

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

Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

**THIS EXAMINATION CONSISTS OF 4 PAGES (INLCUING THIS PAGE)**

**PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA**

**FACULTY OF LAW**

**FINAL EXAMINATION – APRIL 2019**

**LAW 300.004**

Jurisprudence and Critical Perspectives

Professor Goldbach

**TOTAL MARKS: 80**

**TIME ALLOWED: 180 MINUTES**

**(PLUS 15 MINUTES READING TIME)**

\*\*\*\*\*

- NOTE:**
1. This is a semi-open book examination. Candidates may bring to the exam the class textbook (Bix) plus **one page** of typed or hand-written notes (double-sided with a total word count of no more than 1200 words). Communications devices such as mobile phones are not permitted. Candidates are permitted to write on the paper during the 15 minutes reading time, but must not begin the examination until instructed.
  2. All candidates must answer **three questions**. Answers must be in essay format.
  3. Each question is worth **equal marks**.
  4. Students should not discuss the exam, including once the exam is completed. Because other students will be working on the take-home assignment throughout the exam period, students must not discuss the exam, either on or off campus.

**THIS EXAMINATION CONSISTS OF SIX QUESTIONS**

**Question One.**

Professor Jeff Rachlinski and Judge Andrew Wistrich write:

Judges are the axle on which the wheels of justice turn. They manage pretrial proceedings, mediate settlement conferences, rule on motions, conduct bench trials, supervise jury trials, take guilty pleas, impose criminal sentences, and resolve appeals. In the process, they find facts, make or apply law, and exercise discretion. Judges wield enormous power, and society therefore rightly expects much of them. Judges must be fair-minded, impartial, patient, wise, efficient, and intelligent. They must set aside their politics and their prejudices, make rational decisions, and follow the law. But is it possible for judges to perform as we expect?<sup>1</sup>

Discuss the authors' characterization of judges' work, as well as their concern and concluding question. Refer to course materials and readings in your discussion.

**Question Two.**

In the context of women's inequality and subordination, Wendy Brown describes rights as "that which we cannot not want."<sup>2</sup> However, she cautions that rights are paradoxical, locking "us into the identity defined by our subordination," and "potentially even enhance[ing] it."<sup>3</sup> How do rights do this? Do you think other Feminist Legal Theorists, Critical Race Theorists, and Indigenous Legal Scholars would agree with this characterization? Discuss with reference to course materials and readings.

**Question Three.**

The United Nations describes the Universal Declaration of Human Rights (UDHR) as a "milestone document in the history of human rights."<sup>4</sup> Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the UDHR sets out fundamental human rights to be universally protected. It was proclaimed by the United Nations General Assembly on 10 December 1948 "as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages."<sup>5</sup> Do you think crafting a human rights document that represents and is applicable to all people in

---

<sup>1</sup> Jeffrey J. Rachlinski<sup>1</sup> and Andrew J. Wistrich, "Judging the Judiciary by the Numbers: Empirical Research on Judges" (2017) 13 *Annu. Rev. Law Soc. Sci.* 203 (Citations removed)

<sup>2</sup> Wendy Brown, "Suffering the Paradox of Rights" in Wendy Brown and Janet Haley, eds. *Left Legalism/ Left Critique* (Duke University Press 2002) at 421.

<sup>3</sup> *Ibid* at 423.

<sup>4</sup> United Nations, "Universal Declaration of Human Rights" (n.d.), <https://www.un.org/en/universal-declaration-human-rights/>.

<sup>5</sup> United Nations, "Universal Declaration of Human Rights" (n.d.), <https://www.un.org/en/universal-declaration-human-rights/>.

all nations is possible? Why or why not? What is the source of law in this case? What would Positive and Natural Law theorists say about the possibility and importance of documenting universal human rights?

#### **Question Four.**

Over a short period in early 2016, the U.S. deployed remotely piloted aircraft to carry out deadly attacks in six countries across central and south Asia, north Africa, and the Middle East. Already by the end of President Barack Obama’s first term, American strikes had killed several thousand people in Pakistan, Yemen, and Somalia, including hundreds of civilian bystanders. Senior officials in the Obama administration variously described drone strikes as “precise,” “closely supervised,” “effective,” and “indispensable” – but what they emphasized most of all is that the drone strikes they authorized were lawful.

Specifically, Executive branch lawyers had drafted a Presidential Policy Guidance, which established the standard operating procedures for the use of lethal and non-lethal force against terrorist targets outside the U.S. and areas of active hostilities. The Presidential Policy Guidance was not enacted by Congress nor was it published in the U.S. Code. No federal agency issued regulations relating to drone strikes, and no federal court adjudicated their legality.<sup>6</sup>

Based on your understanding of the criteria required for a law to be valid, do you think the Presidential Policy Guidance should be considered law? Discuss with reference to course materials and readings.

#### **Question Five.**

In *State v. Soto*,<sup>7</sup> the Superior Court of New Jersey considered the motions of seventeen African-American defendants to suppress evidence of drug possession obtained during traffic stops. The defendants alleged that their arrests violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment because the New Jersey State Police selectively enforced the traffic laws by targeting African-American violators.

Two troopers provided testimony about having been trained and coached to make racially based profile stops. The defense also elicited evidence that the State Police hierarchy allowed, condoned, cultivated and tolerated discrimination in its crusade to rid New Jersey of the scourge of drugs. In fact, an empirical study showed that 42% of the traffic violators stopped by the police were African-American, even though African-Americans only account for 15% of violators.

---

<sup>6</sup> Adapted from Jameel Jaffer, “How the US justifies drone strikes: targeted killing, secrecy and the law” (2016) *The Guardian*.

<sup>7</sup> *State v. Soto*, 324 N.J. Super. 66 (N.J. Super. App. Div. 1996)

What authority did the State Police hierarchy have to condone discrimination in carrying out legal operations? Imagine that a group of African-Americans who were subject to race-based profile stops launched a civil suit against several state troopers. Could the state troopers justify their actions on the basis that they were following orders? Why would the state troopers feel obligated to follow the orders of their superiors? Generally speaking, why do we feel obligated to follow the law?

**Question Six.**

Is there anything that makes law unique and distinctive? How does law differ from politics, social norms, and/or ethics and morality? Scott Shapiro writes that “Legal systems are institutions of a very special kind: they are compulsory planning organizations that have a moral aim and bear a privileged relation to other planning organizations.”<sup>8</sup> Do you agree? Is this a helpful characterization of law? Why or why not? Discuss with reference to readings and course materials.

**END OF EXAMINATION**

---

<sup>8</sup> Scott J. Shapiro, “The Planning Theory of Law” Yale Law School, Public Law Research Paper No. 600 (22 Mar 2017).