



**Federation of Law Societies of Canada**

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**National Committee on Accreditation**

**SAMPLE**

# **Examination for Foundations of Canadian Law**

**Candidate No.:** \_\_\_\_\_

*(To ensure your anonymity, please do not print or sign your name)*

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## **SAMPLE**

# Examination for Foundations of Canadian Law

### **General conditions of ALL NCA exams:**

This is a **three (3) hour, open book** exam.

Answers should be **double-spaced** and written in **blue or black ink** (no pencils).

All answers **must** be completed on the pads provided unless space is expressly provided within the examination booklet.

The examination will be graded on a pass/fail basis (50% is a pass).

**WRITE LEGIBLY.** Writing considered illegible by the examiner may result in your exam not being fully graded **or your exam being disqualified.**

You must **return the exam questions in the envelope provided** along with your answers. Failure to return the questions will result in the **automatic disqualification** of your exam.

The contents of the examination, including the exam questions, **must not be disclosed** or discussed with others.

**Each exam may have its own special instructions; therefore it is important for you to read these carefully before starting.**

### **Instructions specific to this exam:**

1. There are **XX (xx) pages** to this exam, which includes the covering and instructions pages. Please notify the proctor immediately of any defect in this examination.
2. This examination contains **XX (xx) questions**, of unequal value, worth a total of **100 marks**.
3. A passing answer will: **(1)** identify the relevant legal issues; **(2)** apply and cite relevant cases and readings from the syllabus; **(3)** be clear and well-organized.
4. Candidates **must** attribute any direct quotes from authors or judgments to their source. This includes quotations from online sources, including online summaries and outlines. Failing to attribute the words of another to their source is serious academic misconduct. Answers containing plagiarized material will receive a mark of zero.

**These sample exams are simply indications of the style/types of questions which may be asked in each exam; they do not reflect the content or actual format/structure of questions nor of their value. Actual exams will vary from subject to subject and from exam session to exam session.**



### **QUESTION ONE (25 marks; 45 minutes)**

You are legal counsel to Canada's newly elected Minister of Indigenous Affairs. Her mandate letter from the Prime Minister contains the following statement:

*"No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership."*

The Minister has asked you to prepare a memorandum on how the legal interpretation could be shifted in relation to the duty to consult with Indigenous communities about developments in their traditional territories. She stressed the importance of her mandate letter and the overarching goal of promoting a more progressive policy agenda than her predecessor. Write the memorandum and be sure to include reference and analysis of all relevant authorities to support your advice.

### **QUESTION TWO (25 marks; 45 minutes)**

Proulx recently brought an action in the General Division of the Ontario Court of Justice against Dempster, seeking \$1 million in damages for breach of contract. The case is tried by Lopez J, who must determine if a contract was formed. Her research has revealed the following:

- i) In *Oke v Liam* (2016), a case on facts indistinguishable from those in *Proulx v Dempster*, the Ontario Court of Appeal held that a contract had been formed;
- ii) An application by Liam to the Supreme Court of Canada for leave to appeal from the decision in *Oke* (2016) was denied in 2017;
- iii) In holding that a contract had been formed, the Court in *Oke* (2016) applied a principle (the "Principle of Felicity") invented by the English Court of Appeal in its 2015 decision in *Ho v Bentley* and applied for the first time in Canada in *Miles v Ghosh* (2015), a decision of the Manitoba Court of Appeal;
- iv) The decision in *Miles v Ghosh* (2015) was overturned in *Ghosh v Miles* (2016), in which the Supreme Court of Canada held that the trier of fact had made a palpable and overriding error of fact, and that the true facts did not attract the Principle of Fidelity;
- v) In *Nolan v Vis* (2017) the UK Supreme Court, overturning *Ho v Bentley*, held that the Principle of Fidelity is not part of English law.

Based (only) on this information, how do you think Lopez J should decide the case of *Proulx v Dempster*? [Note: the "Principle of Felicity" is fictional, and this question assumes no knowledge of the substantive law of contract.]



**QUESTION THREE (25 marks; 45 minutes)**

The government of Pandora is seeking the extradition of Hassan Biad because he is a suspect in a high profile terrorism case. A formal request was made to the Canadian government, where Hassan Biad currently lives and is a permanent resident. Canada has signed and ratified the *UN Convention Against Torture* which includes an absolute prohibition on extradition of anyone to a country where there are “there are substantial grounds for believing that he or she would be in danger of being subjected to torture.” Canada’s Minister of Justice has confirmed the ruling of an extradition judge that Hassan Biad should be extradited to Pandora, despite significant evidence that torture is both widespread and systemic in Pandora, and that detainees suspected of involvement in terrorism are particularly at risk. Although the Minister of Justice has discretionary authority, pursuant to Canada’s *Extradition Act*, not to surrender Hassan Biad for extradition for “reasons relating to the human rights record of the requesting country or for other humanitarian considerations”, the Justice Minister refused to exercise this discretion.

Drawing from the relevant materials in the syllabus, elaborate the legal arguments that Mr. Biad’s counsel could advance in support of a challenge to the Justice Minister’s decision. You may assume that counsel is likely to advance an argument based on the *Charter of Rights and Freedoms*, but your answer should *not* include reference to possible *Charter* arguments.

**QUESTION FOUR (15 marks; 27 minutes)**

The Tax Court of Canada (the “Tax Court”) is a superior court created for resolving tax disputes. Section 12(1) of the Tax Court of Canada Act, R.S.C., 1985, c. T-2 (“TCCA”) confers on the Tax Court “exclusive original jurisdiction to hear and determine references and appeals” on matters arising under the Income Tax Act, R.S.C., 1985, c. 1 (“ITA”).

Under the TCCA the Tax Court’s powers are limited to deciding whether the Canada Revenue Agency has rendered a correct assessment against a taxpayer.

Section s.17.6 of the Tax Court of Canada Act provides that an appeal from a judgment of the Tax Court lies to the Federal Court of Appeal (“FCA”).

The Crown has appealed to the FCA a decision by the Tax Court in favour of Spiro, a taxpayer, in which the Court ruled that certain remittances made to Spiro were not income for tax purposes. Spiro, as respondent, argues that Parliament intended the Tax Court to be the primary interpreter of the ITA because of its expertise in matters of income tax law (the ITA being its home statute), and that the FCA should therefore defer to the Tax Court by interfering with its decisions only where they are unreasonable. This, Spiro argues, is what the rule of law requires.

Do you agree with this argument by Spiro? Explain.



**QUESTION FIVE (10 marks; 18 Minutes)**

Phoebe, who is visiting from overseas, observes that in Canada consumers are routinely asked by banks and other corporations to sign lengthy agreements with fine print that is difficult to read, let alone to understand. She also observes that when a dispute arises, corporations and consumers generally behave as if there is a rule that everything written in an agreement is binding on parties who sign it.

Discussing this observation with her friend, Phoebe remarks that “since no morally sound legal system would bind consumers to fine print that is foisted on them by a corporation just because of their signatures, I can only conclude that this fine-print rule that you Canadians observe is strictly conventional and is not law”.

Based only on this remark by Phoebe, can you identify her general theory of law as anti-positivist? Discuss.



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