

**Faculty of Law
University of Victoria**

Law 326B - Labour Law
Fall 2011
(1.5 units)

Instructor: Heather Raven

Office: Room 105

Class Times: Tuesday and Thursday
11:00am – 12:30pm

Telephone: 250.721.8152

Email: lawassoc@uvic.ca

Classroom: 157

Course Website: on Moodle

COURSE DESCRIPTION

This course introduces the legal principles that govern the employer-union-employee relationships. Although all Canadian provinces and territories and the federal government have labour codes, the focus of this course will be British Columbia. The goal of this course, using British Columbia as the focus, will be to provide a comprehensive overview of the substantive law of collective bargaining. We will cover the following topics;

- a. contextually situating labour law using a brief history of labour law legislation in Canada, constitutional jurisdiction and an overview of the British Columbia Labour Relations Code
- b. identifying how labour standards legislation and human rights codes affect the collective bargaining process
- c. identifying who may or may not participate in the collective bargaining process
- d. identifying the rights and obligations of employers, unions and employees in protecting the right to organize; how collective bargaining rights are obtained, maintained and terminated; the rights and obligations governing the negotiation and administration of collective agreements, strikes and lock-outs; the relationship between the individual member and their union; and, how the Charter affects collective bargaining.

COURSE OBJECTIVES

After actively participating in your learning, you will be able to;

- a. understand the relationships between contract law principles and the statutory regulation of the collective bargaining process
- b. trace the development of doctrinal rules in B.C. labour law
- c. identify, describe and critically assess the values, underlying policies and purposes and effectiveness of the major statutes that govern the principles and process of collective bargaining
- d. read and interpret statutes.

COURSE MATERIALS

University of Victoria, Faculty of Law, Law 326B: Labour Law - available from the Coursebook Distribution Centre in the Fraser Building. The materials are in two volumes. Volume one contains chapters 1-3 which will be dealt with in September. Volume two contains the Table of Contents for all chapters and the materials for chapters 4-9.

Note: the course materials were extensively revised this summer and former editions of the materials are out of date. Also, if you use an outline prepared by someone in last year's class, you will have to update the outline in order to demonstrate sufficient knowledge of the course materials.

Labour Relations Code of British Columbia – any current electronic or print version will be fine. You may obtain a free copy from the Labour Relations Board of British Columbia website at; www.lrb.bc.ca (click on “Code” in the menu on the left side of the screen) and on the course Moodle page. We will be using the Labour Code extensively in chapters 4 through 9 and I recommend that you print a copy since you will not be able to use electronic copies of statutes during the examination.

The BC Employment Standards Act and the Human Rights Code will be used primarily in chapter 2. The basic sections are set out in the course materials (chapter 2). These acts (all sections) are also posted on the Moodle page.

COURSE METHODOLOGY

A variety of teaching methods will be used including lectures and class discussion. Students are expected to complete the assigned readings before class and to be ready to discuss them in class.

COURSE EVALUATION

There are three choices of evaluation;

Option 1 – 100% Final Examination

Write an open book examination worth 100% of the final grade. The examination is currently scheduled for Thursday, December 8, 2011 at 9:00am until approximately noon.

OR

Option 2 – 50% Small Paper and 50% Final Examination

Write a small research paper worth 50% of the final grade and a final examination worth 50% of the final grade. You must obtain my consent for your research topic before Thursday, September 29, 2011. The research paper will be 3,000-3,500 words in length. You must provide a one-page outline of the paper to me by the beginning of class on Thursday, October 6, 2011. The outline must describe the paper’s thesis and major topics. If you choose Option 2, you will write the same final examination as all others in the class. You will be able to “opt back” at your discretion to a 100% final examination until Thursday, October 13, 2011. After October 13th, you must obtain my permission to write a 100% final examination. Research papers are due no later 11:00am on Thursday, December 1, 2011 (last class). Codenames should not be used on your paper.

OR

Option 3 – 70% Major Paper and 30% Final Examination

Write a major research paper worth 70% of the final grade if you have some academic and/or practical experience in labour relations and a final examination worth 30% of the final grade. Students writing a major paper must meet with me and obtain my permission before submitting the, Consent to Supervise Law 399 or a Major Paper Written within a Course Form before the add/drop deadline on Thursday, September 15, 2011. You must provide a one-page outline of the paper to me by the beginning of class on Thursday, October 6, 2011. The outline must describe the paper’s thesis and major topics. If you choose Option 3, you will write the same final examination as all others in the class. Major papers are due no later than 11:00am on Thursday, December 1, 2011 (last class). Codenames should not be used on your paper.

Note: there are extra Faculty requirements for papers to qualify as major papers, at minimum they must;

- be at least 7,500 words – exclusive of footnotes, bibliography, table of contents, etc.
- be assigned a minimum grade of C+
- count for at least 50% of the final course grade
- be fully footnoted and contain a full bibliography.

Grading of Papers

All Papers will be graded on the following basis:

1. Thesis - clear articulation of argument
2. Organization - clear structure throughout paper
3. Research - breadth and depth of research
4. Analysis - logic, balance, depth, context, critical analysis
5. Originality/creativity
6. Style: correct legal citation, flow, grammar and proper paragraphing.

GRADING SYSTEM FOR PAPERS AND EXAMINATIONS

The table below shows the official grading system used by the instructor in arriving at final assessments of student performance:

Passing Grades	Grade Point Value	Percentage Value	Description	Comments
A+	9	90-100%	Exceptional	Grades in this range are normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
A	8	85-89%	Outstanding	
A-	7	80-84%	Excellent	
B+	6	75-79%	Very good	Grades in this range are normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	70-74%	Good	
B-	4	65-69%	Solid	
C+	3	60-64%	Satisfactory	These grades indicate a satisfactory performance and knowledge of subject matter.
C	2	55-59%	Minimally satisfactory	
D	1	50-54%	Marginal	A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49% and below	Unsatisfactory	

CLASSROOM CLIMATE

An inclusive, respectful, and diverse classroom environment is crucial to our work in this course. To ensure that all class members are welcome and equally able to contribute to class discussions, everyone must endeavor to be respectful in our language, our examples, and the manner in which we conduct our discussions. We all have an ethical and legal obligation to support this kind of environment.

You may wish to consult the University's Discrimination and Harassment Policy (http://www.uvic.ca/shared/shared_usecdocs/policies/GV0205_1150_.pdf) and the Policy on Human Rights, Equity and Fairness (http://www.uvic.ca/shared/shared_usecdocs/policies/GV0200_1105_.pdf).

Section 5.1 of the Policy on Human Rights, Equity and Fairness provides that; "All members of the university community are responsible for promoting a supportive and inclusive learning and working environment and for dealing respectfully and fairly with each other. Members of the University will not discriminate on any grounds prohibited by the Human Rights Code or harass."

I expect all aspects of this class to be conducted with these policies firmly in mind. If you have any concerns about the climate of the class, please contact me.

Academic Integrity

Academic integrity is centrally important in the work of faculty and students. All student work in this course must adhere to the University's Policy on Academic Integrity (<http://web.uvic.ca/calendar2009/FACS/UnIn/UARe/PoAcI.html>). In particular, please note that the Policy defines plagiarism as follows:

"A student commits plagiarism when he or she:

- submits the work of another person as original work
- gives inadequate attribution to an author or creator whose work is incorporated into the student's work, including failing to indicate clearly (through accepted practices within the discipline, such as footnotes, internal references and the crediting of all verbatim passages through indentations of longer passages or the use of quotation marks) the inclusion of another individual's work
- paraphrases material from a source without sufficient acknowledgement as described above

Students who are in doubt as to what constitutes plagiarism in a particular instance should consult their course instructor.

The University reserves the right to use plagiarism detection software programs to detect plagiarism in essays, term papers and other assignments."

Students with a Disability

If you have any type of disability, there are support systems, resources, and accommodation measures available to you. If you wish to access any of these supports, resources or accommodations, I encourage you to contact Yvonne Lawson in the Associate Dean Academic's Office or the Resource Centre for Students with a Disability (<http://rcsd.uvic.ca>) and I am happy to work with you to ensure your success in this course.

Accommodation of Religious Observances

The University of Victoria and the Faculty of Law have policies guaranteeing accommodation for those students who are unable to participate in a class or an aspect of the course owing to a religious holiday (http://www.uvic.ca/shared/shared_usecc/docs/policies/AC1210_2350_.pdf). If you must miss a class, know that you will be unable to complete an assignment or examination, or otherwise require accommodation due to a religious holiday, please speak with me and I will be pleased to work out some satisfactory form of accommodation.

ESTIMATED Class Schedule and Assigned Readings Fall 2011 – Volume 1 of Materials

Please note; there will not be sufficient class time to review all of the assigned readings in detail. However, all assigned readings are examinable.

Class Number	Date	Course Materials	Statute(s) and Section Numbers
1	Sept. 8	None	None
2	Sept. 13	Ch. 1 and Ch. 2, pages 1-10	ESA 1(1) def. of Ee, 3*
3	Sept. 15	Ch. 2, pages 10-35	HRC 1, 13, 43** <u>Course Add/Drop and Major Paper Deadline</u>
4	Sept. 20	Ch. 2, pages 35-53	
5	Sept. 22	Ch. 2, pages 53-62	
[6]	Sept. 27 – Class cancelled - make- up class on Friday, Oct. 7th from 12:30- 2:00pm in room 157	None	None
6	Sept. 29	Ch. 3, pages 1-14	LRC 1(1), 28, 29, 139 (a), (l) & (n)*** <u>Research/Major Paper Topic Selection Deadline</u>
7	Oct. 4	Ch. 3, pages 14-23	LRC 31

* [BC] Employment Standards Act – assigned sections are in the course materials.

** [BC] Human Rights Code – assigned sections are in the course materials.

*** [BC] Labour Relations Code – 1(1) is the definitions section. Some definitions are contained in the materials. Most definitions and the other assigned sections are not in the course materials.

LRC 1(1) Definitions; bargaining agent, collective agreement, collective bargaining, dependent contractor, employee, employer, lockout, person, picket or picketing, strike, trade union, unit.

The first thing to do after turning over a law school exam

Written by Gary Young (December 13, 2010 - Canadian Lawyer Magazine)

You are given four hours for your exam. Truth be told, you probably only need two of those hours to actually pound out your answer on paper. Unless you have a sadist for a professor — and I suppose that is possible — you have plenty of time to answer your law school exam question. And I suggest you use it. Slow down, take your time, and use it all.

Now, don't get me wrong here. If you are a "huge middle" student who has a habit of starting to answer the exam before you finish reading it, it could very well be that *you* won't have an extra hour or more than you need to answer the exam. You probably need five or six hours to finish the exam.

Over and over again I remember taking my time, finishing an exam an hour early, and then listening to somebody going on and on about how they didn't finish the test, and they can't believe how the professor was such a jerk to put more on the exam than could be answered in four hours.

Here is the antidote to the "huge middle" approach to exams: plan on using 25 to 33 per cent of your exam time getting comfortable with the exam and outlining your answer or answers. You know the material, trust that it will come out as you read the problem and spot the issues. It will. So, relax, and slowly read the question and then, only after reading through it once, begin the slow and careful process of outlining an answer on a separate piece of paper from your exam blue book or your laptop.

As you spot the issues in the fact pattern, your prior effort to memorize your outline cold and practise outlining answers now pays off in gold; the topics of your outline will systematically fly to your mind as you write down each piece of the analysis you must address.

Once you have fully written out your outline, then go back through the problem slowly again to make sure that nothing is missing from your outline. Let me say it again: take your time. It's going to be OK.

If nothing else, by the time you work through this process, whatever exam anxiety or leftover agitation from your neighbour furiously starting his scribbles will be gone. Your next step is simple: moving through your answer outline slowly, writing out your answer in IRAC format, deliberately working through the issues, rules, and application to the facts, one issue at a time.

The payoff from outlining your exams is twofold, at least. Outlining your exam answer provides you with a place where you work out all the organizational challenges the problem presents. If you take your time ordering the way that you address the issues you spot at the outlining stage, you will eliminate the mess that comes when you try to do this in your answer itself.

Secondly, outlining your answer and then working from the outline to write your answer has the valuable psychological effect of removing the uneasiness and pressure of "coming up with your answer as you go along." Something about writing out an answer the first time you think of it leaves you with the feeling, through the entire four hours of the exam, that you don't know the answer until you have finished writing the whole thing out. This adds a level of needless anxiety to your pen or your typing for the entire time you are writing.

But when you outline first, and take care in doing it, you spend your whole time writing with confidence that you know the answer — there it is on the outline, after all — and your test-taking outlook makes a subtle shift away from “do I know the answer?” towards focusing on how to write out the answer you already know *well*. Your mindset somehow turns from just getting the answer down, to actually carefully *crafting* the answer.

A lot of people are going to have substantively the same answer to the question you have, because everyone that is in the big middle or better knows most of the law. The difference you are going to have is that your exam is going to be cleanly organized, and the writing is going to sing. It’s the difference between an average grade and one at the top.

Finally, you are probably going to have some time leftover after you are done. It may be hard to believe, but I don’t have strong opinions about what to do with this time. Some people re-read their answers to catch mistakes. That is probably a useful practice. If I had a lot of time I would sometimes rewrite my entire answer, if only to improve the handwriting, or add a helpful point here or there. If you are typing — as I am going to recommend — that won’t be an issue. With the laptop option, you should probably use the time to edit the writing, line by line, to make it as clear and direct as possible.

*Gary Young is adjunct professor of law at the University of Nebraska College of Law. His book *Law School Ninja* is a no-nonsense strategy for how the ordinary student can beat the curve in law school. He can be found online at lawschoolninja.com and he tweets at @lawschoolsensei.*