

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 THREE (3) PAGES (INCLUDING THIS PAGE)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – DECEMBER 2019

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. *Roncarelli*, *Secession Reference*).

THIS EXAMINATION CONSISTS OF THREE (3) PARTS

ANSWER ONE (1) QUESTION IN PART I – ESSAY

ANSWER TWO (2) OF THE THREE (3) QUESTIONS IN PART II – SHORT ANSWER

ANSWER ONE (1) QUESTION IN PART III – SHORT REFLECTION QUESTION

PART I: 50 MARKS – Essay Question

Suggested time: 25 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. Make sure that you are not simply summarizing the cases, but providing a reasoned argument in your answer.

1. You have been learning about judicial review and the nature of judicial power in Public Law. Briefly define judicial review. Then select **TWO (2)** cases from the list below and consider this question: What principled reasons have we seen for limiting the scope of judicial power in Public Law? For each case, provide your legal analysis regarding whether or not the judiciary exceeded or properly limited the scope of its power. Do either of your selected cases illustrate how courts can support, rather than undermine, democracy and/or the rule of law in their exercise of power?

- *Agraira v Canada (Public Safety and Emergency Preparedness)*
- *Black v Chrétien*
- *Canada (Attorney General) v Mossop*
- *Canada (Prime Minister) v Khadr*

2. How does the Supreme Court define the principle of rule of law? Explain how the various interpretations of this principle are similar to, or different from, each other in this line of cases:

- *Roncarelli v Duplessis*
- *Reference re Secession of Quebec*
- *BC v Imperial Tobacco*
- *Trial Lawyers Association of BC v BC (Attorney General)*

Is there any content missing from the Court's definition of the rule of law that you would argue should be added?

Now consider Rothstein J's dissent in *Trial Lawyers Association of BC*. Do you agree or disagree with the concerns he raised about the Majority's decision? In your opinion, did the Supreme Court of Canada implicitly overrule *BC (Attorney General) v Christie*? If your answer is yes, briefly explain why this action might pose a problem for the rule of law.

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

Suggested time: 15 minutes per question.

Select **TWO (2)** questions to answer from the three (3) below.

1. What does justiciability mean? Explain the general guidelines and boundaries of justiciability as discussed throughout the course. Identify **TWO (2)** cases from the course where justiciability played a key role and explain why this was so. Make sure you select different cases from those you discussed in Part I of this Exam.
2. Briefly explain the concept of parliamentary privilege. What role does parliamentary privilege play in the Supreme Court of Canada's decision in *Authorson v Canada (Attorney General)*? Why did the Court refuse to apply the concept in *Canada (House of Commons) v Vaid*?
3. The Crown has been called the first principle of government in the Canadian legal system. Explain how the principle of the Crown structures our system of government. How do reviewing courts describe its constitutional status? What are some of the key features of the relationship between the Crown and Indigenous peoples in Canada?

PART III: 10 MARKS – Short Reflection Exercise (no choice)

Suggested time: 5 minutes.

1. We learned a lot from each other in the Public Law in the News presentations this term. Reflect on your experience with your particular group and tell me one important piece of knowledge that you learned from your group. Now reflect on one of the other group's topics, reproduced below:
 - the Trump Impeachment Inquiry;
 - SCOTUS interpreting the meaning of "sex" in the US *Civil Rights Act*;
 - Quebec's laicity Bill 21;
 - the salience of minority governments for Public Law in Canada;
 - BC's Bill 41 implementing the UN Declaration on the Rights of Indigenous Peoples;
 - the recent Federal Court challenge to the Safe Third Country Agreement; OR,
 - the Latimer case and Executive pardons and apologies.

What is one important piece of knowledge that you learned from another group?

***** END OF EXAMINATION *****