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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 4
Professor Cheng

TOTAL MARKS: 100

TIME ALLOWED: ONE (1) HOUR AND FIFTEEN (15) MINUTES

NOTES:

1. This is an open book examination. Candidates may have with them any hard-copy written material they wish. Laptops are only permitted for the use of ExamSoft.
2. Use of communication devices such as mobile phones, tablets, smartwatches, etc. are not permitted. Candidates should ensure that their phones are turned off.
3. Read the questions carefully and understand what you are being asked to do before you begin your answer.
4. You may refer to cases in short form (e.g. "*Sparrow*").

THIS EXAMINATION CONSISTS OF TWO (2) PARTS

ANSWER BOTH QUESTIONS IN PART I – ESSAY

ANSWER TWO (2) OF THREE (3) QUESTIONS IN PART II – SHORT ANSWER
(If more than 2 questions answered, only the first 2 responses will be marked)

PART I - 60 MARKS – Essay (Suggested time: 45 mins)

Having taken a course in Public Law, you have learned that indigenous rights and indigenous governance are entrenched by the Constitution Acts and beyond. The SCC and other courts also provide standards and tests to identify these rights and titles, such as the *Sparrow* test, the *Van der Peet* test, and the recognition of self-government as predating and entrenched by s.35 of the Constitution Act in *Campbell v British Columbia (Attorney General)*.

A First Nations-led development is to be built in the heart of the City of Vancouver, on the traditional land of the Squamish Nation in the neighbourhood now known as Kitsilano. It would be one of the largest private First Nations investment projects in the country, expected by the Squamish to be in the billions of dollars, and would turn the Squamish Nation into a major developer in Vancouver's lucrative housing market.

The 4.7-hectare project must be approved by the Squamish Nation's approximately 3,000 members in a referendum on Dec. 10, 2019. If approved, the project will be unconventional in at least two aspects: the project will provide parking for only 10 per cent of the apartments, far below the usual minimum; and the project abandons the city's preference for towers that sit on podiums of townhouses. It is believed that reducing the amount of parking so significantly will result in huge cost savings for everyone who eventually lives there, since an individual car stall would cost \$80,000 to \$120,000 to build.

The City of Vancouver said it would have very little influence on the plan, because the land is owned by the Squamish Nation and not subject to local zoning or bylaws. Kitsilano community activists said they hoped the Squamish would consult them on the project.

Given your knowledge of Public Law and the study of the indigenous rights:

1. Discuss the three major views on the relationship between indigenous and non-indigenous peoples in Canada and the development of case law. In particular, based on the recent development in *Campbell*, explain if the City of Vancouver could ask the Squamish Nation to apply the local zoning or bylaws on the project and why.
2. Suppose that the Squamish Nation approves the project on Dec. 10, 2019, but the City of Vancouver rejects to provide water, sewer and waste-removal services to the new project unless the Squamish Nation agrees to adjust its construction plan. Based on your knowledge of public law, does the Squamish Nation have a right to the public facilities without negotiating with the City of Vancouver? Please briefly explain why.

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

Answer any two (2) of the following three (3) questions

(Suggested time: 15 minutes per question)

1. What is bijuralism in the Canadian legal system? What has made the policy toward civil law change from assimilation to adaptation/harmonization? Please briefly explain the development of bijuralism in Canada.
2. Why is Canada considered to have the “deference and dialogue” model of constitutional judicial review? What are the structural reasons identified by Justice Iacobucci in *Vriend* that help to shape this model? Can you provide an example of how “mutual respect” and dialogue are formed between the judiciary and the legislature?
3. Is an exercise of a Crown prerogative reviewable by the judiciary? What are the conditions and standards/tests for judicial review of a Crown prerogative decision? Please briefly explain the justifications of these conditions and standards.

END OF EXAMINATION