

FACULTY OF LAW

FINAL EXAMINATION - DECEMBER 2008

**LAW 599:A07 LEGISLATIVE PROCESS AND LEGISLATIVE DRAFTING
(Reynolds/Pagano)**

Time Allotted: TWO (2) HOURS PLUS TWENTY (20) MINUTES READING TIME.

Code Number: DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS. A list will be circulated and your name is to be entered opposite a number on that sheet. That number will be your code number **FOR THIS EXAMINATION ONLY** and should be entered on the examination booklets in the space provided for surname. This will provide for anonymity during marking.

- Special Instructions:**
1. This examination question paper contains 9 Questions on 5 pages. Check to ensure it is complete before starting.
 2. Answer **ALL** questions noting alternatives where offered. Cite relevant authority in all answers.
 3. Questions are **NOT** of equal value. Apportion your time intelligently.
 4. This is a **CLOSED BOOK** examination. No materials may be brought into the examination room. Some materials will be provided.
 5. Cell phones, pagers, beepers and related equipment are strictly forbidden. These items must be turned off and stowed. Except by permission of the instructor, which will not routinely be given, lap top computers are not allowed in examinations.
 6. Adhere to the time limitation imposed on this examination strictly. Failure to stop writing at the end of the examination may lead to a deduction of grade or a failure to accept the examination paper.
 7. To avoid disturbing your classmates, please do not leave the room during the last 15 minutes of the examination.

Value **Question**

- 15 1. A Member of the Legislative Assembly who sits in the Opposition has come to you with an idea for a Private Member's Bill. Ms. Ajani is concerned about the lack of composting that is being performed by residents of Alberta. In order to encourage composting, Ms Ajani wants to amend the *Alberta Personal Income Tax Act* to allow people to claim a refundable tax credit up to \$500 if they purchase a composter or composting equipment. A refundable tax credit means that a person claiming it receives a \$500 credit whether or not they have any taxable income to offset the deduction against. In short, everyone who claims it is eligible to receive \$500. A less attractive alternative to Ms Ajani is to create a tax deduction against taxable income up to \$500 for taxpayers who have purchased a composter or composting equipment. Advise Ms Ajani on the appropriateness of her alternatives based on the material covered in the course. Do not draft a Bill.

Value **Question**

- 10 2. Using examples from the course, discuss how the dynamic approach to statutory interpretation differs from other approaches covered in the course and when it might be applicable.

Value **Question**

- 10 3. A Statement of Claim was filed in the Court of Queen's Bench on Friday, February 19, 2007. This is considered to be the date the Statement of Claim was issued. Under the Alberta Rules of Court (A.R. 390/68), a Statement of Claim expires on the first anniversary of the day it was issued and must be served before it expires. February 19, 2008 was a Sunday and February 20, 2008 was Alberta Family Day, a holiday. The Statement of Claim was served on Tuesday, February 21, 2008. Assume there are no problems or issues arising from the service except for the time limits. Based solely on the issue of timeliness, is service of the Statement of Claim valid? Provide reasons for your answer. You do not need to refer any specific Rules of Court in your answer.

Value **Question**

- 15 4. A Member of the Legislative Assembly, Mr. Ido Right, is concerned that Members of the Legislative Assembly are not adequately held accountable

for what they say in the Assembly. He believes that the historical reasons for protecting Members are archaic and he wants to be the vanguard of the changes. He does not want to repeal any legislation that may exist but believes that the passage of a motion will lead people to reject any provisions that may exist. His motion proposes, in part, that:

“...Members of the Legislative Assembly be liable for anything said by the Member in the Assembly or a Committee of the Assembly.”

As a keen student of legislative process, he believes a motion will be a more economical way to achieve his desired result as a motion requires one vote.

The Speaker is concerned about the possible impact on freedom of speech and has come to you for advice about Mr. Right's motion and the impact should it pass. Advise the Speaker.

Value **Question**

- 5 5. If the sponsor of a Bill does not want it to come into force upon proclamation, what other options are available to that person with respect to the coming into force provision?

Value **Question**

- 10 6. The *Dangerous Dogs Amendment Act, 2007* was passed by the Legislative Assembly on November 22, 2007. It received Royal Assent on November 27, 2007. It is scheduled to be proclaimed January 1, 2009. One provision of this Act allows for the Lieutenant Governor in Council to make regulations on a number of issues specifically declaring certain breeds to be dangerous dogs, setting fees for the registration of dangerous dogs and designating municipalities to which the Act applies. The Act which the Bill amends is older having been initially passed in 1922 and, surprising by today's standards, does not contain any regulation-making powers. In an effort to be proactive, the Lieutenant Governor in Council approved a Regulation under the Act on December 3, 2008 in Order in Council 666/08 on the three areas mentioned above. Certain dog owners across the province want to challenge the validity of the regulation. They have come to you for advice. Provide advice on the validity of the Regulation.

Value **Question**

- 15 7. In the 1994 decision in *R. v. Heywood*, the Supreme Court of Canada was considering the meaning of “loiter” in the context of the prohibition in the *Criminal Code of Canada* against convicted sexual offenders loitering in school yards, public parks and playgrounds. Justice Cory stated:

“The appellant and the Attorney General of Canada argue that the legislative debates surrounding the passage of the section in 1951 and again when it was reconsidered in 1986-87 provide support for the proposition that “loiter” in s. 179(1)(b) includes the notion of some sort of malevolent intent. **In my opinion this argument is not well founded. The admissibility of legislative debates to determine legislative intent in statutory construction is doubtful...**” (Emphasis added)

Discuss the basis for Justice Cory’s statement in terms of what has been covered in the course. Discuss whether his views represent the state of the law today and if not what the changes have been and how they differ. In your answer address the merits and rationale for the changes. Finally, do you agree with Justice Cory?

Value **Question**

- 15 8. In March 2004, Alex Victor, a resident of Edmonton and the holder of a Bachelor of Arts from the University of Lethbridge, was accepted into a program of legal studies in Wales at Old Dragon University commencing September 2004. On February 20, 2004, the Law Society of Alberta notified foreign and Canadian law schools by letter that the assessment of foreign law degrees for entry into the profession of law would be changing. Before the changes, students graduating from Wales had to write up to four additional examinations. The February 2004 notice indicated that up to 13 additional examinations would be required. The legislation giving effect to these changes to the *Legal Profession Act* was contained in the *Miscellaneous Statutes Amendment Act, 2006* and came into force on November 30, 2006. Mr. Victor graduated from Old Dragon in the spring of 2007. He had been aware of the February 2004 letter but was not overly concerned as similar changes had been discussed for years but no changes had been made. There was no provision in the legislation “grandfathering” those who were in law school in Wales when the Act came into force. In fact, the Act was silent on transitional provisions.

Mr. Victor now wants to return to Edmonton to pursue a legal career. He has secured an articling position but has been notified by the Law Society that he must take 13 courses under the “new” rules in order to qualify for articling. Based on material covered in the course, advise Mr. Victor as to what arguments may be raised in this matter and the merits of those arguments. There is no need to refer to the *Canadian Charter of Rights and Freedoms* in your answer.

<u>Value</u>	<u>Question</u>
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| 5 | 9. Even before the current economic turmoil, Mr. Goodfella was experiencing great financial difficulties. He was petitioned into bankruptcy. As part of the bankruptcy process, the bankrupt must declare all of his or her personal assets. The receiver discovered that Mr. Goodfella had failed to disclose 1000 pairs of shoes that he possessed. The <i>Criminal Code of Canada</i> provides that: |
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Everyone who removes, conceals, or disposes of any of his or her property to defraud creditors is guilty of an indictable offence and is liable for imprisonment for two years.

Explain what maxim the courts might rely on in interpreting this provision and why it might be useful.

TOTAL MARKS: 100

End of Examination