Faculty of Law

FINAL EXAMINATION - DECEMBER 2003

LAW 499: A5 LEGISLATIVE PROCESS AND LEGISLATIVE DRAFTING
(Reynolds/Pagano)

TIME ALLOTTED: TWO (2) HOURS PLUS TEN (10) MINUTES READING TIME.

CODE NUMBER: DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS OR BOOKLETS. A list will be circulated and your name is to be entered opposite a number on that sheet. That number will be your code number FOR THIS EXAMINATION ONLY and should be entered on the examination booklets in the space provided for surname. This will provide for anonymity during marking.

SPECIAL INSTRUCTIONS: 1. This examination question paper contains 2 Parts on 6 pages. Check to ensure it is complete before starting.

2. Answer ALL questions (20 questions in Part 1, 1 question in Part 2).

3. Questions are NOT of equal value. Apportion your time intelligently.

4. This is an OPEN BOOK examination.

5. Adhere to the time limitation imposed on this examination strictly. Failure to stop writing at the end of the examination may lead to a deduction of grade or a failure to accept the examination paper.

6. Whereas it is very disruptive for those students finishing examinations while others are leaving the examination room and discussing the examination outside the examination door, it is requested that no individual leave the examination room during the last 15 minutes of the examination period.

7. Cell phones, pagers, beepers and related equipment are strictly forbidden. These items must be turned off and stowed. Lap top computers are not allowed in examinations.
PART 1 - 60 MARKS

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<tr>
<th>Value</th>
<th>Question</th>
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<tr>
<td>3 marks</td>
<td>1. Not all problems need to be solved by legislation (Acts or Regulations). Legislation should be used only when it is the most appropriate, i.e. when there is no other way to achieve the policy objectives effectively. List 3 types of instruments (other than legislation) that are available to accomplish the desired results.</td>
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<td>3 marks</td>
<td>2. What differentiates a Money Bill from other types of legislation?</td>
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<td>2 marks</td>
<td>3. Why are regulations referred to as delegated legislation?</td>
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<td>2 marks</td>
<td>4. Who makes regulations?</td>
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<td>4 marks</td>
<td>5. On January 1, 2002, there is an Act called the Fences Act that states that all new fences must be painted black. On January 1, 2003, an Act called the Wood Products Act is passed stating that all new wood products must be painted white. On June 1, 2003, you are charged with painting your fence black instead of white in contravention of the Wood Products Act. (a) What “rule of interpretation” argument would you use in your defence? (b) What “rule of interpretation” argument would the prosecution use to convict you?</td>
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<td>3 marks</td>
<td>6. An Act comes into force on January 2003, providing that every adult is to receive a one-time payment of $100. The Act is then repealed effective December 31, 2003, by which time you did not receive your money. What provision of the Interpretation Act would you rely on to argue that you are still entitled to the money?</td>
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<td>3 marks</td>
<td>7. An Act states that a person must pay a tax not later than 3 months after receiving the notice of assessment. The notice is received on November 30, 2002. What is the last day on which tax is payable? (a) January 30, 2003 (c) February 28, 2003 (b) January 31, 2003 (d) March 2, 2003</td>
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<tr>
<td>2 marks</td>
<td>8. What 5 steps must a Bill go through before it becomes law?</td>
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<td>3 marks</td>
<td>9. If a Regulation to which the Regulations Act applies is not filed with the Registrar of Regulations, the Regulation</td>
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(a) has effect
(b) is valid only against persons who have actual notice of the Regulation
(c) has no effect
(d) is effective once it is published in The Alberta Gazette

3 marks 10. Every Act that comes into force on Proclamation must receive Royal Assent. Do all Acts that receive Royal Assent require Proclamation?

2 marks 11. What is a Private Bill?

3 marks 12. What is the difference between retroactive and retrospective?

2 marks 13. What constitutes the “Legislature”?

4 marks 14. The Rollerblading Act had a provision that a person could not rollerblade on sidewalks. An Act called the Rollerblading Repeal Act was passed that stated “The Rollerblading Act is repealed on July 1, 2003”. You are charged on July 1, 2003, with rollerblading on a sidewalk. Was the Act in force on that date? What is the authority for your answer?

4 marks 15. A provision in an Act that refers to “pigs, chickens, cows and other animals” is an example of what maxim? Provide reasons as to why “lions” would or would not be included.

4 marks 16. Under the Standing Orders of the Legislative Assembly, each sitting is to start with a prayer. What authority would you rely upon to oppose an investigation into the practice by an agency of the government such as the Human Rights Commission?

3 marks 17. What would you advise a client who wanted to sue a Member of the Legislative Assembly for something that the Member said in the Assembly about your client?

4 marks 18. An Act creating a Cattle Commission and allowing the Lieutenant Governor in Council to appoint the members of the Commission is given Royal Assent on October 31, 2003. However, an Order-in-Council is passed on October 5, 2003, appointing members on the authority of Crown prerogative. Are the appointments valid? Why or why not?

3 marks 19. Do statutes in Alberta have to be printed in French now and why? Would your answer be the same if you were answering this question in 1985?

3 marks 20. Name 3 inherent privileges of a Parliament or Assembly in Canada.
PART 2 - 40 MARKS

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<td>40 marks</td>
<td>1. In 1997, the Government of the Canadian coastal province of Newalta was concerned about the unique environmental challenges faced by certain islands. Legislation was passed that year to allow for the establishment of Local Trust Committees to administer the land of the islands. Section 3 of the Island Trust Act states:</td>
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   3 The object of the trust is to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of the Province generally, in cooperation with rural and urban municipalities, other persons, organizations and the Government.

One hotbed of environmental activism at the time the Act was passed was Woodstock Island. The residents were one of the first to take advantage of the legislation and established a local trust committee to administer the area of Woodstock Island. The residents were especially concerned about the logging on the island and wanted it severely curtailed. Assume the committee was legally established.

Under the Local Government Act, the local trust committee has the powers of the council of a rural municipality. Under section 4 of the Island Trusts Act, the local trust committee can regulate the use of land in their local trust area by exercising powers that would otherwise belong to a rural municipality.

That same year, there were a number of significant amendments to the Local Government Act contained in the Local Government Amendment Act, 1997. A new section, section 879(1)(a) was added that provides:

879(1) A rural municipality may designate areas for

(a) the protection of the natural environment, its ecosystems and biological diversity...

Under this authority, the Woodstock Island Local Trust Committee passed Bylaw 113 which restricted the cutting of trees. The primary purpose of the bylaw “is to require that a certain amount of forest cover will always be present on each property and that the forest cover will include a significant area of mature and old forests in particular.” The bylaw allows for the cutting of not more than 10% of the trees on any property over a 5 year period. Furthermore, it forbids the cutting of any trees that are over 50 years old.
When the Minister, the Hon. I. M. Green, moved the *Local Government Amendment Act, 1997* for second reading, she said at page 123 of *Newalta Hansard*:

“This Bill is an important part of the fisheries renewal strategy recently announced by the Premier, and I’m proud to join my honourable colleagues in presenting legislation that will make Newalta the national leader in fish habitat protection.

Rural municipal governments, through planning practices and development approval processes, have a critical role to play in the protection of the natural environment, and this Bill strengthens the powers of rural municipalities to protect the environment, including but not restricted to fish habitat. For the first time ever, local government will have the power to strike a balance between fish habitat and human habitat, something extremely important to all of us. It is my great honour to move this Bill for Second reading.”

It is interesting to note that the same Bill contained a provision concerning trees in urban municipalities. A section 708 was added that stated, in part,

708(1) A council of an urban municipality may, by bylaw, do one or more of the following:

(a) prohibit the cutting and removal of trees,
(b) regulate the cutting and removal of trees,
(c) prohibit the damaging of trees, or
(d) regulate activities that damage trees.

There was no mirror provision for rural municipalities.

The 1234 Corporation has owned the majority of land on Woodstock Island since 1956. It is outraged that its ability to log is being undermined by a bylaw of the Woodstock Island Local Trust Committee. The corporation has complied with all forestry regulations and requirements in the province and, without the bylaw, would be able to cut as much timber as it wanted on its property.

1234 Corporation has brought an action in court to quash Bylaw 113 on the grounds that the Committee does not have the statutory authority to pass such a bylaw. The Committee argues that it clearly has the statutory authority.
You are a student assigned to the judge of the Superior Court of the Province of Newalta that will be hearing the application. The judge has asked you to write a memo on the application. Using approaches to statutory interpretation from this course, you are to advise the judge on the validity of the bylaw. Use relevant authorities from the course in your answer. Assume that Newalta is a Canadian province that is governed by the same laws (except for the ones mentioned in the question), practices, procedures and rules as Alberta.

End of Examination