1. This is a CLOSED BOOK examination. You may NOT bring in any notes or course materials. Nor may you bring in any textbooks. You will be given when you enter the exam room an outline of first semester readings.

2. IF YOU ARE HANDWRITING THIS EXAM, PLEASE WRITE LEGIBLY ON ALTERNATE LINES AND ON ONLY ONE SIDE OF EACH PAGE.

3. You have 15 minutes reading time, in addition to the 55 minutes allowed for the exam. You cannot start writing in your exam booklets or typing on your computer during this time but you can make notes during this time on a piece of scrap paper which is not to be handed in.

4. Identify and discuss fully the points that could be raised on all sides of each issue, giving some sense of the relative strength of the arguments.

5. Full citation of cases is not necessary. You may refer to cases in short form.

6. This examination is designed to test material covered in this course—both assigned reading and material covered in the lectures. Do not concern yourself with statutes, cases, or other sources not covered in the course materials or lectures, or not assigned for study for this exam.

7. This exam is “fail safe.” Your grade on this examination will count as 25% of your final grade in this course only if your grade on the final exam is lower than your grade on this exam.

8. GOOD LUCK

THIS EXAMINATION CONSISTS OF THREE QUESTIONS.
BACKGROUND

The federal government is concerned about public opposition to its decision to build a pipeline from Alberta to a port on the British Columbia coast. This pipeline, the TransCanada Pipeline, is opposed by large numbers of the population at key points of pipeline construction. The federal government has introduced the following bill, *An Act to Ensure Successful Completion and Operation of the TransCanada Pipeline (Pipeline Act)*, into the House of Commons.

The Preamble to the Bill reads as follows.

Whereas the Government recognizes the importance of free expression to Canadian democracy;
Whereas the successful construction and operation of the TransCanada Pipeline is essential to the economic health of Canada;
Whereas public disruption of construction or operation of the Pipeline imperils the economic potential of the Pipeline;
Whereas the Government desires to reconcile democratic ideals with economic health;

The following provisions are enacted...

The Bill goes on to establish three specific “free-speech zones”, the location of which will be determined on a weekly basis by a Public Participation Pipeline Office (PPPO). Protest or expression within these zones is unregulated by the statute. Expression in any other location within 1 kilometer of any activity related to the construction or operation of the Pipeline is limited by the statutory provisions of the Bill.

Specifically, section 10 of the Bill states that any expression outside of the Free Speech Zones that “significantly obstructs or hinders” the normal course of work on the pipeline is prohibited by the statute.

Section 11 of the Bill provides that anyone who wishes to publicly communicate or advertise details of planned expressive activities (such as protests or rallies) in relation to pipeline construction through newspapers or billboards and signage must apply for a permit to do so from the PPPO. Requests for permits must be received by the PPPO at least one month in advance of the planned expressive activity.

Punishment for breach of either section 10 or section 11 is a fine of up to $5,000. Repeated breach is subject to imprisonment of up to one year.

The PPPO is established under section 7 of the Bill, and consists of three officers appointed by the federal government who are charged under the Bill with the following tasks: (i) posting online each week the location and parameters of the three Free Speech Zones; (ii) assessing whether or not proceedings should be brought in a relevant court in relation to breaches of the prohibition against expression that “obstructs or hinders” pipeline activities; (iii) determining and publishing on-line the criteria by which Free Speech Zone locations are determined, and (iv) issuing licenses for prior communication of future “expressive activities”.

The provincial government of British Columbia is equally concerned about public protest against the Pipeline. BC already has a provincial law in place that stipulates that “protest speech” about the TransCanada Pipeline is permitted only on the grounds of the Victoria Parliament Buildings. Protest speech against the Pipeline is prohibited in any other location in British Columbia.

QUESTIONS

MARKS

40  
1. Recommended Time: 30 Minutes

Is the federal legislation as a whole valid under the federal government’s criminal law power? Do not discuss any other head of power.

15  
2. Recommended Time: 10 Minutes

If the validity of section 11, considered on its own, is raised discuss what the federal government might argue about the validity of that provision, if the rest of the federal statute is found to be valid? Do not reference any head of power other than the federal criminal law power.

20  
3. Recommended Time: 15 Minutes

If the federal legislation becomes law and is found to be valid, is the provincial legislation operable?

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