NOTE:

1. This is an open book examination.

2. You have 15 minutes of reading time, in addition to the 1 hour allowed for the exam. You cannot start writing in your exam booklets or typing on your computer during this time but you may make notes on a piece of paper that should not be handed in.

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

4. This examination is designed to test material covered in this course – both assigned readings and lecture materials. Please do not refer to materials not covered in course materials or lectures.

5. This exam is “fail-safe”, which means that this mark will only count for 25% of your final grade if this would increase your final grade in the course.

6. All facts and scenarios in this exam are fictional. No knowledge of actual events or legislation is required to answer the question. If you need to make assumptions to answer the question, please indicate what those assumptions are and what, if anything, follows from them.

7. Remember to answer the questions posed to you and to focus on the strongest arguments. If there are alternative arguments to make, you should mention them to the extent that you have time.

8. Good luck and happy holidays!
Climate change is a core commitment of the Canadian government. Greenhouse gases are the cause of climate change. The federal government recently renewed its commitment to reducing greenhouse gas emissions with the Paris Agreement on climate change ("Paris Agreement").

The federal government has been working on a national plan to meet the targets established by the Paris Agreement. Extensive scientific and parliamentary studies have shown that without government intervention to impose costs on the emission of greenhouse gases, there is no sufficient incentive for industries and individuals to reduce their carbon footprint. The federal government has considered various options. Several environmental and economic think tanks as well as the federal government's most recent white paper on environmental policy conclude that emissions limits will work best paired with a cap-and-trade system to reduce greenhouse gas emissions while maintaining economic growth and competitiveness.

There is a long and tangled history to the federal government's commitment to reducing greenhouse gas emissions. Each successive government seems to revise the previous government's approach. A few years ago, British Columbia decided to take independent action on climate change and greenhouse gas emissions. The Province of British Columbia instituted emissions regulations under the provincial Emissions Act ("EA") that set limits for greenhouse gas emissions by sector. The resulting limits set under the provincial EA were much stricter than industry players anticipated. Some research institutes have raised concerns about asymmetric climate initiatives if a patchwork of provincial laws is allowed to proliferate. They suggest that firms will skirt the regulations by shifting production across borders.

This month, the federal government introduced the Greenhouse Gas Reduction Act ("GGRA"), a federal statute that imposes limits on industrial emissions and institutes a cap-and-trade system. The combination of emissions limits and trading credits is designed to curb emissions while maintaining economic growth. The federal limits are lower than the provincial ones set by the British Columbia government, making the GGRA system industry-friendly. The federal GGRA system establishes the Greenhouse Gas Emissions Agency ("GGEA"), a branch of Environment Canada, to oversee the limits and credit regime. Firms that do not comply with the emissions limits are subject to fines up to $1 million or imprisonment for a term up to six months.

The Preamble to the GGRA reads:

Whereas climate change is an issue of serious concern to all Canadians;
Whereas the reduction of greenhouse gas emissions is essential to combating climate change;
Whereas flexibility must be provided to industry to limit emissions within a cap-and-trade system; and
Whereas the Government of Canada is committed to meeting greenhouse gas reduction targets; [...]
The **GGRA** system consists of three broad parts:

1. **Emissions Limits**: Part I of the **GGRA** imposes mandatory emissions standards by sector. Industrial firms are prohibited from producing greenhouse gas emissions beyond the limits established by the **GGEA**.

2. **Cap-and-Trade**: Part II of the **GGRA** establishes the trading piece of the “cap-and-trade” system. This permits firms to purchase emissions credits from other regulated firms that have accumulated offset credits. Firms can accumulate offset credits by reducing their emissions beyond the federally prescribed limits. The cap-and-trade system allows them to sell or trade those offset credits.

3. **Greenhouse Gas Emissions Agency ("GGEA")**: Part III of the **GGRA** creates a federal agency, the **GGEA**, to set the emissions limits and to oversee the offset credit regime. The **GGEA** has discretion to lower the emissions limits for certain sectors, and it is empowered to issue exemptions by permit for occasional greenhouse gas emission over-releases.

**QUESTIONS**

**MARKS**

70  
(1) **Recommended Time: 40 minutes**

Is the **GGRA** valid federal government legislation under the criminal law power or the national concern branch of **POGG**?

Please do not discuss the ancillary doctrine.

30  
(2) **Recommended Time: 20 minutes**

Regardless of your answer to Question 1, assume that the **GGRA** is valid federal legislation. Is the BC provincial legislation operable?

**END OF EXAMINATION**