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THIS EXAMINATION CONSISTS OF THREE (3) PAGES (INCLUDING THIS PAGE)
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THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – DECEMBER 2018

LAW 251
Public Law

Section 1
Professor Liston

TOTAL MARKS: 100

TIME ALLOWED: 75 MINUTES

FIFTEEN (15) MINUTES READING TIME

SIXTY (60) MINUTES WRITING TIME

NOTES:

1. This is an open book examination. You may bring COURSE MATERIALS into the exam such as: the casebook, materials posted on the course website, and your own notes. Laptops are only permitted for the use of ExamSoft.
2. Use of communication devices such as mobile phones, tablets, smartwatches, etc. are not permitted. Please ensure that your phone is turned off.
3. Read the questions carefully and make sure you understand what you are being asked to do before you begin your answer.
4. You may refer to cases in short form (e.g. *Secession Reference*).

THIS EXAMINATION CONSISTS OF TWO (2) PARTS

ANSWER ONE (1) QUESTION IN PART I – ESSAY

ANSWER TWO (2) OF THE FOUR (4) QUESTIONS IN PART II – SHORT ANSWER

PART I: 60 MARKS – Essay

Suggested time: 40 minutes.

Please write an essay in response to **ONE (1)** of the following questions. You will be assessed on the clarity and organization of your writing, how you understand the doctrines and case law, and the quality of the arguments you make.

1. This course has explored the problem of interpretation in Public Law. As you now know, Canadian courts have created their own approaches to guide their acts of interpretation, specifically the living tree approach to interpret the constitution and the modern approach to statutory interpretation for statutes. Some critics, however, argue that these interpretive approaches cannot properly constrain judicial power and, consequently, judges are often too ‘activist’ in their decisions.

Referring to course materials, first explain what these critics mean when they call judges ‘activist.’ Below you will find a short list comprised of several cases we have studied in Public Law. Select **TWO (2)** cases from this list. For each, identify some of the problems with judicial interpretation that the case raises. One of your selected cases should illustrate possible ‘judicial activism’. The other selected case should provide an example that counters these critics’ views and vindicates the exercise of judicial power. Make sure that you are not simply summarizing the cases, but providing a reasoned argument in your answer.

- *Canada (Attorney General) v Mossop*
- *Reference re Secession of Quebec*
- *Reference re Supreme Court Act, ss 5 and 6*
- *Vriend v Alberta*

2. As you have learned this term, concerns about the separation of powers are ever-present in Public Law. What does the doctrine of the separation of powers mean and why does it matter so much in Public Law? Based on your understanding of both the doctrine of the separation of powers and relevant cases from this course, explain why courts do not review the following the same way they review ordinary legislation:

- constitutional conventions;
- parliamentary privilege; and,
- decisions made using prerogative powers.

PART II: 40 MARKS (20 MARKS PER QUESTION) – Short Answer

Suggested time: 10 minutes per question.

Select **TWO (2)** questions to answer from the four (4) below.

1. How does the Supreme Court define the principle of the rule of law in *British Columbia v Imperial Tobacco*? Briefly explain the different ways this principle is applied (or is not applied) in *Roncarelli v Duplessis*, the *Reference Re Secession of Quebec*, *Imperial Tobacco*, and *Trial Lawyers of British Columbia v British Columbia (Attorney General)*. Do you agree that the definition of the rule of law from *Imperial Tobacco* is sufficient? If not, identify one (1) requirement of the rule of law that you would like to see added to *Imperial Tobacco*'s definition.
2. Explain the importance of the concept of "legal pluralism" for Canada. How do unwritten principles like the honour of the Crown or the principle of reconciliation support the claim that Canada is a legally pluralistic state? Identify two (2) implications of a pluralistic state for Indigenous peoples in Canada.
3. Consider *Shell Canada Products Ltd v Vancouver*. Briefly explain why the City of Vancouver is part of the Executive Branch of government. What was the legal issue in *Shell Canada*? How did the majority decide this issue? What reason(s) did the dissent give to support its decision? Now consider the unwritten principle of democracy and advance a brief argument explaining which decision you agree with and why.
4. *Canada (Prime Minister) v Khadr* is a case where the limits of judicial review in our legal system were confronted. What principled reasons were put forward for limiting the scope of judicial review (and judicial power) in *Khadr*? Do you believe that the remedy the SCC ultimately selected was constitutionally appropriate OR constitutionally problematic? Make sure that you briefly explain what a legal remedy is in your answer.

END OF EXAMINATION