

**BROCK UNIVERSITY**

Final Examination, Winter 2013  
Course: ACTG 1P71 , Sec. 01, 02, 03  
Date of Examination: April 24, 2013  
Time of Examination: 2:00 p.m. - 5:00 p.m.

Number of Pages: 13  
Number of Students: 309  
Number of Hours: 3  
Instructors: G. W. McCann, B. J. Troup

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All questions except 6, 7, 8, 9, 10 and 11 are to be answered directly on this examination paper. Do NOT exceed the space provided.

6, 7, 8, 9, 10 AND 11 ARE TO BE ANSWERED IN THE WORKBOOK PROVIDED. **WRITE YOUR NAME, YOUR STUDENT NUMBER AND YOUR SECTION NUMBER ON THE FRONT OF THE WORKBOOK.**  
**ANY QUESTION OTHER THAN 6, 7, 8, 9, 10 AND 11 ANSWERED IN THE WORKBOOK WILL NOT BE MARKED.**

NO EXAMINATION AIDS OTHER THAN THOSE SPECIFIED ARE PERMITTED. USE OR POSSESSION OF UNAUTHORIZED MATERIALS WILL AUTOMATICALLY RESULT IN THE AWARD OF A ZERO GRADE FOR THIS EXAMINATION.

| <u>Question</u> | <u>Marks</u> | <u>Suggested<br/>Minutes</u> | <u>Awarded</u> |
|-----------------|--------------|------------------------------|----------------|
| 1               | 21           | 43                           | _____          |
| 2               | 12           | 22                           | _____          |
| 3               | 21           | 32                           | _____          |
| 4               | 7            | 13                           | _____          |
| 5               | 6            | 9                            | _____          |
| 6               | 4            | 7                            | _____          |
| 7               | 4            | 7                            | _____          |
| 8               | 7            | 13                           | _____          |
| 9               | 5            | 9                            | _____          |
| 10              | 4            | 9                            | _____          |
| 11              | <u>9</u>     | <u>16</u>                    | _____          |
|                 | <u>100</u>   | <u>180</u>                   |                |

NAME: \_\_\_\_\_

STUDENT # \_\_\_\_\_

Circle your section: Section 1: Glen McCann, Thursday  
Section 2: Glen McCann, Monday  
Section 3: Brad Troup, Tuesday

**QUESTION 1 (21 marks)**

From the list of expressions below select the answer which best completes the following sentences.  
Answers cannot be used more than once.

|                           |                        |                                 |
|---------------------------|------------------------|---------------------------------|
| passing off               | salary                 | discrimination                  |
| wrongful dismissal        | unilateral             | just cause                      |
| pay in lieu of notice     | pre-emptive            | offer                           |
| invitation to treat       | directors              | expectation                     |
| agents                    | preferred creditors    | privity                         |
| constructive dismissal    | common shareholders    | mitigate                        |
| bylaws                    | illegality             | partnership                     |
| causation                 | private                | estopped                        |
| acceptance                | officers               | working notice                  |
| management                | preferred shareholders | sole proprietorship             |
| unsecured creditors       | auditors               | rescission                      |
| acceptance                | fiduciary              | breach of warranty of authority |
| redemption                | reasonable person      | seal                            |
| articles of incorporation | voting                 | secured creditors               |
|                           | retraction             | defamation                      |

1. An employer cannot terminate an employee on grounds that constitute \_\_\_\_\_.
2. An employee who is advised that her employment will be terminated immediately and is given money by the employer to "sever" the employment relationship, has been given \_\_\_\_\_.
3. The "but for" test is a test for the \_\_\_\_\_ element of negligence.
4. When an employee is told when her job will end but is expected to continue to provide service until that time, she has been given \_\_\_\_\_.
5. A bet or wager may be an invalid contract on the grounds of \_\_\_\_\_.
6. The tort of \_\_\_\_\_ consists of intentionally confusing the public as to the source or manufacture of goods.
7. The most common formulation of the standard of care in a negligence case is the \_\_\_\_\_ test.
8. An agent is a \_\_\_\_\_ of her principal which means, for example, that she must not compete with her principal.
9. The concept of \_\_\_\_\_ means that people who are not parties to a contract cannot enforce it or be bound by it.
10. All partners of a partnership are presumed to be able to enter contracts on behalf of the partnership, and are therefore \_\_\_\_\_ of the partnership.

11. A contract in which the offer is not accepted by communication but rather by performance of the act specified in the offer is called a \_\_\_\_\_ contract.
12. If a partner is to receive a \_\_\_\_\_ it must be specified in a partnership agreement.
13. A limited partner must not participate in \_\_\_\_\_ .
14. An award of damages for breach of contract is usually calculated to protect the \_\_\_\_\_ interest of the innocent party.
15. A principal may be \_\_\_\_\_ from denying a contract where his agent acted within his apparent authority.
16. The appropriate remedy where a victim of innocent misrepresentation seeks to set aside a contract is \_\_\_\_\_.
17. A \_\_\_\_\_ right is the right of a shareholder to “put” her shares back to the corporation.
18. The \_\_\_\_\_ of a corporation manage and supervise the management of the business of a corporation, but they may delegate some of these duties to one or more \_\_\_\_\_.
19. **(3 Marks)**
- Corporations must have shares that have these three rights:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

**QUESTION 2 (12 Marks)**

Select a total of **THREE** of the following concepts or cases (you may choose a mix; it doesn't have to be three cases or three concepts).

For each of your selections:

- (a) if it is a case, explain the legal proposition for which the case stands and explain why the case represented a significant advance in business law;
- (b) if it is a concept, explain what the concept means, explain its significance in business law and give an example where the concept is relevant.

You may write your answers on the following blank sheet. **(DO NOT EXCEED THE SPACE PROVIDED)**

CASES: Carlill v. Carbolic Smoke Ball Co.

Hedley Byrne v. Heller

Donoghue v. Stevenson

Haig v. Bamford

Hadley v. Baxendale

CONCEPTS: tendered performance

substantial performance

rescission

mitigation

vicarious liability

contributory negligence

standard form contracts

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**QUESTION 3 (21 Marks - 7 @ 3 each)**

For each of the following terms/concepts provide a brief definition and an explanation of its legal significance in the context indicated. (You may find it useful to provide a short example).

*- in the context of employment law*

1. constructive dismissal

2. just cause

*- in the context of agency law*

3. estoppel

- *in the context of partnership law*

4. fiduciary duty

5. creation of a partnership through inadvertence

*- in the context of corporations*

6. The indoor management rule

7. unanimous shareholders agreement

**QUESTION 4 (7 marks)**

The *Ontario Business Corporations Act* contains a number of provisions designed to protect creditors in the event of payments to shareholders. Explain, in detail, how one of these protections work.

**QUESTION 5 (6 marks)**

“Limited liability for shareholders makes it possible to have a separation of ownership and management.” Explain what the previous statement means and why it helps to make a corporation an attractive vehicle for investors.

QUESTIONS 6, 7, 8, 9, 10 AND 11 ARE TO BE ANSWERED IN THE WORKBOOK PROVIDED.

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**Question 6 (4 Marks)**

Name a benefit and a shortcoming of being:

- (a) a public corporation; and
- (b) a private corporation

**Question 7 (4 marks)**

Describe the difference between an employee and an independent contractor and provide one (1) reason why it may be significant to make the distinction.

**Question 8 (7 marks)**

Bill and Ted have a business that they carry on in partnership. The business is one of designing and installing indoor garden spaces for large offices. Bill takes care of sales and design and Ted does the installation. Their lawyer has suggested that they could avoid personal liability by setting up the business as a limited partnership. What does establishing a limited partnership entail, and will this work for Bill and Ted? Do you have any better advice for them?

**Question 9 (5 marks)**

Stan is a director of Acme Pipelines Limited. The corporation has decided to invest a substantial amount of money into new manufacturing equipment. Stan is aware of a corporation, Dynamic Engineering Inc., which could build the machinery. Stan is a director and a substantial shareholder of Dynamic and he knows that it is struggling in business and would be desperate to obtain a contract such as this.

- (a) **(3 marks)** Does Stan have any specific obligations to fulfil to Acme or Dynamic or both before their respective boards of directors approve a contract? What specific steps must Stan take?
- (b) **(2 marks)** Would your answer be any different if Stan held shares in both corporations but was not a director or officer of either?

**QUESTION 10 (4 marks)**

From a legal and an accounting perspective what are both the authorized capital and the issued capital of a corporation?

**QUESTION 11 (9 marks)**

Discuss the principles that apply in determining whether the courts will enforce a restrictive covenant (ie. a "non-competition" clause). In particular discuss, with details, the prospects for enforceability of such covenants where they are written into the following contracts:

- (a) an employment contract of a low-level employee
- (b) an employment contract of a senior manager of a large business
- (c) an agreement of purchase and sale by which a business is sold to a purchaser