

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2020

LAW 300.002
Jurisprudence and Critical Perspectives

Professor Goold

EXAM PASSWORD: 65q2FW
RESUME CODE: ABB1D0

TOTAL MARKS: 100

(8:50 AM PST) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS**

8:50-9:00 AM Preparation Time (Exam writing not permitted) – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

9:00 AM Exam Writing Time – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

This is an open book examination, meaning that you can refer to class notes, articles, textbooks and other class readings. The use of library books is not permitted.

The examination consists of **twelve questions**, and candidates must answer **three questions**. All questions are worth **equal marks**. No additional marks will be awarded for answering more than three questions.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question. Do not email your professor or anyone else about this while the exam is in progress.

ACADEMIC INTEGRITY

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

CONFIDENTIALITY REGULATIONS – READ CAREFULLY

As this exam is being written off-campus and is unsupervised, any communication whatsoever (including, but not limited to in person, telephone, e-mail, text, social media, etc.) concerning the contents of this examination with anyone (other than the Student Services staff of the Allard School of Law) is strictly prohibited.

In the event any information comes to your attention regarding a breach of these regulations (by others, or inadvertently by you), please immediately contact Student Academic Services (studentservices@allard.ubc.ca) and make full disclosure.

A breach of these regulations may constitute student misconduct, and you may be subject to penalty or discipline under UBC's Academic Misconduct policies.

What Do I Do If:

- **I cannot access the exam questions on Canvas**

If you experience technical difficulties accessing the exam questions on Canvas, email studentservices@allard.ubc.ca and the exam questions will be emailed to you. Please provide your phone number when emailing Student Services.

- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

If you experience technical difficulties with Exemplify at the very beginning or during an exam, you may attempt to solve your problem/reboot your computer **BY YOURSELF**. You are **STRONGLY** encouraged to spend **NO MORE THAN 5 minutes** attempting to do so. You will **NOT BE GIVEN ANY EXTRA TIME** to complete the exam. **If your attempt to solve the problem is unsuccessful**, or if you choose not to make such an attempt, you **MUST** immediately **begin hand-writing** your exam answers with pen on lined paper. **You may NOT type your exam answer in word-processing software.**

When you have finished writing the exam, you must upload the exam answers that you completed in Exemplify (if you are prompted for a Resume Code, it is on the coversheet of the exam questions). Email Bernie Flinn, flinn@allard.ubc.ca, for help with this. Please provide your phone number in the email. Bernie or another IT Support staff person will then help you to upload any answers that you typed in Exemplify.

You must also upload to Canvas your hand-written exam answers into the “Exam Answer File Upload (Word Processor or Hand-written ONLY)” folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file should be named, and the coversheet of your answers should be titled with:
Your Exam Code, Course Number, Name of Course, and Instructor Name
i.e., **9999 LAW 100.001 Law of Exam Taking - Galileo**

- **I’m experiencing technical difficulties EXITING and UPLOADING the exam**

If you experience any difficulty exiting and uploading your Exemplify exam answers, you must wait until the allocated time period specified on the coversheet of the exam has ended, then email Bernie Flinn, flinn@allard.ubc.ca, and he or another IT Support staff person will help you to upload your Exemplify exam file. Please provide your phone number in the email.

If you have approved accommodations to type your answers using Word Processing Software, and experience difficulties uploading your exam answer file to Canvas, email your exam answer file to studentservices@ubc.ca.

- **I fall ill in the middle of an exam, or am otherwise interrupted such that I’m unable to continue writing my exam**

Please stop writing, note the time that you stopped, and email studentservices@allard.ubc.ca immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

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LAW 300 – Section 2

The examination consists of **twelve questions**, and candidates must answer **three questions**. All questions are worth **equal marks**. No additional marks will be awarded for answering more than three questions.

1. How can asking the question “what is law?” help us to better understand contemporary debates about the role of lawyers, judges, and law makers in Canada? Do you think studying the nature of law can help someone to become a better lawyer? Illustrate your answer with reference to materials you have studied in this course.
2. “One should not expect all debates to dissolve, clarify, or become less heated by being ‘transformed’ – re-characterised or seen from a new perspective. Many debates in jurisprudence, as elsewhere, reflect basic moral or political controversies, and no amount of transformation will relieve us of the obligations to make choices in those areas.”

(Brian Bix)

Do you agree with this statement about the role of legal theory? Is there any point in studying the debates that lie at the heart of contemporary jurisprudence? Illustrate your answer with reference to materials you have studied in this course.

3. “True law is right reason in agreement with nature; it summons to duty by its commands, and averts from wrongdoing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, though neither have any effect on the wicked. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst penalties, even if he escapes what is commonly called punishment.”

(Cicero)

To what extent does this quote from Cicero capture the key features of natural law theory? How has the work of contemporary natural law theorists – such as John Finnis – sought to build on and update this vision of natural law? Explain your answer.

4. “[M]any Indigenous legal theorists are likely to have a much less narrow concept of a ‘legal order’ [than non-Indigenous legal scholars], in the sense that decentralised, less formalized systems of social regulation will be seen as encompassing legal systems... Looking at the world via different cultural and experiential groundings, Indigenous peoples will not only be able to articulate how their own systems are structured and understood, but also to cast light on dominant legal orders. The existence of multiple spheres of law presupposed in this general picture yields ripe questions as to how different legal systems can meaningfully interact, raising further theoretical issues in need to further exploration. How do we measure legitimacy, for example, when two normative systems meet and conflict? Do we search for meta-legal rules, rules within one or the other system, or rules that seem to lie in or emerge from an area of overlap between the systems?”
(Gordon Christie)

In what ways can Indigenous legal theory help us develop a better understanding of the nature of law and legal legitimacy in 2020? How might Indigenous legal theory provide new insights into the “what is law” question that lies at the heart of many contemporary jurisprudential debates? Explain your answer.

5. In what ways are the insights of legal positivists such as Jeremy Bentham, John Austin and Herbert Hart helpful to our efforts at understanding the nature and role of law in 2020? Is there still value in studying legal positivism in light of the jurisprudential and critical theories that have emerged since the publication of Hart’s *The Concept of Law* in 1961? Explain your answer.
6. Do you think Ronald Dworkin offers a coherent and convincing account of how judges engage in legal interpretation and the nature of judicial discretion? To what extent does his work rely on a belief in the possibility of “right answers” to legal questions? Explain your answer.
7. To what extent is the law in Canada grounded in a commitment to corrective justice? Should judges and law makers pay greater attention to ideas of distributive justice, and what would be the implications of such a change? Explain your answer.
8. Does legal realism – with its focus on judges and critique of legal formalism – still have anything to say about the nature of law, legal education, and legal decision-making in 2020?

9. “All the critical scholars unite in denying the rational determinacy of legal reasoning. Their basic credo is that no distinctive mode of legal reasoning exists to be contrasted with political dialogue. Law is simply politics dressed up in different garb; it neither operates in a historical vacuum nor does it exist independently of ideological struggles in society.”
(Hutchinson and Monahan)

Do you agree with the claim that law is inseparable from politics? Is it possible – or desirable – to try to limit the extent to which judges draw on their personal and political convictions when deciding cases? Explain your answer.

10. “Feminist theory seeks to reveal the ways in which law reflects, reproduces, expresses, constructs and reinforces power relations along sexually patterned lines: in doing so, it questions law’s claims to autonomy and represents it as a practice which is continuous with deeper social, political and economic forces which constantly seep through its supposed boundaries.”
(Nicola Lacey)

How does feminist legal theory help us to understand the ways in which patriarchal ideas and power structures are embodied in – and perpetuated by – the law? How do different feminist legal scholars propose we should address this problem, and do you think their suggestions go far enough? Explain your answer.

11. Why is it important to have a clear, coherent, and convincing justification for the institution of state punishment? Do any of the theories of punishment you have studied in the course this term provide such a justification? Explain your answer.
12. Is there any value in studying the Hart–Devlin debate in 2020? To what extent can an examination of this debate shed light on contemporary discussions about the relationship between law and morality? Explain your answer.

END OF EXAMINATION