THIS EXAMINATION CONSISTS OF 6 PAGES

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2022

LAW 383

MENTAL HEALTH LAW

Section 1

Professor Johnston

**TOTAL MARKS:** 100

**TIME ALLOWED:** 3 HOURS

plus 15 minutes of reading time

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| **NOTE:** | 1. The students ARE ALLOWED to begin typing/writing their answers during reading time. 2. This is an open book examination. 3. Answer all questions. |

**Part 1 – Fact Patterns**

STUDENTS MUST ANSWER ALL OF THE FACT PATTERN QUESTIONS

**Question 1**

Farid is a 54 year old man who has been detained under the BC *Mental Health Act* multiple times for severe depression. During his most recent involuntary admission, his psychiatrist decided that since multiple attempts with different kinds of psychiatric medications had not been effective at helping Farid with his depression symptoms, he would try Farid on a course of electroconvulsive therapy (“ECT”). Farid decided after his first round of ECT that he did not want any further ECT because it felt frightening and he experienced memory loss following the procedure.

Farid hates being in hospital and generally does not trust the recommendations of health care providers. Part of Farid’s fear and distrust stems from the fact that he became infected with hepatitis C as a result of a blood transfusion he received in 1985 during what is now known as the tainted blood scandal. The hepatitis C symptoms can be managed with medication, but Farid often does not want to accept recommended treatment. He expresses concerns about health care providers trying to get rich with kickbacks and corruption in the system, which his treatment team describes as paranoid thinking related to his depression.

Farid’s wife Leila is very supportive of him and shares his concerns about what is happening. With Leila’s help, Farid makes an appointment with you for legal advice.

MARKS

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| 15  15  10 | 1(a)  1(b)  1(c) | Farid’s perspective is that he should be allowed to make his own decisions about his health care, but since he feels like health care providers aren’t listening to him, he wonders if they would be more likely to listen to his wife Leila, who he trusts. With reference to evidence in the fact pattern and specific legal authority, explain whether health care providers should be seeking consent from Farid or Leila for the ECT and the hepatitis C treatment and whether there is anything Farid and Leila can do to ensure that Leila can be involved in making Farid’s health care decisions.  Farid does not want any further ECT procedures. With reference to evidence in the fact pattern and specific legal authority, explain Farid’s options to challenge the course of ECT treatment or regain the ability to make his own decisions about the ECT.  After your appointment with Farid, he is discouraged by the options you outline for him to try to stop the ECT and, fearing another procedure, he leaves the facility without permission. Approximately three months later, he calls you again from a facility where he is detained under the *Mental Health Act*. He has been staying with extended family since he left the facility, but yesterday he was apprehended by the police when he was out in the community and returned to the facility. Farid is angry that he was apprehended by the police when he was not committing any crime and asks you whether the police were allowed to do this. With reference to evidence in the fact pattern and specific legal authority, explain if and how the police may have had the authority to apprehend Farid. |

**Question 2**

Shreya is a 78 year old woman who lives in a home that she owns in Richmond. Her husband died last year and she has struggled following his death. While her husband was comfortably bilingual, Shreya has limited English language capability and instead prefers to speak in her first language, Hindi. Her husband generally took care of the family’s finances. She has one child, a son who she has had a strained relationship with for many years.

Shreya heard a rumour through a friend that her son was hiring a lawyer to go to court to take over management of her finances. Shreya knows that her son does not think she’s able to take care of her money now that her husband is gone and she thinks he’s just worried about his inheritance. Shreya recalls having an appointment with a doctor once at her son’s request, but she thought the process was a waste of time so she hasn’t been to another appointment like that despite her son’s urging. The doctor asked Shreya questions about significant amounts of money she had lost in the last year through two different financial scams targetting older adults, which she found embarrassing.

Shreya is confident that as long as she has translation, she can manage her finances. But even if she needs help, she would rather that not come from her son. Shreya and her husband each made a power of attorney years ago, naming each other and Shreya’s brother-in-law as attorneys and she still trusts her brother-in-law more than anyone else in these matters.

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| 10  15  5 | 2(a)  2(b)  2(c) | Shreya is anxious about this court application she heard about and comes to you for legal advice. With reference to evidence in the fact pattern and specific legal authority, explain whether there is a legal mechanism in BC that her son may be relying on and if so, what her son would need to show to take over control of her finances. In your answer, include an explanation of whether her power of attorney would be impacted by this.  About a month after your appointment, Shreya is hospitalized for dehydration and it appears she may not have been eating and drinking enough in the preceding days. She calls you from hospital because she wants to get home as soon as possible but a social worker told her that they are investigating whether she is neglecting herself or being abused and made it seem like she shouldn’t try to leave the hospital. Shreya is deeply insulted by this and says everyone is just making assumptions about her because she doesn’t speak much English. With reference to evidence in the fact pattern and specific legal authority, explain what legal situation you think Shreya might be in, what possible outcomes may result from the investigation, and what rights Shreya has while this investigation is taking place.  Given recent events unfolding in Shreya’s life, you are developing concerns about whether she has sufficient understanding of the legal situation she’s in for you to represent her. With reference to evidence in the fact pattern and specific legal authority, explain how you would address these concerns and what information you would need to make a decision about representing her. |

**Part 2 – Essay Questions**

STUDENTS MUST CHOOSE ONE OF THE FOLLOWING ESSAY QUESTIONS TO ANSWER

**Option 1**

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| 30 | 1 | In this course we have considered many BC laws that engage fundamental rights. People impacted by these laws must have access to a mechanism to challenge or seek review of decisions impacting them. The only relevant tribunal operating in the area of mental health law – the Mental Health Review Board – has extremely limited jurisdiction to consider different rights impacts. While courts have much broader jurisdiction, few impacted people are accessing available court applications.  Write an essay that addresses at least, but is not limited to, the following points:   * Explain whether you believe that broader jurisdiction should be granted to an existing tribunal or new tribunal to review rights impacts in the laws we have considered in this course or whether you believe the existing broad jurisdiction of the court is a better mechanism to supervise these rights impacts. In providing your answer:   + If your perspective is that tribunal jurisdiction should be broadened, discuss at least two different examples of rights impacts that would benefit from tribunal supervision and explain why you think these should be additional areas of tribunal jurisdiction.   + If your perspective is that the existing broad jurisdiction of the court is a better mechanism to supervise rights impacts, discuss at least two different examples of rights impacts that have been considered by courts in Canada and explain why you think the court was the effective decision-maker in that case.   + Discuss potential advantages and disadvantages of your position of expanding tribunal jurisdiction or relying on access to the courts. |

**OR**

**Option 2**

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| 30 | 2 | The *parens patriae* doctrine has been described as both a right and duty of the state to care for persons who are considered unable to take care of themselves. In *E (Mrs) v Eve*, [1986] 2 SCR 388, La Forest J wrote for the Court:  *“Though the scope or sphere of operation of the parens patriae jurisdiction may be unlimited, it by no means follows that the discretion to exercise it is unlimited… The discretion is to be exercised for the benefit of that person, not for that of others. It is a discretion, too, that must at all times be exercised with great caution, a caution that must be redoubled as the seriousness of the matter increases.”*  Write an essay that addresses at least, but is not limited to, the following points:   * Explain whether you believe we have achieved the standards articulated in this passage from *E (Mrs) v Eve* in the approach and application of mental health laws in BC. In providing your answer:   + If your perspective is that these standards have been achieved, discuss at least two different examples of BC laws that you see as being constructed or exercised for the benefit of people with mental disabilities, not for that of others.   + If your perspective is that these standards have not been achieved, discuss at least two different examples of BC laws that you see as being constructed or exercised for the benefit of others, rather than for people with mental disabilities.   + Discuss whether and how BC mental health laws have ensured that as the seriousness of the matter increases, greater caution is exercised. |

**END OF EXAMINATION**