NOTE: 

1. This is an open book examination.

2. ANSWER ALL QUESTIONS.

3. Assume the laws of British Columbia and the federal laws of Canada apply in all circumstances.
Question 1 (10 points)

Geoff works for No Talent Productions, a video-streaming company which is in the business of streaming live video games to people too uncoordinated to actually play them. For the past six years, he has worked as a Content Distributor, playing video games while providing mundane commentary to online viewers.

Over the past 6 months, No Talent Productions has been losing business to other companies. Geoff became nervous 2 weeks ago when 8 of his co-workers were terminated by the company, but his boss told him his job was safe.

Unfortunately, last Friday, the company released its financial statements – which were horrible – and that same day announced that another 44 employees were being fired immediately. Geoff was one of the employees terminated.

(a) What, if any, is Geoff's statutory notice entitlement under the British Columbia Employment Standards Act? Explain your answer. (5 points)

(b) Is Geoff entitled to any other damages as a result of his termination? If yes, explain your answer, including how such damages would be assessed. (5 points)

Question 2 (5 points)

Jennifer Parsons is employed as a pilot with Danger Air, an adventure tourism company which carries on business in British Columbia and Alaska. After 3 years of employment, Jennifer was called to a meeting and told that her employment was being terminated that day, due to an ongoing clash with a fellow co-worker over Jennifer's insistence on wearing sunglasses in the office.

Jennifer loves her job and is devastated that she may never fly again over the majestic peaks of British Columbia’s many mountain ranges.

(a) What, if any, remedies does Jennifer have under statute? Explain your answer. (5 points)

Question 3 (5 points)

Derek Smalls works as a project supervisor for Build and Flip Construction, a Vancouver-based project management company. Two years ago, Derek became a father to twin boys, named Thor and Loki. Both boys attend a local daycare which, until recently, remained open until 6:00 p.m. each day.
The daycare now closes at 5:30 p.m. and Derek has found that due to Vancouver’s incredible transportation system, he cannot leave work at 5:00 p.m. and make it to the daycare before it closes.

The daycare has threatened to cancel Derek’s contract due to his ongoing tardiness. He and his wife are both, sadly, orphans and have no immediate family members in the Lower Mainland to help with childcare.

Derek approached his boss and requested that his work schedule be changed so that he could start work earlier and leave the office by 4:30 p.m. each day. His boss was annoyed and, two days later, told Derek that his request was unreasonable and he could either keep his regular hours or quit.

(a) Does Derek have any recourse against his employer? Explain why or why not? (5 points)

Question 4 (10 points)

Wiley Kayote works for ACME Industries, designing innovative explosives for use in the road construction industry. After 4 years of employment, ACME was acquired by a multinational company and Wiley, along with all the other employees, were given new employment agreements to sign.

The new agreements did not change any terms of employment, except that they contained a new non-competition provision which provided that Wiley could not work for 5 named competitors anywhere in Canada or the United States for a period of 2 years after his employment with ACME ended.

Wiley has dreamed of starting his own business when he turns 50 and comes to you for advice.

(a) Is the new employment agreement binding on Wiley? Explain why or why not. (5 marks)

(b) If the new employment agreement is binding, would the non-competition provision be enforceable against Wiley? Explain why or why not. (5 marks)

Question 5 (20 points)

David St. Hubbins was a three-time men’s figure skating champion and, following his retirement from competitive skating, began offering learn to skate programs throughout British Columbia. His reputation as a coach flourished and in 2008, he was offered the position of Head Coach with BC Figure Skating.
Each year, David and BC Figure Skating enter into a new one-year contract which sets out the pay David is to receive. It does not speak to termination. The contract has been renewed every year since 2008.

David is paid by BC Figure Skating through a holding company he established. He receives monthly deposits to that account with no deductions for tax, CPP or EI being made by BC Figure Skating. David pays his own income taxes and is registered with WorksafeBC.

As Head Coach, David spends about seventy percent of his time providing figure skating lessons and developing other younger coaches. The balance of his time is taken up working as a contract figure skating commentator for TSN during national and international skating events. He is paid directly by TSN for these services.

Last winter, following a terrible showing at the Canada Winter Games, David was told that BC Figure Skating had appointed a new Director of Athletic Development to oversee all coaching and training programs. Effective immediately, David was required to report to the new Director and lost responsibility for developing younger coaches. Previously, David had reported directly to the Board of BC Figure Skating.

David was not impressed with this change and wrote the Board stating they had breached his contract and demanding one year's pay from BC Figure Skating. BC Figure Skating responded that, as an independent contractor, it could terminate its contract with David without any notice and refused to pay him anything.

(a) Was David an employee or independent contractor? Explain why or why not. (10 points).

(b) If David was an employee, was he entitled to any damages? Explain why or why not and if yes, how those damages would be assessed? (5 points).

(c) If David was a contractor, was he entitled to any damages? Explain why or why not and, if yes, how those damages would be assessed? (5 points).

Question 6 (10 points)

Jack Torrance was employed as a caretaker at the Overlook Hotel in Squamish. Seven months ago, he was fired because, in the words of the company president, he was “too damn old and too damn slow.” The company alleged cause for his termination.

Jack was devastated by this turn of events. Two weeks after his termination, he wrote the company and demanded three months’ pay in lieu of notice. He also asked that the company pay him his outstanding vacation pay. The company ignored his requests.
Jack decided to let matters go, but this week his daughter convinced him to seek legal advice.

(a) Does Jack have any statutory remedies he can pursue under British Columbia law? Explain. (6 points)

(b) What other non-statutory remedies, if any, might Jack pursue? (4 points)

Question 7 (20 points)

Nigel Tufnel has been offered employment with Stonehenge Productions as musical coordinator. He is responsible for selecting the music to play during Stonehenge’s theatre productions on Granville Island.

He has been provided with a draft employment agreement which contains the following terms:

This letter will confirm the terms of your employment with Stonehenge Productions. By signing this letter, you accept the following terms and conditions of employment:

1. You shall be employed as musical coordinator. You agree that your duties and reporting relationships may change at any time in the sole discretion of the company.

2. You will be subject to a 100 day probationary period. During this time, your employment may be terminated at any time without notice or pay in lieu thereof.

3. You will receive a base salary of $125,000.00 per year, paid in 12 equal instalments on the last day of each month.

4. All employees of Stonehenge are required to wear our special “Building Block” team uniform during performances. You are required to purchase two sets of the team uniform before your first day of employment at a cost of $225.00.

5. Your normal hours of work will be from 8:00 a.m. to 5:00 p.m. with a 30 minute lunch break each day. You may, due to evening performances, be required to work beyond these hours. Your base salary anticipates these additional hours and you will not be entitled to overtime for additional hours worked.

6. You will be entitled to vacation based on the following schedule:

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<th>Years of Service</th>
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7. If you are unable to perform the duties of your employment for more than 120 days in any given year, for any reason, you agree that your employment may be terminated by the company without notice or pay in lieu of notice.

8. We may terminate your employment:

   (a) at any time, for just cause, without notice or pay in lieu of notice; or

   (b) at any time, without just cause on providing you with 1 week's notice, or pay in lieu of notice for each year of completed employment, to a maximum of 10 weeks' notice or pay in lieu of notice.

9. As a representative of Stonehenge, you are expected to treat company property as if it were your own. Any loss or damage to company property, however caused, will be your responsibility and the company will deduct the cost of such damage from your paycheque.

10. In honour of our founder's adherence to the Druid faith, we do not recognize Christmas Day as a holiday. The company typically schedules performances on that day and all employees are required to attend work if requested and will not be paid extra wages for working on Christmas Day.

We look forward to welcoming you to our team. Please sign and return a copy of this agreement to Marty Tuffnell by April 30, 2016.

(a) Advise Nigel of any legal issues raised by the terms of the contract which he should be aware. Where appropriate, identify legislative or common law support for your advice. (20 points)

Question 8 (20 points)

Eric Childs was employed as the Financial Controller with Break Like the Wind Bicycle Company for fifteen years when he was approached by his former college roommate about a job opportunity with a competitor, Rolling Spokes Cycles. Eric explained he was happy in his current job but, over the next three months, he received countless emails extolling the virtues of Rolling Spokes.

Eric eventually agreed to meet with the president of Rolling Spokes, Keith Richards, to discuss the opportunity.

When Eric met Keith for lunch, Keith started by asking Eric his salary and told him he would give him a twenty percent raise. Eric explained that he did not want to leave secure employment for a new job. Keith assured Eric that he would have a long and prosperous career with Rolling Spokes.

After thinking it over, Eric eventually agreed to join Rolling Spokes in the position of Vice President of Finance. He started work in April of 2014 and, over the next two years, received glowing performance reviews.
In March of 2016, the senior management team of Rolling Spokes flew to Europe to watch the Tour De Infusion, a bicycle race in Spain. Eric did not go as he was preparing year-end financial statements for the company.

On March 31, 2016, Eric realized that Keith Richards had forgotten sign one critical document which had to be filed with the British Columbia Securities Commission that day.

In a panic, Eric texted Keith and explained the penalties facing the company if the document was not filed that day. Keith texted Eric back, saying “Do whatever you have to do to make this right!”

After thinking it over, Eric obtained an old letter signed by Keith and traced Keith’s signature on the securities document. He then filed it, along with a number of other corporate documents. He texted Keith that the filing had been taken care of and Keith responded “Thank you.”

Two days later, Eric and the other management team members met with the Chair of Rolling Spokes’ Board of Directors. Over a few drinks, Eric disclosed his creative solution to the filing issue. Two days later, Eric was called to a meeting with the full Board and questioned about his behavior. He was fired later that day, for just cause.

The next morning, Eric tuned into “The One Percent”, a weekly radio show on AM1010. He was stunned to hear the Chair of the Board of Rolling Spokes being interviewed about Eric’s termination. The Chair explained that Rolling Spokes had fired Eric for serious fraudulent misconduct. The Chair also said that company was continuing its investigation as it suspected Eric had engaged in a number of other suspicious transactions during his time with the company. None of these allegations had been mentioned to Eric during his meeting with the Board.

Eric’s Iphone immediately lit up with text messages from friends and colleagues asking if the story was true. Eric comes to you a broken man, his reputation in tatters. He wants to sue Rolling Spokes for wrongful dismissal.

(a) Did Eric’s employer have just cause for his termination? Why or why not? (5 points)

(b) If there was not just cause for Eric’s termination, give your opinion on his entitlement to reasonable notice (5 points)

(c) If there was not just cause for Eric’s termination, does Eric have a claim for aggravated and/or punitive damages? Why or why not? (10 points)

END OF EXAMINATION