FACULTY OF LAW

FINAL EXAMINATION - DECEMBER 2005

LAW 599:13 LEGISLATIVE PROCESS AND LEGISLATIVE DRAFTING
(Reynolds/Pagano)

Time Allotted: TWO (2) HOURS PLUS FIFTEEN (15) 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 3 questions in Part 1 and 7 questions in Part 2).

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

4. This is a CLOSED BOOK examination. No materials may be brought into the examination room. Some materials will be provided.

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, laptop 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 - 60 MARKS

Value  Question

25  1. In reviewing some old cases you come across one from Alberta involving the dismissal of a teacher.

The School Act (S.A. 1931, c. 32) which received Royal Assent on April 4, 1931 and came into force on July 1, 1931, repealed the School Act that was in force prior to that time (R.S.A. 1922, c. 51). Under the 1922 Act, the agreement of employment between a teacher and the Board of Trustees (the entity that employs school teachers) could be terminated by either party giving 30 days’ notice in writing of their respective intention to terminate the agreement. In this case, the employment agreement between the teacher, Mr. Iron, and the Anvil Board of School Trustees was entered into on June 15, 1929. On July 15, 1931, the School Board provided Mr. Iron with written notice that the agreement between them would be terminated at the expiration of 30 days. He would no longer be employed at that time.

Section 157 of the 1931 Act stated:

157 Subject to the conditions hereinafter set out in this section, either party thereto may terminate the agreement of engagement between the teacher and the Board by giving thirty days’ notice in writing to the other party of his or its intention so to do:

Provided always:
(a) that except in the month of June, no such notice shall be given by a Board without the approval of an inspector previously obtained;
(b) that except in the months of June and July no notice of the termination of a contract shall be given by a teacher without the approval of an inspector previously obtained;
(c) that any such notice may be given either by delivering the same to the person to whom it is addressed or sending the same in a duly addressed and prepaid cover by registered mail, and in the latter case the notice shall be deemed to have been given upon the day on which it is mailed;

On March 13, 1931, at the time of moving Bill 1, the “new” School Act, for second reading the Minister of Education, the Hon. Mr. Goldenrod said:

“Mr. Speaker, I want to touch on another part of this Bill that this government has put before the Assembly. First, as everyone in this House knows, the economic troubles that are gripping North America are devastating the lives of many
people here in Alberta particularly those who live on the farms. We do not want to see that devastation wreak havoc on the children of this Province. There is no gift we can give to our children more precious than that of education. We need teachers who are committed to their communities throughout this great Province. But we’ve got to be fair to them as well. That’s why this Bill would require Boards that want to fire teachers in the summer months to get the approval of the provincial inspector. That’s a new feature but its one that helps ensure that we are fair to the teachers. Now, I know this might be hard on the Boards who have to come up with the money to keep the teachers on but we’re concerned that if we don’t put in this little bit of protection then the teachers that we have in rural areas are going to leave and not come back. Besides, they have to plan for the next year and a month or two just isn’t enough time for them to get their affairs in order. That’s why after June, they have to get the permission of an inspector.”

Mr. Iron challenged the Board’s decision to terminate his employment agreement. The Board maintains that it was fully within its rights to terminate the contract in the manner it did.

A. Assume that you are the judge assigned to hear the case. Imagine that the case turns entirely on issues of statutory interpretation. Do not concern yourself with employment law issues that may arise. Assume that you are writing the judgment today and apply the law as it currently exists.

(20 marks).

B. Would it make any difference to your answer if there was no Hansard in 1931 and the Minister’s comments were found in newspaper articles?

(5 marks).

2. Ms Mace is an assistant to an MLA in the Province of Newalta. Essentially, she performs secretarial and clerical functions in the office of Mr. Debate, the Member of the Assembly for the electoral division of Resume Speed. Mr. Debate is the employer of Ms Mace.

Ms Mace is unmarried. One day, she advises Mr. Debate that she is pregnant and will be seeking maternity leave when her baby is due in June 2006. Mr. Debate represents a rural constituency and believes that his constituents would not tolerate having an unmarried expectant mother in his office. Accordingly, he terminates her employment.
Ms Mace is outraged. She wants to proceed to the Newalta Human Rights Commission to file a complaint that she was discriminated against on a number of grounds not limited to gender, physical ability and family status. Assume that all are grounds of discrimination under the Human Rights Act. The Human Rights Commission is an independent agency that investigates and ultimately adjudicates on allegations of discrimination. The Act specifically states that it applies to alleged discrimination in the workplace and employees of the Commission have the authority to compel disclosure of records from employers in the course of their investigation. The Act states that it applies to all employers in the Province including the Crown.

Mr. Debate gets wind that Ms Mace is going to the Human Rights Commission. He is outraged that someone would take offence at the fact they were dismissed for what he perceives as good reasons. He has heard somewhere that Members have some protection for the actions they take with respect to their employees so he is reasonably confident that he is in the clear. He is so confident that on December 12, 2005 he stands in the Assembly and makes a Members’ Statement during the appropriate time in the Daily Routine denouncing the Human Rights Commission but also Ms. Mace whom he describes in the Assembly as “an ungrateful and selfish employee.” The Speaker of the Assembly cautions Mr. Debate about making statements about persons who are not in the Assembly and are unable to defend themselves. Mr. Debate is cornered by reporters outside the Chamber but does not elaborate or say anything further about Ms Mace.

Ms. Mace reads Mr. Debate’s comments in Hansard. She is further outraged. She comes to see you as she knows that you have taken a course in matters related to Legislative Process while in law school. She wants to sue Mr. Debate for his comments. She also wants you to proceed with the Human Rights Commission complaint. Assume that Ms Mace is not a member of a union and that there is no collective agreement governing her employment. There is no specific statute that governs the rights of persons employed at the Legislative Assembly.

Prepare a memo for Ms Mace on whether she can proceed with a Human Rights complaint against Mr. Debate and whether she can sue him for his comments. Do not discuss the specifics of employment law. For the purposes of this question, assume the laws of Alberta apply to Newalta. Cite relevant authority in your answer.

3. In the 1902 case of Hilder v. Dexter, Lord Halsbury said that the “draftsman” of a statute is the worst person in the world to interpret it, because he is unconsciously influenced by what he meant rather than by what he said. As
Professor J. A. Corry states in his 1936 article “The Interpretation of Statutes”:

He had drafted the statute in question in that case and refused to give a judgment on the ground that he might not fully appreciate the literal, objective meaning of the words he had used. We have indeed come a long way from the justices of Edward I.

Explain Corry’s comment and evaluate Lord Halsbury’s statement in the context of the approaches to statutory interpretation that were covered in the course.

PART 2 - 40 MARKS

Cite relevant authority in your answers.

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<th>Value</th>
<th>Question</th>
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<tr>
<td>5</td>
<td>1. What if any authority is there for a Member to speak French in the Legislative Assembly of Alberta?</td>
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<td>5</td>
<td>2. Assume you are drafting an Act. What options are there with respect to when it comes into force?</td>
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<td>3. Does a Ministerial order have to be filed under the Regulations Act?</td>
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<td>4. What purpose does a Preamble to an Act serve?</td>
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<td>5. Does a Bill imposing a tax require the Royal Recommendation? Explain your answer.</td>
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<td>6. Identify differences between a Private Bill and a Private Member’s Public Bill.</td>
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<td>7. Define and provide an example of each of the following maxims:</td>
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<td>(a) <em>ejusdem generis</em></td>
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<td>5</td>
<td>(b) <em>noscitur a sociis</em></td>
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TOTAL MARKS: 100

End of Examination