

**FACULTY OF LAW  
FINAL EXAMINATION – DECEMBER 10, 2005**

**LAW 555:A1 – LABOUR LAW (Eisenbraun/Feth)**

Time Allotted:           **THREE (3) hours**

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 in the space provided above. This is to ensure anonymity during marking.

- Special Instructions:
1. This examination paper contains 10 questions on 7 pages. Check to ensure it is complete before starting.
  2. Answer **ALL** questions noting alternatives where offered.
  3. Questions are not of equal value. Apportion your time accordingly.
  4. This is a **CLOSED BOOK** examination except for the *Labour Relations Code*, the *Employment Standards Code*, and the *Human Rights, Citizenship, and Multiculturalism Act*.
  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 grades 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**  
**20 Marks**      **1.**

Zell Computers operates two facilities in Podunk, Alberta. Its facilities have the following units: production, repairs, shipping, clerical, and a support call centre. Staff numbers are as follows:

Production	50 employees
Repairs	20 employees
Shipping	10 employees
Clerical	20 employees
Call Centre	100 employees

Production, Repairs and Shipping employees work at a high security facility outside the town, but each work different hours: Production and Repair employees work four-10 hour shifts per week, staggered so that half work Monday - Thursday and the other half work Tuesday - Friday. Shippers work five-8 hour shifts per week (9:00 a.m. to 5:00 pm.). Shippers spend their time between the high security facility, and a Zell complex in the town itself, which holds the Call Centre, Office staff, and Managers. The Call Centre staff work 24/7, in three-8 hour shifts. The Office staff work 8 a.m. to 5 p.m., Monday to Friday.

Production and Shipping employees are largely unskilled workers, and are paid between \$9-\$15 per hour. Repair staff have technical diplomas in computer repair, and earn \$30/hr. They also tend to be less transitory, with more years service at Zell. The Call Centre employees are principally under-employed Arts Degree graduates in the Liberal Sciences, because excellent communication skills are needed for their work. They are paid \$20/hr, plus commissions. Office personnel are recruited from local secretarial colleges, and get paid on salary, usually starting at \$2000/month.

Zell has a long history of defeating union organizing across North America, except in the production area where unions have been successful. However, two competing unions now believe Zell's Podunk facilities are ripe for organizing. One union is the International Computer Employee's Union (ICEU), a U.S. based union with no formal presence in Alberta. The other is the established Alberta Computer Technicians Association (ACTA).

Assume you are legal counsel to the ICEU. Advise your client of what steps need to be followed to become certificated in Alberta, and give advice as to the considerations affecting potential bargaining unit structures, should ICEU decide to organize at Zell.

**VALUE**  
**5 Marks**

**QUESTION**  
**2.**

In a surprise turn of events, ACTA manages to unionize the Shipping and Repair staff, before the ICEU can complete its own rival campaign (*based on your advice!*) for a more inclusive unit. After a short negotiation, a 30-month collective agreement is entered into (January 1, 2005 to June 30, 2007). Explain to your frustrated client (ICEU) the organizing and other options available to them under Alberta *Labour Relations Code*, either immediately by or in the future, to establish a presence at Zell's Podunk facilities.

**VALUE**  
**10 Marks**

**QUESTION**  
**3.**

Not surprisingly, Zell is unhappy about ACTA's success, viewing it as the "thin edge of the wedge" at its Alberta operations. Immediately following completion of negotiations with ACTA for its first collective agreement, Zell starts to reconsider its delivery model in Podunk. In particular, those functions at the high security facility are now under review.

First, assuming you are fired from your job as union counsel and have taken a job at the pre-eminent employer-side law firm, what advice would you give Zell as to how it might reorganize or outsource some or all of the work performed at the high security facility, prior to the next round of collective bargaining.

Second, how would your advice change if this outsourcing was being contemplated after notice to commence bargaining for a new collective agreement had been served in May 2007?

**VALUE**  
**10 Marks**

**QUESTION**  
**4.**

The unhappy ACTA experience has taught Zell a lesson about avoiding union organizing campaigns. In July 2005, it decides that in an effort to avoid future certification campaigns targeting its Production staff, it will immediately increase their wages by 25%, and offer them stock options, and flex time.

There is, however, fall-out from this decision. The ACTA members in Shipping and Repair, seeing that the Production staff got a significantly higher raise than they recently negotiated, are angry at both their employer and their union. Ten ACTA members then meet after work one day and decide that they will extend their breaks and refuse to work any more overtime until their contract gets reopened. As

well, they start talking about wanting to get ACTA removed from the workplace.

At the same time, the non-unionized Call Centre staff are equally unhappy about Zell's decision to give preferential treatment to Production staff. A memo starts circulating via e-mail that on the following Monday, no phones will be answered between 10 a.m. and 11 a.m. - normally a busy call-volume period.

Over the July 2005 long-weekend, the unhappy ACTA members also stage an initially peaceful rally in front of Zell's Alberta headquarters in Edmonton. They waive placards on public property and call the media to attend. The rally degenerates, however, and in the ensuing melee a security guard employed by Zell videotapes some individuals egging the Zell headquarters, and spray-painting anti-management graffiti on the door.

Zell Managers come to you seeking advice. What will you advise Zell about the legality of the various activities described above, and Zell's possible responses thereto?

**VALUE**  
**5 Marks**

**QUESTION**  
**5.**

The videotape made by Zell's security company is poor quality. One of the Shipping employees purportedly videotaped at the Edmonton rally is Marvin Harrison, a former unsuccessful candidate for presidency of the ACTA at Zell. Company managers review the grainy videotape and terminate his employment for vandalism, using the "just cause" provision in the collective agreement. Marvin approaches the president of his local - Peyton Manning, and asks the local to file a grievance. Harrison says he was visiting his mom at the hospital when the melee occurred, and so had an alibi to the misconduct attributed to him. Manning realizes the person in the video may not be Harrison, but rather another Shipping employee by the name of Ron Mexico; the taped evidence is inconclusive. Manning knows Mexico's wife is deathly ill, and he needs his job at Zell to pay for her medicine. On the other hand, getting rid of Harrison would solidify his hold on ACTA. Discuss the issues facing Manning and Harrison.

**VALUE**      **QUESTION**  
**12 Marks**      **6.**      Discuss the ways in which the *Labour Relations Code* reflects government intervention or interference in the “free” collective bargaining process between unions and employers, including reference to relevant Code sections.

**VALUE**      **QUESTION**  
**8 Marks**      **7.**      According to critics of our labour relations legislation, what are the failings of Alberta’s *Labour Relations Code* as presently drafted?

**VALUE**      **QUESTION**  
**8 Marks**      **8.**      John Depp is a Taxi Driver working for Night & Day Taxi Ltd. He works the nightshift Monday through Friday from midnight to noon. He pays a flat fee of \$125.00 per day to the taxi company for the use of the cab and keeps all of the fares earned during his 12-hour shift. Night & Day requires him to be on duty for the full 12 hours. A dispatcher at ABC Taxi Ltd. co-ordinates his trips. John is required to abide by the company’s safety and personal appearance policies. The company tracks John’s fares and receipts, but leaves it to him to remit taxes. The company has always stated that John is an independent contractor.

Last month, John started showing up for work in a kilt. His mother is Scottish and he takes pride in that heritage. His dispatcher called him a “fag” and said that no guy is going to wear a dress while working for the company. The dispatcher also said that the “dress” offends the company’s personal appearance policy.

John wants to file a Human Rights Complaint. Discuss whether John is an employee or an independent contractor, and the considerations that will bear on whether he can file such a complaint.

**VALUE**      **QUESTION**  
**16 Marks**      **9.**      Frank Ford has been employed by Big Al’s Autobody Ltd. as a mechanic for 20 years. He started with the company after dropping out of high school. The company was started and operated by his father, Big Al Ford. In November 2004, Big Al sold the company to his brother “Cheap Tony” Ford. By that time, Frank was earning \$90,000.00 per year in salary,

largely due to his father's generosity. When Tony took over the business, he insisted that all of the mechanics work three statutory holidays along with a 45-hour work week. The company did not pay overtime and holiday pay; instead, each mechanic was given increased health and life insurance benefits. Frank rebelled against his uncle's policies by "working to rule". He sometimes read the newspaper during working hours and often came in late. He told some of the other mechanics that Tony was a loser. In May 2005, Tony approached Frank in a rage and warned him that his work performance was unacceptable and that he needed to "clean up his act". Tony then left the room in a huff. In June 2005, Tony introduced an anti-nepotism policy. Tony told Frank that he would be exempted from the policy if Frank agreed to sign a written employment contract. The contract dictated that Frank had to be at work by no later than 7:30 a.m. each day (instead of his normal 9:00 a.m. start), that he was not entitled to overtime pay, and that either party could terminate the agreement by giving the other party eight weeks notice or pay in lieu thereof. Frank's salary and benefits remained unchanged. Frank reluctantly signed the contract. On October 1, 2005, Frank came into work at 8:45 a.m., having been delayed at a doctor's appointment. Tony was waiting for him. Tony said that Frank had been late for work three times during the past month and therefore had breached the employment contract. Tony said that he had just cause to terminate, or at least "near cause". However, in order to give Frank a break, Tony would dismiss Frank without cause. The company paid Frank eight weeks of termination pay.

Frank was depressed and didn't know what to do. He lived off his savings for the next two months, and stayed home watching television. He started looking for a new job at the end of November, but all of the advertisements for mechanics stated that the expected salary range was \$50,000.00 - \$60,000.00 per annum. Frank then began to consider the possibility of going back to school to get his diploma and change careers. He had always been interested in real estate and knew that some realtors made more than \$100,000.00 per year. Unfortunately, his savings were almost gone, making the cost of returning to school potentially prohibitive.

Frank has come to you for advice. Explain his legal rights and obligations including the damages to which he may be entitled. Also discuss the forums that he might access and the relief that might be available.

**VALUE**  
**6 Marks**

**QUESTION**  
**10.**

*Wallace v. UGG* holds that the reasonable notice period may be extended to account for bad faith in the manner of dismissal. Discuss the major failings of the majority view of the Supreme Court of Canada.

**TOTAL MARKS: 100**

**End of Examination**