equipment and offered employment to all 8 of the former PAU employees, who gratefully accepted the work.

BIU only required small additions to the manufacturing space and retained all the previous equipment for a potential business expansion into pamphlets. BIU also utilized all of the computer hardware, but had to install BOX+, a computer software for the design of boxes. BIU continued to pay the membership fee to Pamphlet+ for potential pamphlet design work. After BIU recommenced the old PAU operations to make boxes for its product line, it started advertising for specialized work making pamphlets. However, given the ongoing market pressures due to Covid-19 BIU has not received any orders for pamphlets.

Question #1 (20 marks)

Advise the employer BIU on the possibility of a successful successor application by the affected union, the merits of that application and any alterations, if any, BIU might undertake to minimize the risk of a successor declaration by the Labour Board.

PART II Fact Scenario (40 marks – 70 minutes)

A group of employees who work as custodians in an office building for Bee-Clean (“BC”) want to unionize so they approach UNITE HERE, Local 40 (“Union”) to file an application for certification. The Union conducts an investigation and determines the following relevant facts.

BC is a cleaning services agency that connects cleaners with custodial and security work for office buildings in downtown Vancouver. BC has contracts for three different high-rises: Bental 1, located on Hornby Street; Bental 2, located on Burrard; and, Bental 3, also located on Burrard. Bental 2 and Bental 3 are adjacent to each other and share a corridor. All the buildings are owned by the Ontario Teachers Pension Plan (“OTPP”), but are managed by a building management company known as Quad Real. Quad Real is the party who contracts with BC for the provision of cleaning services and security services.

BC hires all custodians through Craig’s List with a short interview to ensure they are responsible and can lift 25 pounds of weight. Training is completed over a one week period. BC does not directly train employees but rather schedules them to work with an experienced worker who goes over the basic elements of the job as well as the rules and regulations promulgated by Quad Real. BC has no supervisors on staff and only communicates with custodians or security guards through text message. Communications between BC and staff are usually limited to scheduling but if Quad Real has complaints, BC will send those complaints to the affected employee. Quad Real prefers custodial staff to be scheduled to the same area, so it is easier for Quad Real to monitor performance. Where there are chronic deficiencies by one particular custodial staff, Quad Real will ask that they no longer be assigned. BC always accepts such a request from Quad Real and will simply drop the individual off its schedule. The security staff stay at one location for a period of time, and then rotate to the next building.

Each of the three Bental buildings have 8 custodial staff and 2 security guards. The custodial staff are paid hourly and make minimum wage and are all women and almost all of them are recent immigrants. The security guards by contrast are all men, are on salary and make almost 50% more than what the custodial staff make. The employees seeking to unionize all work in Bental 2. At the time the Union was approached, 100% of the employees in Bental 2 wanted to be unionized. The employees in the other buildings are very non-committal and will not sign cards.

The custodians are assigned to a specific building and specific offices in that building. Once a cleaner is assigned to specific offices they rarely move and can expect their specific assignment every day. Quad Real insists on this scheduling protocol as they believe it is the most efficient manner in which to schedule the cleaning services. The cleaners’ hours are from 6:00 pm to 2:00 am. At that time of the evening the office doors are locked and each of the cleaners must contact a security guard to unlock each office they wish to enter and clean.

The custodians have a cleaning cart, which is restocked every day prior to their shift by another BC employee. The cleaners never see that individual but the same person restocks all the cleaning carts at all three of the high-rises. At the end of their shift, the cleaning staff also require the security guards to unlock the garbage and recycle bins at the base of the building.

The custodial staff in Bental 2 and Bental 3 meet for their breaks every day in the corridor connecting the buildings. The employees in Bental 1 are too far away from the others and enjoy their breaks together in a locked storage room in the main floor. The security guards normally keep to themselves but might pop by to say hello on the occasional break.

Question #2 (25 marks)

You are a lawyer for the Union and they approach you for an opinion on the best way to secure a certification for employees of BC. Advise the Union on the most viable bargaining unit for employees of BC. Provide the reasons why that bargaining unit you've chosen is the most optimal and explain any potential risks to such an application.

Question #3 (15 marks)

Advise the Union on which entity is the true employer and therefore, which entity the certification should be filed for. Further, advise the Union on the benefit, if any, of filing a common employer application.

PART III Essay Question (15 marks – 30 minutes)

Question #4 (15 marks)

Describe the most recent changes to the unfair labour practice provisions of the *Labour Code* and the historical and political context of those changes. Provide your opinion on what the most appropriate balance is, or if you do not believe balance can be achieved, explain why such a balance is illusive.

PART IV Essay Questions (15 marks – 30 minutes)

Answer only **one** of the following questions (for 10 marks):

Question #5a

Describe what is meant by the *Olivetti* principle and, using examples, describe how that principle informs the law and policy of the Labour Relations Board.

OR

Question #5b

State your view on whether the *Labour Code* could ever adequately address the problems highlighted in the reading “Bankworker Unionization and the Law” providing examples and reasons.

PART V Short Answer (10 marks – 15 minutes)

Question #6: (5 marks – 5-10 minutes)

Provide the Board's policy approach to essential services and how that policy relates to a determination of what is truly essential.

Question #7: (5 marks – 5-10 minutes)

The best industrial pluralist model is individual contract of employment. State whether you agree or disagree with this statement and why.

END OF EXAMINATION