

SIMON FRASER UNIVERSITY

OCTOBER 2010

Instructor: Shafik Bhalloo

BUSINESS 393

MIDTERM EXAMINATION

This Exam is worth forty percent (40%) of your final grade. The Exam contains forty (40) marks: 10 marks for the Multiple Choice Questions; 20 marks for the Short Answer Questions; and 10 marks for the Longer Answer Question. You have **TWO** (2) hours to complete this Exam. Use the time allotted effectively, keeping in mind the marks allocated to each question. With respect to the Multiple Choice Questions (worth 1 mark each), please choose the **single most complete** answer. The Short Answer Questions (worth 2 marks each) can be answered in a paragraph of a few sentences. As with Multiple Choice Questions, you must answer **all 10** Short Answer Questions. The Longer Answer Questions (worth a total of 10 MARKS divided into 2, 2, 3 and 3 marks respectively) will require a number of paragraphs to answer.

PLEASE RETURN THE EXAM IN ITS ENTIRETY

ANSWERS TO PART 1 OF THE EXAM SHOULD BE CIRCLED ON THE EXAM ITSELF. ANSWERS TO PART 2 and 3 SHOULD BE WRITTEN ON THE EXAM IN THE SPACE PROVIDED

NAME: _____

STUDENT NUMBER: _____

T.A.: PONG [circle one]
 SHAFIK

Multiple Choice Questions: (worth one mark each for a total of 10 marks)

Chose **the single most complete answer**. Please mark your answer directly onto the page by circling the most correct answer.

1. A retainer
 - (a) is the amount a lawyer will receive when charging based on a contingency fee agreement.
 - (b) works as a deposit.
 - (c) is the amount a client must pay that is in addition to regular legal fees and disbursements.
 - (d) refers to the costs incurred by a lawyer on a client's behalf.
 - (e) works to secure the release of an arrested person.

2. Which one of the following statements is not accurate with respect to the Canadian legal system?
 - (a) The traditional supremacy of parliament to make law has been limited to some extent by the *Charter of Rights and Freedoms*.
 - (b) The original Canadian Constitution is now known as the *Constitution Act (1867)*.
 - (c) The principle of *stare decisis* provides that courts within a province are bound to follow previous decisions on the same legal point from the higher courts of other provinces.
 - (d) The three major components of present Canadian law are the common law, equity, and statutes.
 - (e) The full normal route of a civil action is from a provincial trial court to a provincial Court of Appeal to the Supreme Court of Canada.

3. A seven-year-old boy followed his dog into Mr. Howe's backyard. He fell into a large hole dug by Mr. Howe in preparation for a tree that had been ordered. The boy broke his arm in the fall. At the hospital, a doctor employed there for four years, treated the boy. The doctor did not set the boy's arm because he made a mistake in reading the x-ray. Because the arm was not treated correctly, it healed improperly. When the boy kept complaining, his mother took him to their family doctor, who discovered the error. The

boy had to have his arm rebroken so that it could be set properly. On these facts, which of the following is true?

- (a) The case law that developed over hundreds of years on the duty of care owed by occupiers of land has priority over any subsequent legislation on the point.
 - (b) The doctor owed a duty of care to the boy, but he only had to meet the standard of care expected of the average man.
 - (c) The owner of the land owed no duty of care to the boy because the boy was a trespasser.
 - (d) The hospital, not the doctor, would be solely liable for any harm suffered due to the negligence.
 - (e) In an action against the land owner, if the boy were found to be partially at fault for his injury, the court would apportion the award of damages as it apportioned the fault.
4. With regard to the relationship between the judiciary (courts) and the legislatures, which of the following is false?
- (a) The Supreme Court of Canada cannot strike down any statute passed by the federal parliament because “Parliament is supreme”.
 - (b) Statute law overrides case law on the same point.
 - (c) The Supreme Court of Canada has the power to find the province didn't have the power to pass the statute, with the result that the statute would no longer be law.
 - (d) Although a statute is the creation of the legislature, the courts can affect the meaning of the statute through subsequent interpretation.
 - (e) A provincial statute could be struck down by the courts for being contrary to the *Charter of Rights and Freedoms*.
5. In which one of the following cases can the Supreme Court of Canada not override the will of the federal parliament?
- (a) Parliament enacts legislation that infringes on rights contained in the *Charter of Rights and Freedoms*.
 - (b) Parliament enacts legislation that is *ultra vires*.
 - (c) Parliament enacts legislation in an area outside their jurisdiction.
 - (d) The Supreme Court of Canada disagrees with the substance of the legislation.
 - (e) Parliament enacts legislation that is not clear.

6. Rob bet Joe \$300 that the Chicago Bears would beat the San Francisco 49ers. The day after the Bears lost, Joe went to Rob's office. He created quite a scene. He got the \$300 and yelled nasty remarks about the Bears team and coach. Rob was furious. He lied to the onlookers by saying that Joe passed himself off as an accountant but that he never passed the required exams and had forged the documents. Joe lost several clients because of Rob's false statements. On these facts, which of the following is true?
- (a) Rob could successfully sue Joe for defamation because of the statements Joe made about the Bears team and coach.
 - (b) Joe could successfully sue Rob for defamation.
 - (c) Rob's statements about Joe were defamation by innuendo.
 - (d) If Joe sues Rob for defamation, Rob would be able to use successfully the defence of qualified privilege.
 - (e) Rob could sue Joe for nuisance.
7. Which of the following actions constitutes an assault?
- (a) A rude gesture from another motorist.
 - (b) Pointing an unloaded gun at another who does not know whether or not the gun is loaded.
 - (c) Bumping into another in a crowded hallway.
 - (d) A car accident where you are hit by an impaired driver.
 - (e) A bystander struck by a ball during a baseball game.
8. A recent case involved a fight that broke out at the Commodore, a dancehall. During a break in the music, the master of ceremonies was attacked. When the Commodore security team failed to appear, the plaintiff, Mr Jeffrey, a patron, joined other patrons who intervened. Jeffrey was hit from behind with a chair and deliberately punched in the jaw. He sued Commodore Cabaret Ltd., the company that managed the premises and entertainment, on these facts. Which of the following is false?
- (a) If the defendant argued and the court found that Jeffrey had volunteered to take both the physical and legal risk, Jeffrey would lose and receive no damages at all.
 - (b) If the defendant argued and the court found that Jeffrey was contributorily negligent, Jeffrey would receive some damages for compensation.
 - (c) Jeffrey's cause of action against the company could be framed in negligence because he could argue that the company owed him a duty of care, fell below the standard of care, and caused him foreseeable damage.

- (d) The company has a duty under the *Occupiers' Liability Act* to take reasonable steps to make sure the patrons are reasonably safe.
 - (e) Jeffrey could have successfully sued the person who socked him in the jaw for the tort of negligence.
9. Which of the following is correct with respect to restrictive covenants included in employment contracts?
- (a) For such a clause to be valid, it is only necessary to show that it was needed to protect the employer's interest.
 - (b) Such restrictive covenants are always void and have no place in employment contracts.
 - (c) The imposition of such a restriction is at the option of the employer and the employee has no say in the matter.
 - (d) Such restrictive covenants are enforceable in court if reasonable and not against the public interest.
 - (e) A void restrictive covenant destroys the whole contractual relationship and neither party has any obligations under the agreement.
10. On Friday afternoon, Frieda was told not to return to work because her job was gone. If her employer is in a non-unionized business, and had no "just cause" to dismiss her, which of the following is false?
- (a) The amount of notice could be set out in the employment contract, and that amount would override the amount set by the common law, unless it was less than the minimum amount set out in the *Employment Standards Act*.
 - (b) She can elect to have a notice period or to take money in lieu of notice.
 - (c) If the employee sues for wrongful dismissal and the court has to determine the appropriate notice period, it would consider, among other things, her length of service and age.
 - (d) No notice need be given at all if the employer pays her an amount of money equivalent to the amount of money she would have earned during the notice period.
 - (e) The amount of notice to be given her is "reasonable notice".

SHORT ANSWER QUESTIONS: (ANSWER ALL 10 OF THE FOLLOWING QUESTIONS. EACH QUESTION IS WORTH 2 MARKS EACH FOR A TOTAL OF 20 MARKS). PLEASE WRITE YOUR ANSWER DIRECTLY ONTO THE PAGE, IN THE SPACE PROVIDED

11. What elements must be established in order to succeed in a negligence action?

12. Tom was complaining about the carelessness of his neighbour and asks you if you think he could sue him for negligence and win. Explain what a plaintiff must prove in order to sue successfully for the tort of negligence and have the defendant pay 100% of his loss.

13. Explain how the courts determine whether a duty of care exists in a negligence action.

14. What is a provincial law society and what is its mandate?

15. In addition to legal fees to a lawyer, what other costs is a client responsible for paying?

16. “If the *Employment Standards Act* in British Columbia states that an employee who has worked for a specific length of time is entitled to up to eight weeks’ notice, and the employee you wish to dismiss has worked for that long, you can be sure that’s all the notice or pay in lieu of notice that you have to give that employee.” Discuss the accuracy of that statement.

17. What are the requirements for a fair hearing and what is necessary to satisfy the rules of natural justice?

18. Explain what is meant by punitive damages and when such remedies would be available in a tort action.

19. Explain what is meant by the principle of the rule of law.

20. An individual who is refused service at a restaurant because of his race has had his *Charter of Rights* violated. Comment on the accuracy of this statement.

LONGER ANSWER QUESTION: YOUR ANSWER MUST BE IN ESSAY-FORM (COHERENT SENTENCES AND PARAGRAPHS) AND SHOULD CONTAIN ARGUMENTS OR ANALYSIS IN SUPPORT OF YOUR CONCLUSIONS.

Dufus is driving at 50 kilometres per hour in a 50 kilometres per hour zone down a four lane street where there are children playing. One nine-year-old child, Bubbles, runs into the street chasing a soccer ball. Dufus, without looking over his shoulder, swerves into the other lane to avoid Bubbles and in the process he hits a car, driven by Pompous that was speeding over the posted speed limit past him in the left-hand lane going in the same direction.

Pompous loses control of his car, hits a telephone pole and is seriously and permanently injured. The telephone pole, owned by the local phone company TelusNot, easily snaps into two pieces and hits Bubbles, who is still in the street, knocking him unconscious and resulting in permanent injuries.

TelusNot never did any testing of its poles to establish how easily the poles broke. The only factor used in manufacturing the poles was cost. The poles were made of low quality trees and were not treated in any significant manner except for a coating of tar. No reinforcement was used on the poles.

QUESTIONS: WHAT ARE THE VARIOUS LIABILITIES AND RIGHTS OF THE PARTIES INVOLVED? MORE SPECIFICALLY, CONSIDER THE LIABILITIES AND RIGHTS OF POMPOUS V. DUFUS (2 MARKS); BUBBLES VERSUS DUFUS (2 MARKS); BUBBLES AND DUFUS VERSUS POMPOUS (3 MARKS); AND BUBBLES VERSUS TELUSNOT (3 MARKS)?

