

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

FINAL EXAMINATION – DECEMBER 2020

LAW 382.001  
Health Law

Adjunct Professors Penny Washington LL.B. and Zulie Sachedina LL.B and LL.M

**EXAM PASSWORD: kQA6jT**  
**RESUME CODE: ABB269**

**TOTAL MARKS: 90**

(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.

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This is an open book examination, meaning that you can refer to class notes, casebooks, material in the class electronic data room and other class readings. The use of library books is not permitted.

**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.**

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**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](mailto: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.

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### What Do I Do If:

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

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- **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](mailto: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**

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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](mailto: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**

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END OF COVER PAGES

This examination has two parts (I and II).

- Part I (30 marks) is mandatory.
- Part II (60 marks) choose only four (4) questions (15 marks each) to answer.

## **PART I – Mandatory Memo**

### MARKS

- 30 Assume that the decision in the *Cambie Surgeries* case has made its way to the Supreme Court of Canada, where you are a keen clerk. Provide a memo for the Court outlining the potential grounds for appeal and their respective strengths. Consider whether and to what extent the evidence led at trial in the *Cambie Surgeries* case would allow the SCC to distinguish it from the decision in the *Chaoulli* case and thus to reach a different result from the Quebec case, or whether the result should be the same in light of the approach to the *Charter* taken in other health care access cases in Canada to date. Comment on whether you agree with the text commentators that a “negative rights approach” as taken by Canadian courts to date puts the public health system at risk or whether you think the risk has been overblown.

As a side-note, comment on the consent form identified at paragraphs 2496 to 2505 of the trial decision as used in the clinics and any ethical, professional or legal issues such a consent form might raise.

## **PART II – Choose only four (4) of the following questions to answer:**

### MARKS

- 15 **Question 1:** The response to COVID-19 pandemic in different countries has illustrated the range of government approaches to this crisis. Using Canada as a case study, discuss how, if at all, the constitutional authority and distribution of power over health has shaped government response to this crisis and its impact on citizens. Consider, for example, the constitutionality of provincial “bubbles” and inter-provincial and indigenous community travel restrictions, as well as the recent debate over whether restrictions on religious gatherings, as opposed to dance classes, are constitutional.
- 15 **Question 2:** During COVID-19, many long term care facilities which would normally have facilitated the provision of Medical Assistance in Dying (MAiD) did not respond to requests for these services. Some practitioners who would have provided this service made the decision that the circumstances in long term care facilities at the time were not conducive to free and informed consent and so did not provide this service. Two seniors residing in a long-term care facility who requested MAiD and who are suffering from chronic debilitating and painful diseases have asked you to assess their legal options to sue or seek other remedies against the facilities and the providers who denied them this service. Set out any facts you would like to know before finalizing your advice.

- 15 **Question 3:** Answer both parts:
- (a) A 14 year old girl has asked for your help in the following situation. She went to a medical clinic for contraceptive care. The clinic which provided her this service informed her parents of her request resulting in the young girl being ejected from her family. What legal issues does this scenario raise? Identify any facts or assumptions you make.
  - (b) Now assume that the same patient, now living on her own with social assistance, attends on a different doctor who is recruiting for a clinical trial of an experimental birth control drug. The study pays \$500 to participants and the young patient is eager to participate. For each person enrolled, the physician receives \$5000. The risks of the drug are not yet clear, but some earlier participants have suffered severe side-effects while many others had none. The physician uses a standard consent form that he uses for any treatment in his clinic which states that as with any treatment there can be side-effects. The patient agrees to participate and signs the consent form. She suffers a severe side effect resulting in permanent injury. She comes to you for legal advice as to her options and chances of a successful lawsuit as well as any other remedies she could seek. Identify any facts you would like more information about and what impact the answers would have on your advice, and identify assumptions you make.
- 15 **Question 4:** The stated purpose of the regulation of the professions is to ensure quality and safety for the public. There are also disadvantages to creating a professional monopoly that limits the right to practice and that relies on its members to self-govern. Discuss how well the legal regime in BC that governs the health professions strikes an appropriate balance between safety and efficiency, or other factors, and how that could be improved, in your view. Consider whether regulating as a profession some alternative practices for which there is little objective evidence of efficacy such as naturopathy fit the purpose of regulation.
- 15 **Question 5:** The commentators in the text describe the *Assisted Human Reproduction Act* as making Canada one of the most restrictive jurisdictions in the world for gamete donation, resulting in Canadians being largely dependent on imported gametes or having to consider foreign or illegal surrogacy arrangements in some cases. It is also argued that the lack of regulation at both federal and provincial levels may lead to inadequate oversight of quality and safety as well as the stifling of Canadian innovation and research in this area. Make an argument for or against either reasonable compensation for gamete donation and surrogacy or public funding for such services and consider whether future regulation is best done by the provinces or the federal government in light of the jurisdictional issues identified by the SCC in the Reference re the AHRA.
- 15 **Question 6:** You have been retained by a group of First Nations bands which have come together to challenge government action and inaction in protecting the health of indigenous communities. Provide a memo outlining the various jurisdictional responsibilities of governments in relation to the health of indigenous populations and the approach taken by the courts to date when issues have been litigated. Suggest any ways that accountability could be improved.

- 15 **Question 7:** Apart from infectious diseases, public health also responds to chronic diseases and substance abuse issues. Describe some of the different approaches taken nationally and internationally to regulating various activities in order to respond to the threat of chronic diseases and illicit drug use and how effective the law has been in such responses.
- 15 **Question 8:** Recently, some studies have shown that residents of long-term care facilities who are suffering from COVID-19 have not been admitted to hospital for care at the same rate as the rest of the population. Some studies suggest the admission rate for these seniors is 15-16% compared to 81% for the rest of the population, even though their death rates are much higher. It is suggested that some facilities/physicians and even governments adopted a policy of not transferring these seniors to hospital to avoid overloading ICU beds in light of a perceived lack of treatment options for the frail and elderly. The family of one of these seniors who died in a long-term care facility from COVID-19 comes to you for advice about suing the facility and/or physician for the failure to transfer to hospital. What options/remedies do they have? What facts would you like to know? What would the impact be of an advance directive signed by the senior declining any hospital admission “in the event of an incurable disease, stroke, heart attack or similar”? (Assume the jurisdiction you are in has not passed any legislation protecting facilities or providers from liability for COVID-19 related lawsuits.)

**END OF EXAMINATION**