

Write Your Exam Code Here: _____

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

Attachments:

1. Readings List

**THIS EXAMINATION CONSISTS OF 7 PAGES, INCLUDING THE ATTACHMENT
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA
PETER. A. ALLARD SCHOOL OF LAW
WINTER EXAMINATION – DECEMBER 2018**

Law 201- Canadian Constitutional Law: Federalism

Section 002 - Professor Margot Young

TOTAL MARKS: 100

DO NOT USE YOUR REAL NAME; use your EXAM CODE ONLY on the paper and print it clearly on EACH examination booklet used.

**TIME ALLOWED: 1 HOUR PLUS 15 MINUTES READING TIME
THE READING TIME IS MONITORED. IT WILL BE THE FIRST FIFTEEN MINUTES OF THE EXAM PERIOD DURING WHICH STUDENTS MAY NOT BEGIN TYPING OR WRITING EXAM ANSWERS. YOU MAY, HOWEVER, MAKE NOTES ON SEPARATE PAPER.**

- 1. This is a CLOSED BOOK examination. You may NOT bring in your notes and any course materials. Nor may you bring in any textbooks. You will be given an outline of first semester readings when you enter the exam room.**
- 2. PLEASE WRITE LEGIBLY ON ALTERNATE LINES AND ON ONLY ONE SIDE OF EACH PAGE.**
- 3. Questions raise issues that do not have one ‘right’ answer. Identify and discuss fully the points that could be raised on all sides of each issue, giving some sense of the relative strength of the arguments. State clearly any facts you assume in answering the question.**
- 4. Full citation of cases is not necessary. You may refer to cases in short form.**
- 5. This examination is designed to test material covered in this course. Do not concern yourself with statutes, cases, or other sources not covered in the course materials, discussion, or lectures.**
- 6. A suggested working time for each question is indicated on the examination paper.**
- 7. GOOD LUCK!**

THIS EXAMINATION CONSISTS OF TWO QUESTIONS; YOU MUST ANSWER BOTH QUESTIONS.

Recent news stories indicate a sharp rise in the use of psychedelic drugs as an aid to accessing deep trauma and overcoming mental illness. New medical publications also proclaim how older psychedelic drugs offer miracle-like treatment of persistent medical conditions.

Canada's chief public health officer has stated that the resurgence in psychedelic drug use is of great concern. These drugs present considerable dangers as street drugs, and require close medical supervision for their safe therapeutic use. The federal government is thus concerned about this new pattern of illegal drug consumption. It has passed legislation, *An Act to Combat Psychedelics (ACP)*.

The Preamble to the *ACP* reads as follows:

Whereas drug use is a national health crisis that endangers the health and safety of Canadians;

Whereas psychedelic drugs are illegal under other federal legislation;

Whereas it is important to send a strong message that illegal drug use is a serious risk to both individuals and the fabric of Canadian society;

Whereas physicians face primary responsibility for tracking therapeutic use of psychedelic drugs but function in a matrix of complex obligations;

Whereas the delivery of health care must reflect social and economic factors.

The *ACP* contains the following provisions:

1. The Minister of Health establishes a Psychedelic Use Research Agency (Agency), pursuant to regulations.
 - a. This agency will research psychedelic drug use and collect data from across the country about patterns of use.
 - b. This Agency will also designate urban centres in Canada where public clinics must comply with the stricter requirements of section 3.
 - c. The Agency will determine when revocation of a physician's license under section 5 of the statute is warranted.

Continued on next page.

2. A health care worker who is interacting with the public in any professional capacity must report to the Agency those patient cases where that worker is aware of psychedelic drug use.
3. Public health clinics in designated urban centres must report annually on the socioeconomic status of all clinic patients.
4. Failure by a health care worker to report as required by this Act is subject to a \$5,000 fine.
5. Licensed physicians who fail to report may be subject to medical license suspension of six to twelve months.

Hansard records show that the federal government spoke in the House about the escalating nature of psychedelic drug use as a public health problem, affecting individuals and families across all walks of life. Further, the federal Minister of Health expressed frustration with poor reporting requirements of provincial health regimes and a consequent failure to adequately track the new phenomenon, thus endangering the physical and mental health of the population and preventing effective research.

A 2016 report prepared by a Federal/Provincial Ministerial Council linked psychedelic drug users not under medical supervision with sharply rising levels of psychological medical emergencies.

A 2008 Stanford University study is critical of regulation of psychedelic drugs, and argues that they should be legalized and widely available. The Study cites medical opinions that there is clear therapeutic value to psychedelic drugs and they are as safe to use as legal drugs.

The provincial government of British Columbia has legislation, the *Drug Registry Act (DRA)*, that has the following sections.

12. All staff at any public clinic must report to provincial health services the annual numbers of patients who report having used psychedelic drugs.
13. Any physician who fails to report under s. 12 of this Act more than three times is subject to permanent medical license suspension.

Continued on next page.

You are an articling student for the federal Minister of Health and are well aware that provincial governments have jurisdiction over such things as health care delivery, health care professionals, and physician licensing. Your principal has asked you to research and report on the following constitutional law issue.

MARKS

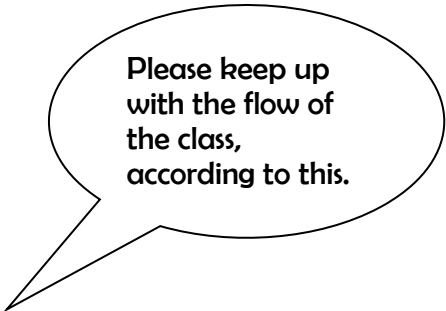
- 70** **Question 1. (Recommended time: approximately 40 minutes)** Is the federal legislation as a whole valid under the federal government's criminal law power? Do not discuss any other head of power. Do not discuss ancillary powers doctrine but consider everything else we have studied in relation to validity.
- 30** **Question 2. (Recommended time: approximately 20 minutes)** Assuming that both the federal legislation and the provincial legislation are valid, are the various pieces of provincial legislation operable?

End of Exam

**CANADIAN CONSTITUTIONAL LAW
Federalism Readings**

2018W

**Law 201 Section 2
Professor Margot Young**



PART I - INTRODUCTION TO CANADIAN CONSTITUTIONAL LAW

Chapter One – Introduction3

What is a Constitution?

The Elements of the Canadian Constitution4
The Sources of the Canadian Constitution5
From Colony to Independent Nation State6
Perspectives on the Constitution8
Constitutional Change9
The Lawyer’s Role10

Chapter Two - Judicial Review and Constitutional Interpretation

Introduction, Judicial Review and the Legitimacy Issue29
R. Elliot, "References, Structural Argumentation and the Organizing Principles
of Canada's Constitution"32
Notes and Questions34
A. Prentice et al., *Canadian Women: A History*35
"A Letter to Nellie McClung" Canvas
*Reference re Meaning of the Word "Persons" in Section 24 of the British North America
Act, 1867* 37
Edwards v. AG Canada40
Notes45
J. Borrows, "Introduction," *Freedom and Indigenous
Constitutionalism*on Canvas

READ FOR CLASS QUIZ Triggering Judicial Review and Procedural Issues 45--51

Pit Stop

PHS Community Services Society v. Canada (Attorney General) (SCC)..... on-line (Search for it yourself.)

PART II - FEDERALISM

Chapter Eight – Interpreting the Division of Powers

I. Interpreting the Division of Powers: Introduction to Chapter 8187

READ FOR CLASS QUIZ II. Values Informing the Interpretation of the Division of Powers

R. Simeon, "Criteria for Choice in Federal Systems"190
 Notes and Questions197
 B. Ryder, "The Demise and Rise of the Classical Paradigm in Canadian Federalism:
 Promoting Autonomy for the Provinces and First Nations" 246

III. Validity: Characterization of Laws

Introductory Note198
 A. Pith and Substance198
 K. Swinton, *The Supreme Court and Canadian Federalism: The Laskin-Dickson
 Years* 199
 W.R. Lederman, "Classification of Laws and the *British North America Act*"202
Citizens Insurance Company v. Parsons86
R. v. Morgentaler.....206
 Notes and Questions.....216
AG Canada v. AG Ontario (The Employment and Social Insurance Act)163
Ref. re Employment Insurance Act (Can.), ss. 22 & 23218
 Notes and Questions.....223
AG Canada v. AG Ontario (Labour Conventions)159
 B. Double Aspect Doctrine226
 W.R. Lederman, "Classification of Laws and the *British North America Act*"228
Multiple Access Ltd. v. McCutcheon230
 Notes233
 C. Ancilliary Powers.....234
General Motors of Canada Ltd. v. City National Leasing.....235
 Notes239
Quebec (Attorney General) v. Lacombe241
 Notes and Questions.....245

IV. Applicability: The Interjurisdictional Immunity Doctrine.....248

Bell Canada v. Quebec (Commission de la santé et de la sécurité du travail) (Bell #2) 252
 Notes and Questions256
Canadian Western Bank v. Alberta258
 Notes and Questions263
Quebec (Attorney General) v Canadian Owners and Pilots Association.....264
 Notes and Questions.....268
PHS Community Services Society (SCC)online

V. Operability: The Paramountcy Doctrine.....271

Ross v. Registrar of Motor Vehicles.....274
 Notes and Questions280
Multiple Access Ltd. v. McCutcheon.....277
 Notes and Questions280
Bank of Montreal v. Hall.....281
 Notes and Questions285

<i>Rothmans, Benson & Hedges Inc. v. Saskatchewan</i>	288
Notes and Question.....	291
<i>Alberta (A.G.) v. Moloney</i>	295
Notes and Questions	300

Constitutional Poetry

F.R. Scott, “Some Privy Counsel”.....	175
---------------------------------------	-----

Chapter Eleven – Criminal Law and Procedure

I. Federal Powers over Criminal Law and Procedure.....	427
<i>Reference re Validity of Section 5(a) of the Dairy Industry Act (Margarine Reference)</i>	428
Notes and Questions	430
<i>RJR MacDonald Inc. v. Canada (Attorney General)</i>	432
Notes.....	439
Note: The Requirement of a Criminal Form	440
<i>R. v. Hydro-Québec</i>	441
Notes.....	451
Note: <i>Reference re Firearms Act (Can.)</i>	453
<i>Reference re Assisted Human Reproduction Act (SCC)</i>	456
Notes and Questions.....	483