FACULTY OF LAW

FINAL EXAMINATION - DECEMBER 2004

LAW 599:A10 LEGISLATIVE PROCESS AND LEGISLATIVE DRAFTING
(Reynolds/Pagano)

Time Allotted: TWO (2) HOURS PLUS TEN (10) MINUTES READING TIME.

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 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 2 Parts on 5 pages. Check to ensure it is complete before starting.

2. Answer ALL questions noting alternatives where offered. (There are 4 questions in Part 1, 5 questions in Part 2).

3. Questions are not of equal value. Apportion your time intelligently.

4. This is an OPEN BOOK examination.

5. Cell phones, pagers, beepers and related equipment are strictly forbidden. These items must be turned off and stowed. Except by permission of the instruction, 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 grade 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.

PART 1 - 85 MARKS

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<td>20</td>
<td>1. In 1993, Mr. Justice Cory of the Supreme Court of Canada stated in the case of R v. Heywood:</td>
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“The admissibility of legislative debates to determine legislative intent in statutory construction is doubtful... this Court has repeatedly held that legislative history is not admissible as proof of legislative intent in the construction of statutes....”

“...there are persuasive reasons advanced that support the position that legislative history or debates are inadmissible as proof of legislative intent in statutory construction. Many of these same reasons are also put forward to demonstrate that such materials should be given little weight even in those cases where they are admitted....”

Citing relevant material covered in the course, discuss factors that should be considered in determining the admissibility of legislative debates. Address whether Mr. Justice Cory’s comments represent the present state of the law.

2. Louis Placebo is not a veterinarian. He is what is known as a farrier. He is engaged in the trimming of hooves and shoeing of horses. He also performs routine dental services on horses. The services he performs are:

i. filing horses’ teeth;
ii removing caps which are the baby or milk teeth in a horse;
iii removing loose teeth;
iv removing sharp points on horses’ teeth; and
v performing incisor bite alignments.

He does not administer sedation or anaesthetic to the horses upon which he works. The College of Veterinarians of Alberta, the professional body governing veterinarians, has brought an application to prohibit Mr. Placebo from practicing “equine dentistry”. The relevant provisions of the Veterinary Profession Act state:

1. In this Act, ....

   (p) “veterinary medicine” means a medical service performed with respect to an animal and includes the following:

   (i) surgery;

   (ii) obstetrics and ova and embryo collection.
2(1) No person except a registered veterinarian or permit holder shall engage in the practice of veterinary medicine.

(2) Subsection (1) does not apply to the following: …

(b) a person who is engaged in trimming hooves, shoeing and applying or using any other corrective procedures on animals.

Assume that the practice of equine dentistry falls within the definition of "veterinary medicine". Mr. Placebo argues that the equine dental services he provides fall within the exception found in section 2(2)(b). If he is successful, Mr. Placebo would not be prohibited from performing dental services on horses. Would Mr. Placebo be successful in arguing that he fell within the exception and was not practicing veterinary medicine? What techniques of statutory interpretation would you use in assessing Mr. Placebo's argument?

20 3. A pension plan for Members of the Legislative Assembly of Newalta came into force on April 7, 1971 when the Legislative Assembly Retirement Allowances Act (S.N. 1971, c. 24) ("the old Act") received Royal Assent.

The old Act was amended in 1979, 1983 and 1996. By 2004, Members who had served a minimum of 4 years were entitled to a pension of 50% of their annual salary. A person who served 8 years as a Member was entitled to a pension of 80% of his or her salary. This was the maximum amount a person was able to receive. Members, while serving, had to pay a contribution of 10% of their salary. After 8 years of service, Members were not required to make any further contributions as they would have reached the maximum.

There was a public outcry over the richness of the plan. In 2004, the Government introduced a Bill, Legislative Assembly Retirement Allowances Reform Act ("the new Act") that increased the minimum length of service before receiving a pension to 6 years. At that time a retired Member would receive 20% of his or her salary. After 10 years of service, a person would receive 50% of his or her salary. After 12 years of service, the person would receive 70% of his or her salary which was the maximum amount. The contribution was increased to 12% per year until a person had served 12 years as a Member after which they no longer had to make contributions. The new Act received Royal Assent on June 1, 2004.

The new Act contained the following provisions:

1 In this Act,...
(c) "Member" means a Member of the Legislative Assembly of Newalta; ...

(f) "old Act" means the Legislative Assembly Retirement Allowances Act (S.N. 1971, c. 24);
...

2(1) This Act applies to every Member who holds office or has held office after April 7, 1971 or who made contributions under the old Act.

2(2) This Act applies in substitution of the old Act as if that Act and the amendments to that Act had not been enacted.

21 No person shall be required to repay any amounts received pursuant to the old Act which exceed those provided for by this Act.

22 This Act is deemed to have come into force on April 7, 1971.

Former Members of the Legislative Assembly are angered by this amending Act and want to challenge its validity. They do not want their pension entitlements reduced.

You are an articling student and have been asked by the judge hearing the case to prepare a memo analyzing the provision in light of the arguments likely to be raised by the parties (those challenging the "new Act" and those supporting it) and the validity of those arguments. Your answer should cite relevant material covered in the course.

For the purposes of your answers, assume that the laws of Alberta apply to Newalta. Do not address any arguments that may be raised using the Canadian Charter of Rights and Freedoms.

In the course we discussed the Re: Ontario Mushroom Co. Ltd. and Learie case which was decided in 1977. Based on developments in the law concerning statutory interpretation since that time, in your view, would the case be decided the same way if it came to court today? Refer to relevant authority covered in the course in answering the question.
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<td>3</td>
<td>1. Explain the difference between a ministerial order and an order in council.</td>
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<td>3</td>
<td>2. What is incorporation by reference?</td>
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<td>3</td>
<td>3. What material covered in the course is authority for what is referred to as “selective proclamation”, that is, the ability of the government to not proclaim all or a portion of an Act?</td>
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<td>3</td>
<td>4. If a person’s appointment expires on January 10, 2005, could that person perform his or her duties on that day? Cite the specific authority in the Interpretation Act.</td>
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<td>3</td>
<td>5. What stage in the legislative process can a Member propose amendments to the contents of a Bill?</td>
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**TOTAL MARKS: 100**