

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

FINAL EXAMINATION – APRIL 2021

LAW 419C.001
Individual Employment Law

Professors McLean and Mitha

EXAM PASSWORD: A8J72u
RESUME CODE: B12EA1

TOTAL MARKS: 100

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

(9:00 AM PDT) **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, meaning that you can refer to any materials available to you.

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.

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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**

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There are 7 questions in this exam. Please answer all questions.

Assume the laws of British Columbia and the federal laws of Canada apply in circumstances. You may ignore any limitation period extensions or suspensions enacted as a result of the Covid-19 pandemic.

QUESTION 1 (20 Points)

Botanical Magic, a start-up company in Burnaby which grows cannabis infused tomatoes is about to hire Henry Thomas. Botanical wants to provide its standard employment contract to Henry. Can you give Botanical advice on what, if anything Botanical should be concerned with on its standard employment contract set out below..

After reading the contract below, please identify as many concerns or issues which you think Botanical should be aware of. Please reference any legislation or common law principles to support your position.

Welcome Henry!

We are pleased to offer you the position of Seeder and Greeter with Botanical Magic. In this role, you will be responsible for working in the greenhouse and conducting tours of the facility when we are approved to do so later this year.

Your employment will commence on May 1, 2021. Please be sure to return a signed copy of this letter to Human Resources by May 30, 2021.

While we know you will be great in your role, to be sure, we have a probationary period for all employees. After 4 months, we will review your performance and, if it is all good, you will become a regular employee.

You will work Monday through Saturday and your regular shift will be 8:00 a.m. to 5:00 p.m. You will be given 2 breaks of 15 minutes off each day for an unpaid snack breaks. As a Greeter, you do not receive overtime – but the gratitude of customers should be payment enough!

Your starting salary will be \$13.50 per hour, plus the potential to earn a bonus of \$250.00 per month if you do not miss any scheduled shifts in a given month. Should you miss more than 5 shifts in a year, your employment may be terminated for abandonment.

After 2 years of employment, you will be given 3 weeks' paid vacation.

While we try to always have fun at work, we do have a few rules we need you to abide by:

- You will be given an employee Toolbox on your first day. It contains 2 gardening shears, protective glasses, a collapsible shovel and hearing protection. If you lose or break any piece of equipment, you will be charged for replacement parts, in addition to a \$15.00 administrative fee.
- Given the nature of the special chemicals we use in the greenhouse, you are required to wear our Seal-It-Safe uniform. These may be purchased at

the main office before your first shift for \$125.00 each. Many employees purchase several as they tend to get quite dirty given the nature of our work.

- In the event of a death in your immediate family, you may have 2 days off with pay. We know family is important so we will pay you to grieve.
- If you receive any tips while performing your duties as a Greeter, those must be delivered to the company. You will be entitled to receive 50% of any gratuities which you receive.

We may terminate your employment:

- at any time, for just cause, without notice or pay in lieu of notice; or
- at any time, without just cause on providing you with 1 week's notice, or pay in lieu of notice for each year of completed employment, to a maximum of 10 weeks' notice or pay in lieu of notice.

Should you decide to resign, we will ask that you don't join any of our competitors in the Fraser Valley for at least 12 months after your employment ends. We think that's only fair given all the great training you will receive!

Finally, on your first day, we will be installing TRACKER on your personal cellphone. This lets us track your movements through the Greenhouse and notifies us if you are not meeting your objectives each day. The app is free and we only share the information we obtain through the app with our parent company located in Germany.

We are confident you will grow into your role. Welcome aboard!

QUESTION 2 (5 points)

Dee Wallace is a helicopter pilot with Over The Moon Inc., a company in Vancouver, British Columbia which specializes in VIP travel for clients in the entertainment and hospitality sectors. Dee typically flies movie stars and other famous people around British Columbia and regularly to Seattle. She has worked with the company for the last 3 years.

On March 1, 2021, Dee was told that a customer had complained about her choice of music during a flight and demanded she be fired. While her supervisor explained that he loved Dee's work ethic, "the customer is always right" and so he had no choice but to fire Dee that day. She was paid for her time at work that day and given her accrued vacation pay.

Dee comes to you and tells you flying with Over the Moon Inc. was her dream job and a number of senior managers in the company have reached out to let her know how sorry they are that her employment had to end that way it did.

What remedies does Dee have under statute arising from her termination? (5 points)

QUESTION 3 (20 points)

Peter Coyote is 50 years old and, until 2 weeks ago, was employed as the Vice-President of Extraterrestrial Exploration with Anyone Out There Corporation. He joined the company 15 years ago in the position of Social Media Coordinator and worked his way up through the company. Last year, he earned \$325,000.00 in salary, plus benefits.

The company is owned by a reclusive billionaire, Edwin Yates, who believes that aliens exist and is devoted to finding irrefutable proof of this fact. As Vice-President, Peter was responsible for negotiating with various vendors to obtain satellites and other research equipment to help prove the existence of extraterrestrial life.

Over spring break, Peter's daughter asked if he could help her with a high school science fair project. Peter agreed to help and met with his daughter and three other classmates to talk about whether alien life could exist in the universe. At the end of his last meeting with the students, he gave his daughter and the three classmates "Anyone Out There" T-shirts and hats to wear during their presentation in class. Peter obtained the t-shirts and hats from a storage closet at work: it was full of old promotional material which had not been used by the company for 2-3 years.

A week later, his daughter and the three classmates were featured in a local newspaper story about their science fair project. All were wearing the "Anyone Out There" t-shirts and hats which they had wore at the science fair.

The following day, Peter was called into Mr. Yates' office. Mr. Yates explained that he had seen the article and had used the company's surveillance cameras to confirm Peter had taken the t-shirts and hats from the storage room. Mr. Yates stated that the company "Could not employ thieves" and told Peter he was being terminated immediately for just cause. Peter was dumbfounded and tried to explain himself, but Mr. Yates ordered him to leave immediately.

Peter left the office and was met by two security guards who told him they had been instructed to escort him from the office. As Peter was being marched out the main door, his Iphone began pinging. He quickly discovered the reason was that Mr. Yates had tweeted "The Wiley Coyote has been fired for theft! Peter Coyote is no longer employed and we are looking for a new VP of ET Exploration!" to his 4,500,000 Twitter followers.

Peter was devastated and has spent the last two weeks unable to leave his house due to the embarrassment the tweet caused him. This week he saw his family doctor who suggested he might be depressed and encouraged him to see a counsellor.

- a) **Did Peter's employer have just cause for his termination? Why or why not? (5 points)**
- b) **If there was not just cause for his termination, give your opinion on his entitlement to reasonable notice (10 points)**
- c) **If there was not just cause for Peter's termination, does he have a claim for aggravated and/or punitive damages? Why or why not? (5 points)**

QUESTION 4 (10 points)

Sean Frye lives in Vancouver and until March 21, 2020, worked full-time with Highflyer Bicycles as a service technician.

On January 1, 2020, while fixing a mountain bike, the screwdriver he was holding slipped and cut a tendon in his left wrist. The injury was serious enough to require surgery and, unfortunately, Sean developed an infection which led to repeated stays in hospital and more surgeries.

On March 15, 2020, he told his boss that he was ready to try and come back to work, but that he could not use his left hand: it was still in a cast from his last surgery and the doctor had told him he would need months of rehabilitation to restore the nerve damage to his wrist area. His boss told Sean that unless he could work as a service technician he was unable to bring him back to work. Sean told him that would not be possible and his boss responded with an email wishing Sean well and letting him know he would be advertising for a replacement service technician.

Sean then spent the next 12 months looking for alternate work. Eventually, he decided to upgrade his education and started an online accounting program on April 1, 2021. He still has weakness in his wrist and cannot hold heavy tools in his left hand, making a return to work as a mechanic unlikely. After speaking with his mother, she encouraged him to file a complaint this week to “teach Highflyer a lesson!”

- a) What remedies does Sean potentially have under statute? (5 points)**
- b) What, if any, impediments does Sean face if he pursues remedies under statute? (5 points)**

QUESTION 5 (20 points)

Anne Lockart worked at Clearview Tents in Surrey, British Columbia for 12 years, until March 9, 2021. Clearview Tents has 9 offices in Western Canada, including locations in Surrey, North Vancouver and Chilliwack.

She was employed as one of 15 Sales Managers who were responsible for soliciting potential customers and encouraging them to buy tents from the company. As Sales Manager, Anne had her own office and company car, but did not directly supervise any employees. In her last year of employment, Anne was paid \$75,000 per year and worked Monday through Friday, 8:00 am to 6:00 pm each day.

On March 9, 2021, the company announced that it was closing the Surrey, British Columbia office. As a result, all 55 employees at the Surrey office, including all of the Sales Managers, were terminated that day. A going away party was held for all of the employees.

Two weeks later, on March 23, 2021, Anne received an email from the president of the company, advising her that the company had just received an unexpected order from a customer and that the company was prepared to bring Anne back to work on April 1, 2021. However, because the company had closed the Surrey office, Anne would be employed from the North Vancouver office.

Anne spoke with her partner about the job offer. She explained to Anne that the commute to and from North Vancouver was terrible and encouraged her to look for a job in Surrey. Anne called the president who confirmed that the job would be the same as her previous role, except for the office location. After thinking on it overnight, Anne told her boss she was not prepared to accept the role in the North Vancouver office. She remains unemployed.

- a) **What claims does Anne potentially have under the *Employment Standards Act*? (10 points)**
- b) **Under common law, explain whether Anne failed in her duty to mitigate? (10 points)**

QUESTION 6 (15 points)

Thomas Howell worked as a police officer with the RCMP until January of 2000. At that time, he left the force and opened his own security consulting business, "Phone Home Consultants", providing telephone and later computer monitoring for business and residential customers.

In 2009, Thomas was introduced to Pat Welsh, the CEO of Chrysanthemum Developments, a large property developer in British Columbia. Pat explained that they were looking for someone to advise them on the proper security systems for all of their residential construction projects.

Thomas agreed to assist and sent Pat his standard consulting agreement that provided Thomas would devote 15 hours per week to assisting Chrysanthemum for a flat fee of \$500.00 per week. The agreement provided either party could terminate the agreement on 30 days' written notice.

Throughout 2009 to 2015, Thomas helped design security systems and programs for Chrysanthemum's residential construction projects. By 2015, he was devoting 30 hours per week and, in recognition of his efforts, Pat offered to increase Thomas' flat fee to \$1,500.00 per week on the condition that Thomas sign Chrysanthemum's Non-Solicitation Agreement.

The Non-Solicitation Agreement provided that if Thomas stopped providing services to Chrysanthemum for any reason, he would not solicit any of Chrysanthemum's clients or employees:

Non-Solicitation Agreement

You agree that should you cease providing services to Chrysanthemum for any reason, you shall not, for a period of 24 months:

- i) solicit any employee of Chrysanthemum to leave their employment; or
- ii) directly or indirectly, without the written consent of Chrysanthemum, canvass or solicit the business of (or procure or assist the canvassing or soliciting of the business of) any customer of Chrysanthemum for any purpose which is competitive with the business of Chrysanthemum.

By 2018, as Chrysanthemum expanded its business, Thomas was spending at least 50 hours per week servicing Chrysanthemum and the balance of his time was devoted to helping 3 other long-standing clients.

In February of 2021, Pat phoned Thomas to let him know that Chrysanthemum had been acquired by Flower Pot Holdings, a giant construction firm based in Toronto. As Flower Pot had its own in-house security experts, Pat told Thomas he would be getting a letter giving him 30 days' notice of the termination of the consulting agreement.

On February 15, 2021, Thomas received a letter from Pat confirming the termination of his consulting agreement on March 15, 2021. He did not receive any further payment from Pat after March 15, 2021.

On April 1, 2021, Gertie Barrymore telephoned Thomas and explained that she was a board member of Humble Gardens Strata Corporation, a large condominium complex which had been constructed by Chrysanthemum in 2017. Thomas vaguely remembered providing security consulting advice to Chrysanthemum for that project. Gertie explained she had found Thomas' name on some documents in the Strata Council office while trying to learn who had helped install the original security system in the building. She explained that Humble Gardens was looking for an upgraded security system. Gertie told Thomas he should call the President of the Strata Council next week to speak with the President about the project.

Thomas calls you looking for advice.

- a) **Is Thomas an employee, a contractor or a dependent contractor? (10 points)**
- b) **Are there any risks if Thomas does business with Humble Gardens? (5 points)**

QUESTION 7 (10 points)

Victoria Gregoire was employed by McLean Bakery Ltd. McLean Bakery Ltd. called its bake shop The Irish Dream. Victoria was the cake decorator and worked happily decorating cakes at The Irish Dream for 14 years. McLean Bakery was bought out by Nicole Steeves. Nicole's company, 102345 BC Ltd. purchased the assets of McLean Bakery Ltd. When Nicole closed the transaction, she changed the name to Nicole's Delightful Cakes.

When Nicole took over she asked Victoria to sign a new employment contract (and Victoria signed the new employment contract) which among other things said:

"You will be starting your employment with 102345 BC Ltd. dba Nicole's Delightful Cakes as a new employee. You will not be receiving any credit for your past employment with McLean Bakery Ltd."

Your employment can be terminated upon the company providing you with notice or pay in lieu of notice in accordance with the minimum requirements of the BC *Employment Standards Act*."

Three months after Nicole took over, she terminated Victoria's employment on a without cause basis and paid Victoria 1 week's wages.

Please advise Victoria what, if any, causes of action or remedies she has against McLean Bakery Ltd. and/or 102345 BC Ltd. by way of statute or the common law. (10 points)

END OF EXAMINATION