

**FACULTY OF LAW
FINAL EXAMINATION - DECEMBER 2003
LAW 499:A2 EMPLOYMENT LAW**

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TIME ALLOTTED: TWO AND ONE-HALF (2.5) HOURS

CODE NUMBER: DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS OR BOOKLETS. 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 12 questions on 5 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 intelligently.
 4. Please write legibly.
 5. This is an OPEN BOOK examination.
 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. Whereas it is very disruptive for those students finishing examinations while others are leaving the examination room and discussing the examination outside the examination door, it is requested that no individual leave the examination room during the last 15 minutes of the examination period.
 8. Cell phones, pagers, beepers and related equipment are strictly forbidden. These items must be turned off and stowed. Lap top computers are not allowed in examinations.
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VALUE	QUESTION
(2 marks)	1. What is the purpose of reasonable notice?
(4 marks)	2. What obligations, if any, does an employer owe to a probationary employee before terminating his/her employment?
(4 marks)	3. Is a 30-day termination clause in an employment contract enforceable (assuming consideration is not an issue)?
(5 marks)	4. Discuss the human rights implications (if any) of mandatory retirement generally, and then with respect to a police force.
(4 marks)	5. Under what circumstances might a wrongfully dismissed employee be able to recover punitive damages from her former employer?
(6 marks)	6. <u>Wallace v. United Grain Growers</u> has had a significant impact on the termination practices of employers. By way of example, consider the situation of an employee with low self esteem who suffers from depression and anxiety. How might his employer terminate his employment, without cause, and avoid Wallace damages?

PROBLEM QUESTIONS

- (15 marks) 7. You are retained by a 40 year-old woman who has been employed for 15 years by a national surgical supply company (the “Company”). She is the sales representative for all of the hospitals within the City of Edmonton, Alberta. She is also the sales manager for the Province of Alberta, and oversees 2 other sales representatives within the Province. Her job as sales representative is to sell surgical supplies to hospitals.
- She has a written employment contract dated January 1, 2003. She tells you that the Company requires all employees to sign new employment contracts at the beginning of each calendar year. However, her base salary and commissions under her employment contract have remained

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unchanged for the last 4 years. Her employment contract specifically requires her to perform duties “as assigned” by the Company. The contract also contains an express termination clause that allows her employment to be terminated upon payment of an amount equivalent to the minimum *Employment Standards Code* termination pay amount.

She has retained you because the Company has just terminated the sales representative for the City of Calgary, Alberta. The Company has now advised her that, effective January 1, 2004, she will now be taking over the sales responsibilities in the City of Calgary in addition to her existing territory. Her base salary will not change, but her sales commissions will likely be substantially higher as a result of taking over the Calgary territory. However, her job will now require her to travel overnight to Calgary once a week. She is a single mother with 2 children in day care, and does not want to travel during the week.

She wants your advice on the issues and potential consequences she faces in making her decision to accept or reject the new territory. What do you advise her, and why?

- (13 marks) 8. Your client (the surgical sales representative and sales manager for Alberta) is back. She decided to accept the new position and see how it worked out. The Company drafted a new employment contract to reflect her new position with the Company. She was given a draft of the contract for her review, but has not signed it.

She started as the sales representation for both Calgary and Edmonton effective January 1, 2004, and worked in that capacity until January 31, 2004. On January 31, 2004, she was suddenly dismissed and paid an amount equivalent to the minimum *Employment Standards Code* Termination Pay pursuant to the termination provisions in her January 1, 2003 employment contract (i.e. the earlier contract – see Question 7).

The Company has refused to provide her with a letter of reference or any explanation for the reasons behind her dismissal. However, after the demand letter was sent to the Company from your office, the Company advised that it terminated your client’s employment for cause because she had advised several doctors at the Foothills General Hospital in Calgary that a particular product line that she was selling was an inferior product, and suggested that a competitor’s product was superior for the particular purpose that those doctors required.

You discuss the allegations with your client, and she admits having made the comments. However, she says that the particular product she

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discussed with the doctors was very minor in terms of overall sales, and that the doctors had been having problems with the Company's product and had asked for her opinion on the issue. She said that the previous sales representative had made similar comments (and the Company was aware of those comments) but that sales representative had not ever been warned, let alone fired.

She needs your advice on how to proceed, and specifically on:

- a) Whether her employer has just cause to terminate her employment?
- b) What her entitlement (if any) is to pay in lieu of notice?

(10 marks) 9.

After consulting with your client (the surgical sales representative and sales manager for Alberta) regarding her January 31, 2004 dismissal, you commence a wrongful dismissal action against the Company, claiming your client is entitled to 12-months pay in lieu of notice given her length of service with the Company and her position as the Alberta sales manager and sales representative for both the City of Edmonton, and the City of Calgary, Alberta. (The alleged entitlement to 12 months severance has no bearing on the answer to the previous question).

On February 28, 2004, your client calls you and advises that she has been approached by the Company's main competitor. The competitor has offered her a position as a sales representative for the City of Edmonton and the City of Calgary, with a significant pay raise and a boost in her commission structure from what she was previously earning with the Company. The competitor wants to hire her because of her knowledge of the industry, her understanding of the cost and profit margins relative to the Company's business, and her contacts within the health industry, including contacts within the hospitals that she was selling to while with the Company.

She wants your advice on:

- a) if you have any concerns about her taking the position with the competitor, and
- b) what (if any) impact her employment would have on the wrongful dismissal action she commenced against her previous employer?

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- (10 marks) 10. You are consulted by the human resource director of a manufacturing plant, Acme Widgets. As with all industrial facilities, safety is a big concern, and Acme is no different. They have a comprehensive safety policy and an extensive safety program. The problem is that their director of safety has put on so much weight lately that his knees are so weak and sore that he is unable to climb up stairs and ladders to view all of the work activities that go on in the plant. The human resource director tells you that it is very important for the safety director to be able to audit all activities, spot check workers, and investigate any incidents. The human resource director tells you that the safety director has previously done a good job, but now he has concerns that the safety director is not being effective. He asks for your advice as to what he can do. In your answer, you should address whether or not there are Human Rights issues, whether the employment agreement has been frustrated by the safety director's condition, whether Acme can terminate the safety officer's employment for cause, and what your ultimate recommendations are.
- (15 marks) 11. Jane Doe was a paralegal in a law firm, having worked there for about eight years. At the time of her termination, she was making about \$48,000 per year plus normal benefits. She is 48 years old, and had worked in the legal field for the last 26 years. As a result of a personality conflict with another paralegal, the firm let them both go, giving them each 6 weeks pay in lieu of notice. She accepted the pay, but complained that it wasn't enough and did not sign a release. While there were lots of paralegal jobs available, Jane was disillusioned with the work, and was tired of the constant pressure and deadlines. She has a talent for organization and had always wanted to be an event planner. Rather than search for work as a paralegal, she decided to start her own event planning business. She rented a small office, hired an assistant and began to advertise her new business. She was talented and managed to attract some clients, but after 6 months of hard work and long hours, she had lost \$25,000 and had to shut the business down. She consults you as to whether she has a claim against the law firm for wrongful dismissal. Advise her as to her rights, and whether she can recover her business losses as part of her wrongful dismissal claim. Additionally, discuss the appropriate amount of notice or compensation she should have received on her termination.
- (12 marks) 12. You are a university student, working your way through school. Previous summer jobs trained you as a landscaper, and you have decided that this summer, you will start up your own gardening business. You think that you can keep a number of people busy with your contacts and

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start looking around for people to hire. The work involves long hours during the good weather – sometimes 7 days per week and up to 12 or 14 hours per day. There are usually lots of days when it rains and you can't work at all. You don't feel that you can afford to pay overtime to your workers, or Canada Pension Plan and Employment Insurance benefits. How can you structure your arrangements with your workers to create flexible hours and avoid having to pay CPP and EI premiums? Draft a simple form of agreement to use with such workers.

Total:**100 (marks)**

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