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GNG4170 Final Exam – Winter Term 2009

April 22, 2009
3 hours, closed-book

Professor: C. Tiesma

1. Answer **one** of two of the following questions (5 marks)
 - (a) Why is a certificate of authorization required? (1 mark) Who may obtain one? (2 marks) Explain what also must be addressed when considering applying for one. (2 marks)
 - (b) Briefly explain the roles of both the Fees Mediation Committee and Complaints Committee (at the PEO),

2. Select **five** of the following eight terms/phrases, and provide an explanation/discussion (5 marks each x 5 = 25 marks)
 - (a) true construction approach
 - (b) strict liability
 - (c) DRB
 - (d) Briefly explain the role of the Human Rights Code and identify 5 examples of inappropriate conduct, in the workplace, under this legislation
 - (e) liquidated damages (additionally, provide an example from the 'tendering' situation).
 - (f) restrictive covenant
 - (g) partnership
 - (h) limitation period for breach of contract

3. Answer **True/False** for the following 5 statements (5 x 1 mark each = 5 marks)

- (a) in a negligence action, as long as the kind of damages are reasonably foreseeable, the extent of the damages are specific to the unique plaintiff (victim).
- (b) if a licensed engineer offers engineering services without a certificate of authorization, potential consequence are discipline and/or enforcement.
- (c) An engineer (from outside Ontario) who wants to do engineering work in Ontario must obtain a limited licence. *Temporary*
- (d) Legally, if fired without cause, the limits of an employee's rights extend to the minimum notice (or pay instead of notice) under provincial legislation.
- (e) A clause labeled "penalty" in a contract, cannot be legally enforced.

4. Answer **one** of the following two short-answer questions (10 marks)

- (a) Identify the different types of intellectual property, describe what each is meant to protect, and indicate the length of protection for three of them. *private public*
- (b) Explain how the tendering and selection process used to be viewed by the Courts, how it is currently viewed, and how the legal relationships (in each case) are formed (include relevant case references) (7 marks) Explain the different kinds of mistake and how the kind of mistake matters. (3 marks)

*patent
Industrial Property
Trademark
Copy-write*

5. You **must** answer the following hypothetical (20 marks)

The Owner of a piece of property hired an architect to provide general specifications for a new office headquarters, which included a separate parking garage.

The architect, in a separate contract, hired an engineering firm (123 Engineering) to design the parking garage (including the paved podium). In their contract (to which the Owner was not a party, and of which the Owner had no knowledge) 123 Engineering assumed full responsibility for these aspects of the design.

After all the designs were completed and implemented/constructed, there was significant water leaking in the parking garage after the first significant rainfall.

The Owner hired a third-party consultant to investigate. The investigation concluded the leaking was caused by a particular rubberized membrane (used in the construction of the garage).

A roofing subcontractor had suggested to the architect and Smith (an engineer at 123) that a substitute membrane was cheaper and more readily available than the membrane which was

originally specified. The architect and Smith agreed to follow the roofing subcontractor's suggestions in those regards.

The investigation concluded that the substitute membrane was inappropriate in the circumstances, and that the problem could only be fixed by removing the membrane, and replacing it with the specific membrane that was initially noted in the designs.

What liabilities in tort law arise from these facts? In your answer, explain and apply the necessary principles, and indicate a likely outcome.

6. You **must** answer the following hypothetical (20 marks)

A major airline required a new software + computer hardware system to be created for its central offices. It put the job out to tender. XYZ Technologies won the contract.

Under this contract, the airline would pay XYZ over eight months. Each month, the invoices (for XYZ's work, and that of other sub-contractors XYZ would hire) would be certified, and then presented to the airline. The contract indicated that the airline must pay by the last day of the month (following certification of the invoices). If the airline defaulted in paying, XYZ was permitted to terminate the contract.

XYZ Technologies had won the tender, but realized it had seriously underbid (compared with the other bidders). XYZ realized it was going to lose money on this contract. Nevertheless, they started work.

The airline made the required payments in the first, second, and third months (following certification). In the fourth month, however, the airline questioned one of the invoices that had been sent (and part of the invoices certified to be paid in that fourth month).

The airline indicated it did not want to pay the fourth installment until they received some kind of an explanation/justification for the invoice. Although XYZ was not required to provide this, a representative from XYZ did verbally confirm (to the airline) that the explanation would be provided (before payment of the fourth installment was made).

XYZ never provided the explanation. At the very beginning of the 5th month (so, immediately after payment #4 was due, and not paid, by the airline) XYZ terminated the contract.

Was XYZ entitled to do so? Explain and apply the necessary principles, and indicate a likely outcome.

7. Answer **one** of the following two ethical hypotheticals (15 marks)

(a) Lamda (P.Eng) works for MegaCorp ("Mega"). Lamda has worked for Mega since graduating from university and has been promoted after obtaining his engineering licence (Lamda is a software engineer). The promotion means more money, more responsibilities and an increased workload. Lamda is also a new parent, and wants to buy a new, larger home.

Lamda is working furiously to meet a deadline for the design of a computer modeling program (for Mega). Lamda is afraid that he will not meet the deadline and does not want to admit defeat by informing his boss.

Lamda's spouse ("Rho"), also a P. Eng, has access to design software (and original code) developed by the company *she* works for, MaxCorp ("Max"). This software has been used effectively for similar design work. Rho reasons that her employer would not mind (her giving that software code to Lamda) since Max had upgraded to a more current version. With this help, Lamda now expects to meet the deadline.

Discuss Lamda's and Rho's conduct, from an ethical perspective (Lamda's conduct should be the major focus of your answer, however a minor focus should also be discussing Rho's conduct).

(b) Alpha is a principal in a large consulting engineering firm. Psi was a summer student that worked for Alpha's firm last summer (he now works for a different firm).

Psi never had any direct involvement or interaction with Alpha. Psi is now applying to obtain his 'full' licence from the PEO, and has obtained Alpha's permission to use her name as a reference.

Before completing the PEO's questionnaire, Alpha inquired about Psi's capability/suitability from one of the supervisors ("Omicron", whom Psi had reported to during that summer job). Based on that information/discussion with Omicron, Alpha completed the questionnaire.

Was it ethical for Alpha to do so, even though he didn't have any direct knowledge of Psi's engineering work and capability?

Discuss.

[END OF EXAM]

best wishes, for the summer and the future ...