

**MID-TERM EXAMINATION – FALL 2017**

**Course Code: DCC2118 – GENERAL PUBLIC LAW (Tuesday Section)**

Professors: Kirk Shannon & Youri Tessier-Stall

Due date: Students must hand in a **printed copy** of their answers **BEFORE 4 PM on October 19, 2017 in the mailbox outside of the Secretariat (room 201) in the Fauteux building** (see detailed instructions in on the next page)

**Instructions**

- This is an **open book** examination. You are permitted to consult any course material during the examination. Students are not to consult each other or conduct independent research (e.g. on the internet) while writing this exam.
- Cheating or plagiarism will result in sanctions under the University's Regulation on Academic Fraud.
- Please type your responses in a separate document, using 12 point, Times New Roman with 1.5 Inch margins. Do not write your answers on this exam questionnaire.
- There are six (6) pages in this exam, including this cover page.
- This exam is **non-prejudicial** and may count for thirty-five (35) per cent of your final grade.
- This exam consists of 2 parts and is designed to be completed in no more than 3 hours.
- The value of each question is indicated next to the question.

<b>Part</b>	<b>POINTS</b>
I	/20
II	/15
<b>TOTAL</b>	<b>/35</b>

## INSTRUCTIONS FOR SUBMITTING YOUR EXAM

- Exams must be placed in the mailbox outside of the Secretariat (room 201) in the Fauteux building **before 4 PM on Thursday, October 19, 2017**
  
- You must include a **cover page** which contains:
  - your first and last name;
  - your student number;
  - the name of your professors
  - the course title, course code and section for each paper that you turn into the box outside of the Secretariat, Room 201.
  
- The cover page and your exam answers must be **stapled** together before being put in the box.
  
- We do not accept exams with spiral or plastic bindings or with plastic or duotang covers.
  
- Once the exam has been turned in, **it is not possible to retrieve it** for any reason whatsoever.
  
- Exams placed in the box after 4:00 PM will be date-stamped with the following day.

\*\*\*EXAM BEGINS HERE\*\*\*

**Part I (20 MARKS TOTAL)**

Answer each of the following questions in 60 words or less.

1. On December 20, 2016 the Supreme Court of Canada heard an appeal from a decision of the Ontario Court of Appeal. The Supreme Court rendered its written decision on June 4, 2017. It was its 28<sup>th</sup> decision of the year. Because of printing delays, the decision wasn't published in the Supreme Court Reports until January 15, 2018. The decision, which was 27 pages long, began on page 22 of the first volume of the Supreme Court Reports for that year.

**Provide two citations for the Supreme Court's decision. (2 MARKS)**

2. The leader of the party that wins a majority in Parliament becomes Prime Minister.

**What is this an example of? (1 MARK)**

3. Before the adoption of the *Canadian Charter of Rights and Freedoms* in 1982, courts could typically only strike down legislation on limited grounds.

**List one of these grounds. (1 MARK)**

4. The rights guaranteed under the *Canadian Charter of Rights and Freedoms* are absolute.

**Do you agree with this statement? Explain why or why not. (3 MARKS)**

5. Following recent tensions with the Republic of Westeros, Canada's Department of Foreign Affairs has issued a ban prohibiting Canadian citizens and companies from exporting maple syrup to Westeros. Canada's Minister of Foreign Affairs, however, owns a large sugarbush and stands to lose many lucrative contracts as a result of the ban. He therefore issues a special permit exempting his company from the ban.

**Name the constitutional principle at play, and cite two sources, discussed in class, that this principle emanates from. (3 MARKS)**

6. When interpreting the Constitution, some judges focus on what Canada's founding fathers intended when they drafted the text in 1867. Others believe that the interpretation of the Constitution should evolve with society.

**What is the name of each of these two schools of thought? (2 MARKS)**

7. In an effort to decrease the number of accidents caused by drunk driving, especially in Ottawa, Ontario's Premier has proposed two new initiatives. First, the provincial legislature will adopt legislation to require all establishments that serve alcohol to have a breathalyser machine on site. Second, the Premier proposes to build a new railway bridge between Ottawa and Gatineau so that partygoers don't have to drive across the river when returning home.

**Will the Premier be able to implement both of these initiatives in accordance with the *Constitution Act, 1867*? Why or why not? (4 MARKS)**

8. Parliament has voted against the Prime Minister and his Cabinet's proposed budget. As a result, the Prime Minister goes to the Governor General's residence and asks her to dissolve Parliament so that elections can be held.

**What principle of government led the Prime Minister to seek the dissolution of Parliament? (1 MARK)**

9. The executive branch of government fulfills some legislative-like function, such as the drafting of regulations (also known as "subordinate legislation").

**Provide one benefit and one critique of the executive's ability to adopt regulations. (2 MARKS)**

10. **Why is security of tenure a core characteristic of judicial independence? (1 MARK)**

\*\*\*PART II OF THE EXAM BEGINS ON NEXT PAGE\*\*\*

## **Part II (15 MARKS TOTAL)**

**Read the following fictional decision from the Ontario Superior Court. In a list, identify 15 errors in the text of the decision and explain each error in one or two sentences.**

*Emile Vasser v. Canada (Minister of Health)*, [2017] 2 ONSC 22

Smith J.:

The plaintiff in this case, Mr. Vasser, is a former employee of the Minister of Health. For 3 years, between 2012 and 2015, Mr. Vasser acted as the Parliamentary Affairs policy advisor to the Minister. All parties to this litigation agree that Mr. Vasser advised the Minister on all aspects of Parliamentary procedure, design and crafting of legislation, and best practices for getting legislation passed by Parliament.

On December 24, 2015, Mr. Vasser received a letter of termination, signed by the Minister. The letter began with the following phrase: "Emile, that's it, I've had it. You're fired. I can't stand it any longer!" The letter continued by claiming that Government Bill Z-102, a tax reform bill proposed by Senator Johnson in the Senate, had passed 7<sup>th</sup> reading despite "[Mr. Vasser's] assurances it wouldn't get through." The Minister then bluntly stated: "Your advice on Parliamentary matters, your only job in this office, has become horrendous and, despite the fact that your position is central to my work in Parliament, I can no longer stand to look at you." The letter concluded by informing Mr. Vasser that he would be provided with \$500 severance and was required to vacate his office within 2 hours of receipt of the letter. It appears the letter was provided to Mr. Vasser at 4pm on the eve of a statutory holiday.

Mr. Vasser challenges his dismissal before this Court, the Ontario Superior Court of Justice. He claims harassment, discrimination, or, in the alternative, that he was not provided enough notice or severance on dismissal. On the other hand, the defendant claims that I am bound by previous case law to 1) not pronounce any decision on this matter because of Parliamentary Privilege and 2) to dismiss the case based on the Supreme Court's Decision in *Johnson v. Johnson*, [2002] 1 SCR 3.

The Plaintiff is right and the Defendant is so wrong for several reasons:

First, parliamentary privilege only applies on Parliament Hill. Outside that geographic region, the privilege has no application. Tis known.

Second, as a Judge appointed pursuant to s.96 of the *Constitution Act, 1867*, I am empowered to pronounce on all matters involving Parliamentarians. The courts are the supreme branch of government in Canada and all other branches (the legislative, the executive and the public service) must answer to the courts. It is well-accepted law that, while the legislative branch and the public service branch is subordinate to the executive branch, all other branches are subordinate to the judicial branch.

Third, I am not bound to follow the decision of the Supreme Court of Canada in this matter as the facts at issue in *Johnson v. Johnson* took place in Alberta. This Court

is only bound to apply the *obiter dicta* from decisions released by the Ontario Court of Appeal and Ontario-related decisions from the Supreme Court of Canada. I therefore will ignore that decision entirely.

Finally -- and I state this knowing that there is a very real risk that the Government will order me removed from the bench for these comments as they have done with many other judges – it is clear that Mr. Vasser was treated unfairly by a member of Cabinet. To confirm as much, I called the Governor General and the Governor in Council – both of them agreed with me on this point. There is therefore no need to waste precious judicial resources on a full trial of this matter: I have heard enough.

In light of the foregoing, I find in favour of the Plaintiff. The Defendant is hereby ordered to re-hire Mr. Vasser and the Minister is required to issue an oral apology during the next session of Parliament. Should the Minister fail to issue this apology, he shall be held in contempt of this Court, irrespective of whether the Speaker of the House of Commons disciplines the Minister or not.

**\*\*\*END OF EXAM\*\*\***