

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

FINAL EXAMINATION – APRIL 2021

LAW 271.004

Public Law and the Charter

Professor Edinger

EXAM PASSWORD: 3cT93k

RESUME CODE: B11CC0

TOTAL MARKS: 100

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

(9:00 AM PDT) **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.

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@allard.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.

LAW 271.004

MARKS

- 5** **1.** What is the *Canada Act* and can it be amended or repealed by a simple majority?
- 5** **2.** From what level of government do most municipal governments receive delegated legislative auth
- 20** **3.** “All interpretation has some creative aspect to it and constitutional interpretation is no different in this respect....But this is a feature of law we ought to welcome.”
- Do you agree? Discuss with reference to the cases you have read in this course or in any other course taken this year.
- 20** **4.** What essential conditions has the Supreme Court of Canada identified as the essential conditions of judicial independence?
- 25** **5.** Aged 14, Dickie Dawkins thinks he is an atheist. His parents are members of the B.C. Humanist Society which is an atheist organization. He attends meetings with his parents and regularly wears an orange T-shirt to school which carries the message “There is probably no god, so stop worrying and enjoy life.” It was obtained by his parents from the Humanist Society when atheist societies in a number of countries engaged in a concerted advertising campaign to post that message on the sides of buses. (Some bus drivers walked off the job.) Orange is Dickie’s favourite colour.

Some of Dickie’s fellow students were offended by the message on his T-shirt and complained to the school principal. The principal spoke to Dickie and asked him not to wear the T-shirt. The principal took the view that Dickie had crossed the line between simply proclaiming his own beliefs and proselytizing. She said that the former would be permissible but the latter was not. When Dickie continued wearing the T-shirt, the principal suspended him for a week.

Dickie's parents are outraged and retain you to challenge the suspension. They are convinced that Dickie's Charter rights concerning freedom of expression have been infringed.

Draft a memorandum setting out what further information you might need, if any, to challenge the suspension imposed by the principal on Charter grounds; and what remedy you would seek.

- 25** **6.** Falung Gong is a spiritual practice emerging from China. Falung Gong practitioners (members) allege that the Chinese government has breached their human rights and has abused them in a variety of other ways.

A year ago, Falung Gong members commenced a vigil outside the Chinese Consulate on south Granville Street in Vancouver. On the grass between the sidewalk and the boundary of the Consulate, Falung Gong members constructed a one-by-two metre shelter and erected billboards with photos and messages. One Falung Gong member was always present in the shelter – 24 hours per day 7 days a week – and was joined at the location by other members during the day.

For some reason, alleged to have been pressure from the Consulate, the City has finally petitioned the court for an injunction to remove the structure and to prohibit construction of any other structure. The City is relying on s.71 of the *Street and Traffic By-law, 2849*. That section provides:

s.71 (1) No person shall build, construct, place, maintain, occupy or cause to be

built, constructed, placed, maintained or occupied (except in accordance with any by-law of the City or except with the approval of and subject to such conditions as shall be determined by the Council) in any street, any structure, object, substance or thing which is an obstruction to the free use of such street, or which may encroach thereon, or without obtaining the written permission of the City Engineer.

Section 71 is contained in the *Street and Traffic By-law*. Other provisions deal with street vending, street entertainment, washing of vehicles, fighting, loitering, soliciting, tethering animals, snow and ice and dirt removal, coasting and sledding, street closures, defacement of poles, parades and injury to trees,

shrubs and flowers. The section also contains by-laws to regulate commercial and artistic forms of expression which would otherwise be prohibited by s.71

The City concedes that the structure has never obstructed and does not now obstruct vehicular or pedestrian traffic. Both sides agree that the members of Falung Gong have never requested permission from the City Engineer.

Draft a memorandum advising the Falung Gong whether they can challenge the constitutional validity of s.71 of the *Street and Traffic By-law* of the City of Vancouver and, if so, how they should structure the argument.

END OF EXAMINATION