

**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, INCLUDING THIS PAGE**

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

**THE UNIVERSITY OF BRITISH COLUMBIA**

**PETER A. ALLARD SCHOOL OF LAW**

**FINAL EXAMINATION –December 12, 2018**

**LAW 383/LAW 557C**

**Section 1**

**Mental Health Law**

**Professors Grant and Johnston**

**TOTAL MARKS: 100**

**TOTAL TIME ALLOWED: 3 hours +10 minutes reading time**

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**NOTE: Read the exam and the following instructions carefully.**

- 1. This is an open book exam. Students may bring all of their materials from the course and any notes they have made. No books are allowed except a Criminal Code and an English-language dictionary (no legal dictionaries are allowed).**
- 2 Please do not begin writing your exam until the 10 minutes of reading time has elapsed.**
- 3. This exam has two parts. Everyone must answer all four parts of the problem in Part A. Part B contains two essay questions. Students must answer ONE of these essay questions**

**PART A (70 marks total, 126 minutes)** Students must answer all parts of this problem.

Benilda (68 years old) and Ernesto (79 years old) are a married couple who live together in Richmond, BC. When they made their wills back in 1984 they both made an enduring power of attorney naming each other as an attorney. They have two children, Robert (34 years old) and Amanda (31 years old). Several years ago Ernesto was diagnosed with Parkinson's disease, which he has been managing with Parkinson's medications. Parkinson's disease affects the nerve cells in the brain and can produce muscle rigidity, tremors, and difficulties with walking and talking.

Robert always struggled in school, both socially and academically, and was diagnosed with several learning disabilities at age 6. By age 11, he was also diagnosed with Oppositional Defiant Disorder, Attention Deficit Hyperactivity Disorder ("ADHD"), Generalized Anxiety Disorder, and below average developmental achievement. He was put on Ritalin for the ADHD and an anti-anxiety medication. As a teenager he began snorting his Ritalin and then using other drugs like ecstasy and methamphetamines. His drug use may have caused an additional brain injury and, after significant struggles in high school, he leaves before graduating. He currently lives in a group home run by Community Living BC ("CLBC") in Langley (roughly a 45 minute drive from Richmond), which was the closest housing available to his family offered by CLBC. Robert has a good relationship with Ernesto and Amanda, but he is closest to his mother Benilda, who has always provided him with a significant amount of support.

Amanda is a legal assistant and a single mother of a 2 year old girl, Jessie. Amanda and Jessie live in a rented apartment in Richmond with a roommate. When Benilda goes on an extended trip to visit relatives in the Philippines, Amanda drops in to check on her father as often as she can. One day Amanda takes Ernesto in an ambulance to the emergency room at Richmond Hospital. Ernesto is disoriented and shouting at people to leave him alone or they'll regret it. Amanda told the emergency room staff that she went by the house to visit her father and found him on the floor at the foot of the stairs. Ernesto is admitted to hospital and tests show that he is delirious from dehydration and that he has not taken his Parkinson's medication for several days. When Ernesto says he wants to leave hospital and go home, the emergency room physician involuntarily admits him under the *Mental Health Act*.

**i) (20 marks, 36 and minutes)**

X-rays show that Ernesto broke his hip when he fell down the stairs and the doctors do not think it will heal properly without surgery. Ernesto is assessed by a geriatric psychiatrist who concludes that he has developed dementia subsequent to his Parkinson's disease and plans to give him an antipsychotic medication to treat some of his agitation symptoms. Who will make these health care decisions? Please refer to relevant statutory authority to support your answer.

**ii) (20 marks, 36 minutes)**

A few months later, Ernesto applied to the Mental Health Review Board for a review panel and you are his lawyer for the upcoming hearing. Ernesto is doing much better than he was on admission: he is rehydrated, he has been getting Parkinson's medication and antipsychotic medications, and his hip has healed. Ernesto tells you that he wants to leave the hospital and go home right away. Although Ernesto has told the hospital staff that he will keep taking all his medication when he goes home, he tells you in confidence that he will stop taking the antipsychotic medications because the side effects make him feel awful. The geriatric psychiatrist is concerned that if Ernesto goes home while Benilda is still away, he will not be safe at home and he will not take his medications.

What evidence and arguments do you expect the facility to raise in favour of continuing Ernesto's detention? What arguments will you raise at the review panel to argue for Ernesto's decertification? Do you think Ernesto will be released by the Board – why or why not? Please refer to specific statutory authority to support your answer.

**iii) (20 marks, 36 minutes)**

Just before her planned departure from the Philippines, Benilda dies in her sleep from a heart attack. Robert struggles with the news of his mother's sudden death, as she was his primary supporter. He begins leaving his group home and regularly using drugs, including crystal meth. He is often found spending time with people that the police believe are gang members who see Robert as an easy person of whom to take advantage and do their bidding for a few extra dollars. At times he becomes very upset and yells at the group home workers that they are lying to him about the death of his mother.

CLBC makes an application in Provincial Court to impose a support and assistance plan on him under the *Adult Guardianship Act*. CLBC tells you it can no longer house Robert in the group home in Langley when he keeps leaving and they want him to be placed in a more secure facility in Hope BC (roughly a 2 hour drive from Richmond). CLBC hopes that the move will also disrupt some of the relationships Robert is forming with suspected gang members in Langley. Robert is adamant that he does not want to be moved to a new facility with less freedom. He is used to his group home in the Langley area and is worried about how he'll be able to see family in Richmond if he is in Hope. You are representing Robert in the Provincial Court application. What will CLBC need to demonstrate to the court to obtain the order and what evidence and arguments do you expect them to raise in support of the application? What arguments will you raise at court to argue against the application? Please refer to specific statutory authority to support your answer.

**iv) (10 marks, 18 minutes)**

Amanda learns that she has a brain aneurism and she has decided to have brain surgery to have it clipped because there is a risk that it could rupture at some point in time. She is concerned about

who will take care of her daughter Jessie and do things like pay her rent while she is in hospital for the surgery and recovery. As with any brain surgery, there is a risk of possible complications that could cause permanent brain damage. Given how much her father and brother are currently coping with, she wants to make sure her roommate can take care of things and make decisions for her. You are Amanda's lawyer – what would you recommend to her and why? Please refer to relevant statutory authority to support your answer.

**PART B (30 marks, 54 minutes)**

**STUDENTS MUST ANSWER ONE OF THE FOLLOWING ESSAY QUESTIONS**

1. In this course, we have examined both the civil mental health system and the forensic mental health system and how they both address issues of liberty/detention and treatment. You have also attended two hearings, one civil and one in the forensic context, dealing with decision-making around the liberty of individuals with mental disabilities. Write an essay outlining the differences you have observed in these two systems in terms of their approach to decision-making that impacts liberty and security interests of the individual caught up in the system. Your answer should include (but is not limited to)

- (a) a brief outline of the rationale for treating these systems differently;
- (b) three examples of differences you see between the two systems in terms of the approach taken to issues that affect liberty or security interests of the individual in the system;
- (c) an assessment of whether these differences are warranted given the differences between the two systems under consideration;
- (d) your conclusions about what either of these systems could learn from the other.

**-OR-**

2. *“Canadian coercive care laws, and some case law and commentary in support of them, have failed to give adequate attention to principles of autonomy, thus undermining the laws’ legitimacy. At the same time, the traditional arguments levied against these laws also sometimes lack foundation in the governing autonomy principles. A refocusing is thus required.”* [Sophie Nunnelle, chapter 1]

Write an essay on the role of coercion in the law relating to persons with mental disabilities that you have studied this term. Your answer should include at least three examples (statutory and/or case law) drawn from different areas of the course in which coercion plays a central role in people's lives and your assessment of whether we have reached an appropriate balance between coercion and autonomy or whether a refocusing is required.

**END OF EXAMINATION**