



Federation of
Law Societies
of Canada

NCA National Committee
on Accreditation

SAMPLE

Examination for Foundations of Canadian Law

Candidate No.: _____

(To ensure your anonymity, please DO NOT include/type your name) in any part of your exam)

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General conditions of NCA online exams

To help NCA applicants transition to online long form examinations, the NCA now allows an extra hour, or **three (3) hours in total**, for completion of each exam.

NCA exams are open-book. **Only hard copy study materials** will be permitted; you will **NOT** have access to electronic copies of your notes or textbooks.

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

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

If you finish early, you must stay in place, with your computer still locked down, for the full 4 hours. **Failure to follow the proctor's instructions regarding sequestering is a violation of the Candidate Agreement and will result in your exam being disqualified.**

NCA online exams are available through a secure, browser-based platform that locks down your computer. This means the computer cannot be used for any other purpose or to access any other material during the exam.

As you write your exam, a person designated as proctor will check your identification and monitor you **using two cameras**; a web camera on your computer and a camera on a tablet or phone.

For more information concerning the NCA's online exams, including, exam rules, technical requirements and the candidate agreement please see the links below:

<https://nca.legal/exams/online-exam-rules/>

<https://nca.legal/exams/technical-requirements-and-testing-for-online-exams/>

<https://nca.legal/exams/nca-candidate-agreement/>



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

Instructions specific to this exam:

1. This examination contains **XYZ questions in total**, for a total of **100 marks**.
2. **Answers to each question should be concise, clear, and well-organized. Be sure to provide explanations of key terms and concepts and support your response with specific references and analysis of relevant sources from the syllabus.**
3. The following elements are required for a passing answer: **(1)** accurate identification of the relevant legal issues; **(2)** succinct explanation of key terms and concepts; **(3)** demonstrated evidence of critical analysis; and **(4)** citing and applying the key, relevant cases and readings from the syllabus. Additional points are awarded for the use of full sentences and the extent to which responses are clear, concise and well-organized.
4. While it is possible to achieve a pass without the latter element (i.e. clear, concise and well-organized writing), it is not possible to pass without meeting requirements in relation to each of the former four elements.
5. 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.

This sample exam provides an indication of the style/type of questions that may be asked in each exam. It does not reflect the content or actual format/structure of questions nor their value. Actual exams for a specific subject vary 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.



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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 antipositivist? Discuss.

--- End of Examination ---