

**Write Your Exam Code Here:** \_\_\_\_\_

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**THIS EXAMINATION CONSISTS OF 6 PAGES (INCLUDING THIS PAGE)  
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA  
ALLARD SCHOOL  
OF LAW**

**FINAL EXAMINATION – APRIL 2019**

**LAW 201  
Canadian Constitutional Law**

**Professors J. Bakan and B. McIvor**

**TOTAL MARKS: 100**

**TIME ALLOWED: 3 HOURS**

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- NOTE:**
- 1. This examination is OPEN BOOK. Candidates may use any materials they have brought into the examination room (with the exception of library and text books) during the examination and the reading period.**
  - 3. Do not concern yourself with statutes, cases or other sources not covered in the course materials.**
  - 4. Be brief in your discussion of each point raised. It is better to cover more points in brief than fewer points in detail. State clearly any facts you assume in answering the question. You should describe the arguments that might be made on both sides of an issue, and give some sense of the relative strength of the arguments.**
  - 5. Full citations of cases are not necessary. You may refer to cases in short form.**
  - 6. GOOD LUCK!**

**QUESTION I – Charter (Prof. Bakan)**

**45 marks**

There is a great deal of concern today about the effects of high fat, salty, and sugary food – otherwise known as “junk food” – on children’s health. Marketing and advertising tactics have become a focus for debate as children are inundated, on numerous platforms, with ads that make unhealthy food and beverages seem irresistible, and that encourage children to nag their parents relentlessly to buy such products. Experts and policy makers worry that the ill effects of consuming these products are devastating for children’s health, especially as childhood rates of obesity and Type II diabetes rise dramatically. There’s particular concern about ‘energy drinks’ which not only have high-sugar content, but also caffeine and other stimulants.

Assume, in response these developments, that the provincial government decides to curb marketing and advertising of “junk food” to children, and to ban the selling and buying of energy drinks to and by children, by enacting the *Unhealthy Food Products Control Act*. The key provisions of the *Act* are as follows:

1. It is an offense under this Act to advertise in any commercial media, including broadcast, cable, digital, internet, social and print media, any food or beverage product that is unhealthy, lacking in nutritional value, and likely to be consumed by persons under the age of 16.
2. It is an offense under this Act to sell to a person under the age of 16 any food or beverage product that is an ‘energy drink’, or for a person under the age 16 to buy an energy drink.
3. The Minister of Health shall determine, on an ongoing basis, with the advice of the British Columbia Food Industry Council of Experts, which food and beverage products fall within the scope of sections 1 and 2, and shall list these products in regulations under this Act.
4. The Council of Experts may, upon its own initiative, determine that a food or beverage not currently listed in the regulations meets the criteria and definitions in sections 1 and 2.
5. An offense under sections 1 and 2 is punishable by a fine not exceeding \$25,000.

Upon introducing the Bill in the House of Commons, the Minister of Health states: “This legislation is aimed at promoting the health of children by eliminating some of the pressures on them and their parents to buy and consume what is commonly described as “junk food,” and to ensure they are made safe from the dangers of energy drinks. The evidence is compelling and indisputable that the physical and psychological health of our children is being compromised by consumption of such foods and beverages, and it would be irresponsible for this Government and this House not to take immediate action.”

The Minister continues by reading the following passage from a report compiled by her ministry:

The evidence is now indisputable that much of the blame for the obesity epidemic among children, and the related surge in Type II diabetes, lies with the consumption of foods that are high in fats, sugar and salt – i.e. “junk food.” The companies that produce such food use persistent, manipulative, and often unscrupulous, marketing and advertising tactics to cultivate desire among children for their products, and to encourage them to pester their parents to purchase them. Though the industry has well-developed self-regulatory mechanisms in place, these are clearly not working; children are continually, and in numerous ways, exposed to “junk food” advertising despite them. It is true, as the industry insists, that the link between advertising of “junk food” and increased consumption by children has not been conclusively proven, but emerging social scientific evidence is strongly suggestive of such a link, and also suggests – on the basis of experience with legislative regimes restricting “junk food” ads in other countries – that such restrictions help curb consumption. There is, in short, a strong basis and need for mandatory legal standards. The government has particular concerns regarding energy drinks which, evidence shows, can be harmful to physical and mental health of children, and positively dangerous when consumed in large quantities or with alcohol.

The Council of Experts mentioned in sections 3 and 4 is composed of physicians, nutritionists, and representatives from the food industry and consumer-protection groups, all of whom are appointed by stakeholder associations within their sectors – for example, the physicians are appointed by the Canadian Medical Association; the nutritionists are appointed by the Canadian Nutrition Society; and so on. The Minister of Health, as *ex officio* chair of the Council (she chairs meetings, but has no vote), is consulted and advises upon membership of the Council, but she has no official authority to determine its membership.

**Discuss the following:**

- 1) Coca Cola, a company whose products are caught by the *Act*, mounts a challenge under section 2(b) of the *Charter*, alleging its freedom of expression has been limited by the *Act*'s restrictions (in section 1) on advertising its products, and that that limitation cannot be saved by section 1 of the *Charter*. **(20 marks)**
- 2) James Speedy, a 15-year-old who drinks 4 or 5 Red Bulls a day, challenges the ban in section 2 of the *Act*, which prohibits him buying Red Bull, claiming it discriminates against him and thereby breaches section 15(1) of the *Charter* **(20 marks)** [do not discuss section 1]
- 3) Does the Charter apply to decisions and determinations of the Council of Experts? **(5 marks)**

**QUESTION II – Charter (Prof. Bakan)**

**20 marks**

1. Is there a particular vision of the proper role of government in Canadian society that informs the Supreme Court of Canada's constitutional jurisprudence?

**Discuss in relation to ONE of the following:**

1. Section 2(b) (and section 1)

**-OR-**

2. Section 15

**-OR-**

3. Section 32

**-OR-**

4. The division of powers in section 91 and 92 of the *Constitution Act 1867*

**-OR-**

5. All, or any combination, of the items in questions 1 through 4

EXAM CONTINUED ON FOLLOWING PAGE

**QUESTION III – Aboriginal and Treaty Rights (Prof. McIvor)**

**35 marks**

**Choose 1 (one) of the following 2 questions to answer.** Please restrict yourself, as much as possible, to material covered in Constitutional Law 201.

**#1 Fact-pattern question**

You are an articling student working at a law firm that provides legal services to Indigenous people. Early Monday morning your principal asks you to return a call from a prospective client named George and to report back to her by 4 pm.

You call George. He tells you that he and his friend Sam have been charged with hunting elk on private property without a licence. Their first court appearance is on Friday.

George is a member of a First Nation in southern B.C. that does not have a treaty with the Crown. He says that at a community gathering last month, a group of elders asked him to obtain traditional meat to use for an upcoming ceremony. He asked his friend Sam to come with him to help out. He says that Sam is from Alberta. He's not a member of George's First Nation, but George thinks he is Metis.

George says that he and Sam decided to go hunting early in the morning in a quiet area off an unpaved road a few kilometres away from the reserve. George chose this area because he used to hunt there with his dad when he was younger, and he's heard stories from elders in the community about how they used to gather berries and go hunting there in the past. He also says that he was pretty sure that one of the families who own property in the area told his dad that it's fine for them to hunt there as long as they aren't close to any houses.

When George and Sam arrived in the area, he noticed that there was a new fence with a no-trespassing sign at the edge of the property. He said he doesn't think it was there when he went hunting in the area before, but that he wasn't concerned about it because there were no houses or people nearby.

George tells you he shot the elk while he was standing on the road beside the fence. He and Sam were on the property gutting the elk when two conservation officers arrived. George said he explained to them that he was a member of the First Nation and that his elders had asked him to go out hunting so that they could use the meat for a ceremony.

George and Sam were charged with hunting without a license and trespass under the provincial *Wildlife Act* and *Trespassing Act*. George tells you that the elders in his community are upset about what happened, and that the Chief and Council have told him that they want to support him and Sam if they have to go to court.

Identify the issues and main legal precedents you intend to discuss with your principal when you meet at 4 pm. What are the possible defence(s) George and Sam might have to the charges? What further information would you need in order to advise George and Sam on their legal options?

**#2: Essay Question**

Based on the case law you've read this semester, what is the purpose of s. 35(1)? How do the concepts of the 'reconciliation' and 'honour of the Crown' relate to the purpose of s. 35(1)? What are the strengths and weaknesses of the Supreme Court's description of the purpose of s. 35(1)?

**END OF EXAMINATION**