FACULTY OF LAW

FINAL EXAMINATION - DECEMBER 2007

LAW 599: A8 LEGISLATIVE PROCESS AND LEGISLATIVE DRAFTING
(Reynolds/Pagano)

Time Allotted: TWO (2) HOURS PLUS TWENTY (20) 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 7 Questions on 5 pages.
Check to ensure it is complete before starting.

2. Answer ALL questions noting alternatives where offered. Cite
relevant authority in all answers.

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, 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.
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<td>10</td>
<td>1. Jennifer Blackacre, a law student, was driving home from a Law School function where she had consumed a few alcoholic beverages. She was stopped by the police. The constable who pulled her car over gave evidence that when he approached the vehicle he smelled an odour of alcohol and that Ms. Blackacre’s eyes were bloodshot and her speech was slurred. The constable administered a roadside screening test which instantly registered “fail.” He charged Ms. Blackacre with impaired driving. Ms. Blackacre is an exceptional law student. She had studied hard and knows that under section 258(1)(c)(i) of the Criminal Code she was to be offered a specimen of breath in an approved container for her own use at the time the same was provided to the Crown. This amendment to the Criminal Code incorporating this provision was passed by Parliament in 1999 and was to take effect upon Proclamation but, unlike the other amendments made to section 258 at the time, it has never been proclaimed by the Governor in Council. Accordingly there was no specimen of her breath provided to her. Ms. Blackacre wants to fight the charge on the basis that even though section 258(1) (c) (i) was passed by Parliament, it is not being applied. Based on your knowledge from this course, and leaving aside any Charter of Rights or criminal law arguments, is Ms. Blackacre likely to succeed? State the reasons for your conclusions.</td>
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<td>2. In this course we reviewed Driedger’s modern principle of statutory interpretation. Are the traditional approaches to statutory interpretation, such as literal interpretation, consistent with Driedger’s modern principle?</td>
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<td>3. Section 5 of the Health and Safety Act states “This Act applies to all employers in Alberta.” Does it apply to the Crown in right of Alberta?</td>
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<td>4. An MLA, John Carpool, wishes to introduce a Private Members’ Bill in the Alberta Legislative Assembly to amend the Bicycle Tax Act by reducing the</td>
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provincial tax on bicycles from $1 on the first $100 to $.75. He wants to increase the tax on bikes over $100 from $1.25 to $1.50. The MLA also wants to amend the Act to create a Bike Trails Fund that would use the money collected from the tax and money from General Revenue Fund to provide funding to municipalities for the construction and maintenance of bike trails in urban centres. Mr. Carpool is very enthusiastic about his Bill proposal as he feels that it will help ensure his appointment to Cabinet. He has come to you for advice on his Bill proposal. Advise Mr. Carpool on whether his Bill or components of it, would be in order. Do not draft the Bill only provide your opinion on whether it can be introduced in the Assembly.

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<td>5. Madame Carole Laroque is the MLA for the constituency of Terre-Alta. She has a significant number of francophones in her riding. Her constituents are very concerned about recycling milk containers. They want milk containers to have a refundable deposit. They ask her to present a petition in the Assembly urging the Government to make milk containers refundable. The petition is in French. Madame Laroque presents the petition in the Assembly and makes her remarks in French with no translation. Another MLA, Mr. Eugene Stickler, who is a strict proceduralist and student of history, recalls that there was a Standing Order (the rules of the Assembly) adopted by the Assembly in 1913 that provided that all petitions presented in the Assembly must be in English. Miraculously, although the Standing Orders have been amended many times since 1913, this particular provision has never been repealed but it does not appear in versions of the Standing Orders after 1942. Since 1942, the Assembly has accepted petitions in several other languages. The debate on the point of order raised by Mr. Stickler became quite heated. Madame Laroque accused Mr. Stickler of being racist and anti-francophone. In turn he has accused her of pandering to minorities in her constituency. Neither Member said anything on the dispute outside the Assembly. The people who signed the petition are also quite irritated. They want to sue Mr. Stickler for his comments. Mr. Stickler has indicated that if they sue he will also sue for Madame Laroque’s comments. Mr. Stickler has come to you for advice on the validity of the petition and the potential lawsuits as he has heard that you are an expert on parliamentary matters. In your response, assume that there are no deficiencies in the petition and the only issue is that it was entirely in French. Provide your advice to Mr. Stickler.</td>
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20 6. Mrs. Whitechapel's husband of 25 years died on March 27, 2005. Mrs. Whitechapel was 51 years old at the time of his death. They had worked hard all their lives but were not well off. She was devastated by the loss of her husband and took some time to arrange her affairs. A bright law student advised her that she could apply for a monthly pension under the Widow's Pension Act which allowed widows of limited means to receive a pension from the provincial government. Mrs. Whitechapel applied for the pension on August 29, 2005. The Act stipulated that applications had to be made within 6 months of the death of the widow's spouse. What Mrs. Whitechapel did not know was that on May 2, 2005 the Legislative Assembly passed Bill 99, Widow's Pension Amendment Act, 2005 which amended section 4(1)(b) of the Act by changing the eligibility criteria so that a person had to be 55 years of age or older to receive a pension if they otherwise qualified. The Act came into force on July 1, 2005. Prior to the amendment, section 4 of the Act read in part:

4(1) A person is eligible to receive a widow's pension if

(a) that person is a widow,

(b) that person is 50 years of age or older but less than 65 years of age, and

(c) that person applies to the Minister within 6 months of becoming a widow.

During second reading debate on Bill 99, the Minister did not address the issue that now concerns Mrs. Whitechapel. However, an MLA in the Official Opposition caucus for the constituency of Edmonton Ice-Pond, Mr. Semenko, stated at page 891 of Alberta Hansard for April 30, 2005:

"Well, the Minister assures us that this amendment reflects present social conditions as people under the age of 55 don't need the sort of support that the Widow's Pension Plan provided to those who were, well I can't remember the age in the Act now, I think its 45. I sure hope he is right because I can't imagine a government, even this government, introducing a charge that would deny even one person a pension if there spouse died just a few months before this amendment comes into force."

There were no transition provisions in the Bill.

The Department administering the program has refused Mrs. Whitechapel's application on the basis that she is under 55 years of age. Mrs. Whitechapel
has come to you as she heard that you have a kind heart and are an expert in statutory interpretation. Advise Ms. Whitechapel of any arguments concerning her eligibility and whether she should qualify. Do not address any complaints that might be made under Human Rights legislation or any Charter of Rights arguments.

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| 15    | 7. Ms. Jane Abi is a clerical assistant in the office of the Speaker of the Legislative Assembly. She was hired by Speaker Mace. She has been employed in that position since September 1, 2004. Her duties involved collecting data on proceedings in the Assembly. When the Assembly was not in session she attended to maintaining the Speaker’s schedule. She was not a management employee. In late 2006, there was a provincial election. When the House next met they elected a new Speaker, Mrs. Dome. English was not Ms. Abi’s first language. In her position under Speaker Mace she did not have much interaction with the Speaker. Under Speaker Dome, Ms. Abi assumed new responsibilities. The Speaker was not satisfied with her performance and on April 1, 2007 offered to transfer her to another division in the Speaker’s department, the administrative arm of the Assembly. Ms. Abi is a very proud person and liked the prestige of working in the Speaker’s office. She complained to the Human Rights Commission. The Speaker has sought your advice as to whether there are any grounds on which she can challenge the ability of the Commission to review the complaint as she knows you have taken a course at Law School related to the laws of Parliament. Address only those issues related to the course. Do not address any Charter of Rights or employment law issues, or issues related to the substance of the Human Rights complaint. Advise the Speaker of possible arguments that could be advanced on her behalf and the likelihood of success. 

TOTAL MARKS: 100

End of Examination