

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

FINAL EXAMINATION – DECEMBER 2020

LAW 383.001
Mental Health Law

Professor Laura Johnston

EXAM PASSWORD: jLJv9N
RESUME CODE: ABB283

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 any course materials.

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.

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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.**

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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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- **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

Part A – Fact Patterns

Question 1

Mateo is a 48 year old man who has been involuntarily admitted to Lions Gate hospital pursuant the Mental Health Act on November 19, 2020 after being found by a Paladin security guard in a construction site using exposed fiberglass insulation as bedding. When the police arrived in response to the security guard's call he screamed at police to leave him alone and was handcuffed only after a significant struggle during which he spat and coughed on police and taunted them for being pawns of the COVID-19 conspiracy. On arrival at the hospital the staff see from records that Mateo was diagnosed with schizophrenia when he was 20 and has a lengthy history of involuntary mental health hospitalizations. They also see that Mateo was diagnosed with diabetes as a side effect of long-term anti-psychotic use about 4 years ago. He views any form of medical treatment with extreme suspicion and tells his treatment team that they all work for big pharma and that he won't take any more medication they try to give him because it's all poison and there's nothing wrong with him.

Mateo was living with his brother Gabriel the last time he had contact with a community mental health team over a year ago, but the hospital staff have concluded from his physical condition with injuries and infections that he has likely been homeless for at least several weeks if not months. Gabriel is mentioned many times in the records as a support for Mateo about a decade ago, but it seems Gabriel has been far less involved lately. Mateo is convinced that COVID-19 is the latest hoax perpetrated by big pharma and politicians who have been trying to perfect human mind control for years through a string of covert operations like vaccinations, satellite surveillance, and microchips. He refuses to wear masks or physically distance from other patients and staff on the ward. Mateo's treatment team has diagnosed him with significant schizophrenia symptoms of paranoia and delusions.

MARKS

- 10 1(a) Mateo's treatment team is of the view that his current schizophrenia symptoms would benefit from anti-psychotic medication. It appears his diabetes has not been managed well and he has injuries and infections in his legs and feet that need treatment. With reference to evidence in the fact pattern and specific legal authority, explain how the health care providers can obtain consent for Mateo's health care treatment.

- 15 1(b) Mateo has challenged his detention pursuant to the *Mental Health Act* through a review panel hearing of the Mental Health Review Board. Take either the position of the facility arguing for continued detention or the position of Mateo's counsel arguing for discharge. With reference to evidence in the fact pattern and specific legal authority, explain your arguments why Mateo's detention should or should not continue.
- 10 1(c) You are assigned as counsel to represent Mateo at the upcoming review panel hearing of the Mental Health Review Board. During preparations, Mateo tells you to talk to his brother Gabriel because he would make a good witness at his hearing. Mateo says Gabriel has always supported him and that he can live with his brother if he gets discharged. When you speak to Gabriel, he tells you that he loves his brother, but has become exhausted supporting him over the years and Mateo can't come live with him if discharged. He thinks you'd better not call him to testify at the hearing because he will say that he thinks Mateo is better off staying in hospital than homeless. When you explain to Mateo that you think it will harm his legal case to call Gabriel to testify, Mateo still wants you to call him anyways because it's important to him to involve Gabriel in the hearing. With reference to evidence in the fact pattern and specific legal authority, explain whether you would call Gabriel to testify and why or why not?

Question 2

Maggie is a 34 year old woman who calls you from a psychiatric unit at Langley Memorial Hospital and asks for you to represent her as counsel in getting her released. She tells you that she's being detained against her will in the psychiatric unit, which is illegal because a review panel hearing ordered that she be discharged. When you speak with hospital staff, you discover that Maggie was in fact discharged by a unanimous decision of the Mental Health Review Board on October 5, 2020. But on November 12 police found her unconscious in a store doorway at 4am and took her to the hospital. On admission she had extremely high levels of alcohol and substances in her system. When she regained consciousness it was apparent that she has a serious brain injury with memory loss and trouble concentrating. It is unclear what caused her brain injury, but it is suspected that she had some kind of head trauma from falling while intoxicated or being hit by someone. Since her discharge it seems like she hasn't been able to find housing or shelter and has either been sleeping on the streets or couch surfing with a couple different friends. Her parents are contacted and although they

have been sending Maggie money in the hopes that she would be able to use it for shelter and food, it seems that the men she's been staying with have been taking that money to buy alcohol and substances.

The social work team at Langley Memorial Hospital inform you that Maggie has been detained as an emergency measure pursuant to s. 59(2)(e) of the *Adult Guardianship Act* to prevent her from leaving the hospital while the Fraser Health Authority investigated concerns about Maggie being abused or neglected. They have concluded that Maggie has been engaging in self-neglect and was being financially abused by the men she was staying with. They propose a support and assistance plan to Maggie that involves her staying in Langley Memorial Hospital while they attempt to locate an appropriate facility placement for Maggie to provide her with support for her brain injury and addiction treatment. Maggie refuses this proposal and wants to be discharged so she can find her own housing and pursue addictions treatment through community based options like Alcoholics Anonymous.

MARKS

- 15 2(a) The Fraser Health Authority makes an application in Provincial Court to impose this support and assistance plan on Maggie without consent. You are representing Maggie in the Provincial Court application. With reference to evidence in the fact pattern and specific legal authority, explain what the Fraser Health Authority will need to demonstrate to obtain the order. With reference to evidence in the fact pattern and specific legal authority, how will you argue against the application?
- 15 2(b) The Fraser Health Authority makes a referral to the Public Guardian and Trustee because they are of the view that Maggie needs assistance in managing her finances. Maggie insists that she does not need help managing her finances, but she particularly does not want the Fraser Health Authority involved because they're keeping her detained and she does not trust them. She reluctantly suggests it would be better to involve her parents with helping her with her finances than the Fraser Health Authority or the Public Guardian and Trustee. With reference to evidence in the fact pattern and specific legal authority, explain what steps the Fraser Health Authority and the Public Guardian and Trustee could take to manage Maggie's finances. With reference to evidence in the fact pattern and specific legal authority, what would you suggest to Maggie about how her parents could become involved in managing her finances?

Part B – Essay Questions

STUDENTS MUST ANSWER ONE OF THE FOLLOWING ESSAY QUESTIONS

MARKS

- 35 1 Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (“CRPD”) requires state parties to recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. State parties are also obligated to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

In ratifying the CRPD Canada issued a reservation to Article 12, stating that while Canada recognises that persons with disabilities are presumed to have legal capacity on an equal basis with others in all aspects of their lives, Canada declares its understanding that Article 12 permits supported and substitute decision-making arrangements in appropriate circumstances.

In this course we have considered numerous different BC laws that impact the legal capacity of people with mental disabilities. Write an essay that addresses at least, but is not limited to, the following points:

- (a) With reference to examples, discuss whether BC laws do or do not ensure that people with disabilities enjoy legal capacity on an equal basis with others in all respects of life.
- (b) With reference to examples, to what extent do BC laws take measures to provide people with disabilities the support they need to exercise legal capacity?
- (c) Is the interpretation expressed by Canada that Article 12 permits both supported and substitute decision-making a defensible interpretation of this human rights instrument?

OR

MARKS

- 35 2 *“...the prejudices that existed 100 years ago are very much with us in terms of popular attitudes. That is something that hasn’t gone away. There’s still a large disregard for the rights of people with mental health problems in psychiatric facilities.”* - Dr. Geoffrey Reaume, a professor and survivor of involuntary mental health treatment providing evidence at a human rights tribunal hearing

Through this quote Dr. Reaume expresses the perspective that there has been very little progress in respecting the rights of people with mental disabilities over the last century. In this course we have considered numerous examples of violations of the rights of people with mental disabilities being recognized through investigations, academic commentary, advocacy, and court proceedings. Write an essay that addresses at least, but is not limited to, the following points:

- (a) With references to examples from the course materials, discuss whether you agree with Dr. Reaume that there has been very little progress in respecting the rights of people with mental health problems over the last century.
- (b) To what extent do you agree with Dr. Reaume’s perspective that disregard of the rights of people with mental health problems is tied to prejudice? What other factors may it be tied to?
- (c) Have the remedies sought or granted in court cases we’ve considered in this course been effective redress for rights violations? Why or why not? What more effective remedies be explored, whether they are in or out of court proceedings?

END OF EXAMINATION