

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

THIS EXAMINATION CONSISTS OF 7 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

FINAL EXAMINATION – APRIL 2022

LAW 419C.001/519.001
Individual Employment Law

Professors McLean and Mitha

TOTAL MARKS: 100

There are 6 questions in this exam.

Please answer all questions.

TIME ALLOWED: 3 HOURS

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.

This is an open book examination, meaning that you can refer to any materials available to you.

QUESTION 1 (20 Points)

Walter White is graduated from UBC in 2005 with a degree in chemistry and commenced working with several local bio-engineering companies.

In 2014, Walter was contacted by his former classmate, Jessica Pinkman who offered him the chance to join her new start-up venture, Blue Is Best. Jessica promised Walter that he would be “set for life” if he joined up with Blue Is Best. Walter was not sure he wanted to exclusively work for a start-up, so he incorporated a company and began providing consulting services to four small companies, including Blue Is Best, effective April 1, 2014.

Walter had a standard consulting agreement prepared which provided that he would charge \$250 per hour for his services. The standard agreement also provided that either party could terminate the agreement on 30 days’ written notice. Each year, Walter paid taxes through his company and would regularly invoice all his clients for his services.

Over the next 4 years, Blue Is Best grew at an exponential rate, taking up more and more of Walter’s time. By January of 2019, Walter was spending about 50 hour a week servicing Blue Is Best and 10 hours on all of his other clients combined.

On October 4, 2021, Jessica met with Walter and told him that, due to continued growth, Blue Is Best was going to hire its own chemist and had found a younger employee. Jessica gave Walter 30 days’ written notice that Blue Is Best would no longer require him to provide services.

Walter was devastated: at age 45, having devoted 8 years to Blue Is Best, he was now without almost all of his regular income. After two weeks to think about his options, he registered with a recruitment website (“Higher You!”) and, to his surprise, received an email on November 5, 2021 requesting that he attend for an interview with a local brewery.

On November 8, 2021, Walter attended his interview and, later that day, was offered full-time employment as the brewery’s Chief Chemist, commencing April 1, 2022 at a wage of \$100 per hour, plus benefits. Walter thought long and hard about the offer, but as the hourly wage was less than half of what he had been earning as a consultant, he turned down the position. Unfortunately, he has not received any offers since and has only 10 hours per week of consulting income from his other clients.

Walter now comes to you seeking advice.

- a) Is Walter an employee, a contractor or a dependent contractor? (10 points)**
- b) If Walter is an employee, what, if any, would his entitlement to common law reasonable notice be? (5 points)**
- c) Assuming Walter is an employee or dependent contractor, explain whether he failed in his duty to mitigate? (5 points)**

QUESTION 2 (5 points)

Todd Alkwist commenced employment with Gary's Cycles, a motorcycle dealership in Langley, British Columbia in June of 2010. Gary's operates a number of dealerships, including branches in Langley, Kelowna and Abbotsford.

On February 1, 2022, Gary came to Todd and told him that he would be closing the Langley dealership and terminating Todd and the other 28 employees on April 15, 2022. Todd was shocked and asked Gary if he could transfer to the Abbotsford dealership. To his surprise, Gary told Todd that the Abbotsford dealership was also being closed, effective April 15, 2022 and all 34 employees in Abbotsford would also be terminated.

On his last day of employment, Todd packed up his things, rode his motorcycle home and then calls for advice.

- a) What claims does Todd potentially have under the *Employment Standards Act*? (5 points)**

QUESTION 3 (15 points)

Marie Schroeder commenced employment with Essential Excavators in January of 2020. Following the onset of the Covid-19 pandemic, Marie was told she could work from home remotely. She did so without incident until March of 2022, when her boss, Jack Welker, sent an email advising that as the pandemic was now largely over, all employees were required to return to the office effective April 1, 2022.

Marie emailed Jack and explained that in May of 2021, she had been diagnosed with skin cancer, and her doctor had recommended she avoided attending crowded places until at least June of 2023, when she will finish her treatments. Since May of 2021, Marie has not attended work and does not go to places where she can anticipate large crowds (such as restaurants, shopping malls, etc.).

In response, Jack emailed Marie and told her that as teamwork was a big part of the Essential Excavators family, he required her to attend work, starting April 1, 2022. If she decided not to return, Marie could elect to work from home remotely, but with a 25% reduction in salary.

Marie contacts you for advice.

- a) What remedies does Marie potentially have under statute? (5 points)**
- b) What claims does Marie potentially have under common law? (10 points)**

QUESTION 4 (25 points)

Solomon Goodman works as train engineer for Sea To Sea Railways, which operates freight rail service from Nova Scotia to British Columbia. He began his employment with the company in 2003, working as a brakeman and eventually was promoted to engineer in 2010.

Each year, Solomon and all other engineers attend courses on safe train operation. This includes a course on the importance of ensuring the train is fully secure and safe to transport before travelling. Engineers are required to conduct an inspection of all cars before a train commences any trip.

On February 10, 2022, someone employed with Sea To Sea Railways forgot to secure a valve on one of the railway cars Solomon was scheduled to haul from Brandon, Manitoba to Calgary, Alberta. The railway car in question was full of crude oil and, at some point in the night, a leak developed from the bottom of the rail car.

In the three days before his trip, Solomon worked the night shift, working from 12:00 a.m. until 8:00 a.m. On the day of the incident, he reported to work at 11:00 p.m. Being tired, he forgot to inspect the train cars before commencing his trip.

As a result of Solomon's oversight, an entire rail car of crude oil leaked, causing approximately 700 barrels of oil to spill over approximately 100 kilometers of railway track. The cost to clean up the spill was estimated at over \$4,500,000.00, including remediation of a sensitive gopher breeding habitat.

Following an investigation, Solomon was terminated by the railway, for just cause. There was no evidence that Solomon had been impaired by alcohol or drugs – he alleged he had simply forgotten to complete the check.

Shortly after his termination, Sea To Sea held a press conference to address mounting public anger over the spill. At the press conference, the following exchange took place:

Reporter: How did something like this happen?

CEO: We have no real answer – all of our employees are trained and here, a long service employee, Solomon Goodman, simply failed to follow company policy.

Reporter: Well, why didn't he follow the policy?

CEO: That's a great question. He says he was tired but, let's be honest here, you don't make that kind of mistake unless you are under the influence of alcohol or drugs. I have no idea how you do it otherwise...

- a) **At common law, does Sea to Sea have just cause to terminate Solomon's employment? (10 points)**
- b) **What statutory remedies does Solomon have against the railway? (5 points)**
- b) **Does Solomon have any claim for any tort and/or for any aggravated or punitive damages – why or why not? (10 points)**

QUESTION 5 (20 points)

Spicy Chickenfest operates many restaurants across Canada, including a restaurant located in Burnaby. The owner of Spicy Chickenfest, Gus Frink, wants to hire Huell Babino as its new General Manager and has provided Huell with its standard form of employment agreement. Huell comes to you for advice on the contract.

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

Welcome Huell!

If you love hard work as much as we love chicken, this will be an awesome match!

We are prepared to offer you employment as our General Manager, commencing May 10, 2022. We reserve the right to modify your roles and responsibilities from time to time to satisfy our operational requirements.

You must be able to eat chicken as a condition of employment. This is not a joke: we expect you to be a regular consumer of our chicken-based delights.

You will receive an annual salary of \$125,000.00, paid in 12 equal instalments on the last business day of each month. As a manager, you do not receive any overtime.

We have an employee bonus program which will pay you up to \$50,000.00 a year if you meet the company's goals.

Our restaurant is open 11:00 am to 11:00 pm, seven days a week – people love eating chicken morning, noon and night. We expect that, as a manager, you will be on site 6 days a week, 12 hours per day and will be responsible for opening and closing the restaurant. You can choose which of Monday, Tuesday or Wednesday you want to take as your day off.

Rest is important so we provide all our staff with 2 weeks' paid vacation. After 7 years of employment, that increases to 4 weeks' paid vacation.

You should be aware of the following rules which will govern your employment:

- As a manager, you are required to attend an annual management training seminar at our head office in Hamilton, Ontario. You will not be paid for this time, but we will cover 50% of your travel expenses.
- We believe chicken provides natural immunity to many diseases. However, we recognize in the current climate people may wish to be vaccinated against Covid-19. We will provide you with 2 hours of unpaid leave should you opt to obtain a Covid-19 vaccination.
- With all the chicken you will be eating, you should never get sick. But should your immune system fail you, we will give you 10 sick days each year. In lieu of wages, we provide Cluck Bucks, which are gift certificates

for our store. You will receive your equivalent wages in Cluck Bucks for each sick day you take in a given year.

- We proudly support the rule of law and encourage employees who are chosen to report for jury duty. If selected as a juror, you can take up to 20 days unpaid leave to sit as a juror.
- We use a proprietary recipe of 34 secret herbs and spices. You must agree to never disclose this recipe to anyone and, if you do, you agree to pay the sum of \$100,000.00 as general damages to the company.
- We recognize 9 holidays in British Columbia – one in every month except February.
- While we encourage the growth of our employee's flock so to speak, due to the importance of your position, we request that you restrict any parental leave to a maximum of 50 weeks. You agree that you will not take parental leave during the months of July and August – traditionally our busiest time of the year.

While we hate to ruffle anyone's feathers as they start work, sometimes we have to part ways with our employees. You agree that we may terminate your employment by providing you with two weeks' wages in lieu of notice for each completed year of employment, to a maximum of 10 weeks' wages. You agree to sign a full and final release in exchange for this payment.

Please be sure to get a signed copy of this agreement to me by May 15, 2022.

Let's Get To Clucking Work!

Sincerely,

Gus.

QUESTION 6 (15 points)

Joginder Singh was employed by East African Safari Ltd. ("EAS") selling game farm tours to North Americans. He started employment with EAS on February 15, 2012. Joginder was paid a base salary of \$4,000 per month, plus a 5% commission on each tour he sold. As of 2021 and 2022, Joginder was earning about \$3,000 per month on commissions.

While employed by EAS, Joginder did not have a written employment contract.

On March 15, 2022 (beware the ides of March!), Macbeth Tours Ltd. ("MTL") purchased the assets and business of EAS. MTL told Joginder that MTL was prepared to offer him employment as a new employee of MTL starting March 15, 2022. As a new employee, he had a written contract which stated that he would be paid the same base salary of \$4,000 per month and the same commission for game farm tours he sold (5%), but that since MTL's main focus was tours of the breweries in Scotland, he would be paid 7% on any brewery tours he sold.

Joginder accepted employment with MTL. Within 3 months, it wasn't working out. MTL didn't support game farm tours and Joginder's commission income dropped to about \$500 per month. Joginder was not able to sell brewery tours as he had no history and familiarity with brewery tours.

As a result, MTL terminated Joginder's employment without cause on June 30, 2022 and paid him 1 weeks' pay.

- (a) Discuss any claims Joginder may have against EAS and/or MTL? (10 points)**
- (b) If Joginder has any claims against either company, how much would a court likely award to Joginder? (5 points)**

END OF EXAMINATION