

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

FINAL EXAMINATION – APRIL 2021

LAW 300.003
Jurisprudence

Professor Gordon Christie

EXAM PASSWORD: 374Wtj
RESUME CODE: B12500

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, meaning that you can refer to class notes, casebooks 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.

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.

Part 1 (50 points): Short answer questions. You should consider using 90 minutes to work with for this section.

You must answer all 10 (ten) questions. Each answer is worth 5 (five) points.

1. Under the Hohfeldian categorization of kinds of rights, what would be an example, in Canada, of a specific ‘immunity’ right? Explain how this example fits into the category.
2. Consider some of the reasons one might offer for the notion that the law generates moral obligations (that each of us, that is, is morally obligated to obey the law)? Which of these reasons do you think is the strongest? Why? What seem to still be problems in thinking that with this reason in mind we all do have moral obligations to obey the law? Explain.
3. How, according to Crenshaw, does the application of the separate axes of sexism and racism in anti-discrimination law in the United States impact on the lives of Black women? How does this illustrate the need to engage in intersectional analysis? Explain.
4. The Women’s Court of Canada has been engaged in a project that (arguably) develops a more meaningful theory of substantive equality. How might some critical feminist scholars question this sort of project? Do you think these sorts of challenges are sufficiently robust that feminist scholars engaged in the sort of work of the WCC should rethink what they are attempting to do? Explain.
5. Many jurists in Canada believe that legal positivism best explains the nature of the Canadian legal system. Yet, the *Constitution Act, 1982* begins by noting that “Canada is founded upon principles that recognize the supremacy of God and the rule of law”, and the *Charter* seems to clearly articulate certain natural law principles. Are those who think Canadian law is positivist in nature simply mistaken, or do they have a way to explain how Canadian law can seem to have grounding in natural law? Explain your answer.
6. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, the SCC held (at paragraph 53) that “... respect for the rule of law requires courts to apply the standard of *correctness* for certain types of legal questions ... The application of the correctness standard for such questions respects the unique role of the judiciary in interpreting the *Constitution* and ensures that courts are able to provide the last word on questions for which the rule of law requires consistency and for which a final and determinate answer is necessary.” What theory of law seems to be at play in the minds of the judges in making this claim? Explain.
7. Both (modern) legal positivism and (most) feminist legal theorists hold that one needs to take an *internal point of view* to fully understand a given legal system. How, though, does the *use* of an internal point of view differ between these two sorts of theories? Explain.
8. Legal realists argued that paying attention to how judges actually decide cases shows that in hard cases rules are inefficacious, that judges in those sorts of situations actually tend to

rely on something like a ‘situation-sense’, or sympathy, or their pre-existing political ideology to reach a determination. Legal realists were also generally deeply interested in legal reform. How could their *descriptive* theory of adjudication be used (or be helpful) in developing a *prescriptive* theory of change?

9. What is the effect on who can be rights-holders of the two main theories behind rights (choice/will and interest theories)? Could Aboriginal rights make sense under a choice/will theory? Explain.
10. What role does the notion of ‘purpose’ play in Fuller’s form of modern natural law theory? How does this lead to a natural law position? Explain.

Part II (50 points): Short-essay questions

Choose 2 (two) of the following 6 (six) questions to answer. You should consider setting aside roughly 90 minutes to work with. Each answer is worth 25 points.

1. First, provide an example of some matter that is commonly considered to be on the private side of the public/private divide, where arguably that ‘private matter’ is actually the subject of public control (that is, subject to law in Canada). Second, sketch out how the public/private divide is argued by Critical Legal Theorists to function to further the interests of certain parties in society. In light of your answers to these two tasks, do you think there is some way that the idea of a public/private divide can still be a meaningful means of dividing up how the law is imagined to have limits to its application? Explain.
2. No jurist or theoretician seriously denies that the law is constructed (that is, that each specific society or community *builds* its legal institutions and fills in the content of its laws). How does this fact of the social construction of law play out in Natural Law Theory, Positivist Theory and Critical Legal Theory? If you wish, you can choose a person to exemplify each of these three theoretical positions as you go through each.
3. How does a Critical Legal Theorist like Tushnet seem to fit the matter of morality into his account of the nature of the law? Does this approach to the relationship between law and morals seem better (or worse) than that presented by HLA Hart? Be sure to defend your answer.
4. What is meant by saying that a particular legal theory is a form of ‘identity-jurisprudence’? Do you think that meaningful forms of such theories exist, or do you think that the sort of approach we see with someone like HLA Hart (who describes ‘*the*’ concept of law in an a-cultural, a-historical sense) rules out these kinds of theories? Be sure to defend your answer.
5. How is that arguably the jurisprudence concerning section 35 of the *Constitution Act, 1982* (recognizing and affirming the Aboriginal and treaty rights of the Aboriginal peoples of

Canada), as developed by the Supreme Court of Canada, rests on racist doctrine? Be sure to explain how this is arguably *racism* that is evident in the doctrine, and not sort of 'neutral' or objective principle or concept.

6. What is the social model of disability? How does it contrast to a medical model of disability? How does its adoption lead to a different understanding of the nature of disability in the context of the law? Describe a situation in which adopting a social model approach would lead to the development of a law or policy that would likely not be developed given the classic understanding of disability that still predominates in Canada. Do you agree with the move toward a social model? Why or why not? Be sure to defend your position.

END OF EXAMINATION