

Write Your Exam Code Here: _____

Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

**THIS FINAL EXAM CONSISTS OF 6 PAGES (INCLUDING THIS PAGE)
PLEASE ENSURE THAT YOU HAVE A COMPLETE EXAMINATION**

**THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW**

FINAL EXAMINATION – April 2019

**LAW 359 002
Family Law**

Professor Erez Aloni

**TIME ALLOWED: 3 hours
READING TIME: 15 minutes
TOTAL: 3¼ hours**

.....
NOTES:

1. This exam is open book. Students may bring in the instructor's slides, self-prepared course outlines, copies of cases covered in class, and any student-prepared notes, *but nothing else*. No books, commercial outlines, or other texts are permitted.
2. This exam has 3 questions, worth a total of 100 points. The first question is worth 60 points and the 2 others are worth 20 points each. The time allocation next to each question is a recommendation only; you should divide your time as you think best.
3. If anything in any question seems ambiguous or erroneous to you, say so clearly in your answer and indicate any assumptions you are making to resolve the alleged ambiguity or error in order to address the question. If you feel additional information is required to answer a question, please indicate the additional information you feel is necessary and explain why that additional information is necessary.
4. The fact pattern (Question 1) takes place in British Columbia, and you need to use all legal directives applicable in the province of British Columbia (federal and provincial law).

Good Luck!

QUESTION 1

Allocation: 60 points

Recommended time: 1 hour and 45 minutes

Armand Goldman, 53 years old, is the owner of a night club in Vancouver called “The Birdcage,” which he has owned since 1997. Armand and his first partner separated in October 2011. He has three children from his first relationship; as of this time, they range in age from 16 to 24. Armand and his ex-partner have a shared parenting arrangement whereby the youngest child splits her time equally between both parents.

Armand was longing for a new love that would heal the wounds of the breakup. In 2012 he began dating people he met via an online dating app. Identifying as pansexual,¹ Armand dated people of various genders and orientations, but the chemistry was missing in all. Disappointed, he started to worry that he would remain alone for the rest of his life.

This all changed on a sunny BC day in May 2013. As Armand was hiking on Grouse Mountain he saw Starina, and his heart immediately missed a beat. Starina, then 45 years old, was travelling with her son, Agador Spartacus (at the time about 12 and a half years old). Starina, from South Beach, Miami, USA, was in BC for a week of vacation. Armand found an excuse to begin a conversation and the two connected immediately. Agador felt a bit neglected but was happy to see his mom flirting. Over the following week, Starina and Armand spent lots of time together; and on the third day of their first meeting, they professed their love for each other.

On the last night of Starina’s trip to BC (May 31, 2013), Starina convinced Armand that they should get married. Armand was skeptical about getting married—especially as he was still licking his wounds from his previous relationship. In fact, he did not really believe in marriage. Starina, who had been a widow for 10 years, was very persuasive. She claimed that the only way for her to move to Vancouver and live with Armand forever was if they got married, and then he could sponsor her as his spouse for permanent residence in Canada. Starina explained that it was marriage or nothing. Though Armand had serious doubts, he reluctantly agreed to enter into a civil marriage with Starina. Being under the influence of her magic, and the fear of losing her, he said yes. They entered the office of a registered marriage-licence issuer, and applied for and received a marriage licence. They then found a marriage commissioner, who performed a basic civil ceremony for them. Armand called two friends who served as one witnessed. The marriage was properly registered with the Vital Statistics Agency in Vancouver, BC.

The next day (June 1), in a dramatic scene, Starina and Armand said goodbye, and Starina and Agador returned to Miami. With Armand’s knowledge and support, Starina and Agador applied for permanent residence in Canada under the “spousal sponsorship” category. While Starina waited for the residency application to be processed and approved, they communicated through telephone calls and Facetime, on a daily basis. Once a month Armand spoke briefly over the phone with Agador, and once sent him a birthday gift. Armand flew to visit Starina in Miami in 2014 for 10

¹ “Pansexuality” means sexual, romantic, or emotional attraction toward people regardless of their sex or gender identity.

days, but, other than this visit, they did not see one another in person until the time that Starina moved to Vancouver.

Starina and Agador arrived at Vancouver International Airport on June 1, 2015, as landed immigrants. Armand waited to greet them in the airport with champagne and balloons. He then drove them to his home—the house he has owned since 2001. His children were raised in this home, and he spent a significant amount of time, money, and effort improving this asset over the years, through renovations and extensive landscaping. He was proud of his home and optimistic that three of them would flourish there. Armand could not have been happier.

The honeymoon period, however, ended shortly afterward. Problems in the relationship surfaced right away. Armand was often busy in *The Birdcage*, and Starina was jealous anytime that Armand talked with someone else. Starina turned out to be a bit of a princess. She was capricious, and there were days she ignored Armand completely. She was also frustrated, as she was a famous “drag thing”² in Miami and had a river of fans, while in Vancouver she was accepted with much less enthusiasm. Her income from performing in clubs and at events slightly declined, from an average of \$3,000 (CAD) a month in Miami to \$2,500 (CAD) a month in BC. Due to the disappointing welcome of her as a performer, she stopped enjoying her performances. She focused on raising Agador and caring for Armand (and, infrequently, for his kids). Armand encouraged Starina to perform more and accept more gigs, and tried to help facilitate this endeavour by providing her with guidance, direction, and opportunities to upgrade her performance. Armand did his best to make Starina’s and Agador’s lives in BC better, but felt that his efforts were met with frowns.

The relationship between Agador and Armand was murky, too. Agador insisted that Armand call him by his full name, Agador Spartacus. Armand thought that was silly. Agador called Armand “papa,” although Armand had his own kids and spent little time with Agador. Armand was also bitter that he had to spend more on household expenses to cover Agador’s daily expenses (food, books for school, etc.). While Starina paid for Agador’s education from her own funds, adding an adolescent kid to the household was expensive, and Starina’s income was barely sufficient to cover Agador’s expenses.

Further, during the time they lived in the same household, Armand was the sole person to contribute financially toward maintaining and preserving the family home. He paid for all the insurance, utilities, taxes, repairs, and maintenance costs related to the home. During the time they lived together, Starina participated in the family unit by helping with the cooking and cleaning. However, she made very minimal contributions toward the family’s finances.

Around mid-September 2015, Starina and Armand celebrated Agador’s fifteenth birthday. Armand bought the cake, but he got a flavour that Starina hated. Starina freaked out about this and left the family home with Agador. Her sudden departure and failure to tell Armand where they were going added to the widening rift in their relationship. Though Starina and Agador returned to the family home a day or two later, Starina and Armand’s relationship continued to deteriorate. Armand felt that he had made a mistake by marrying Starina. A huge mistake.

² A non-binary drag performer.

On December 1, 2015, Starina stopped a performance in the middle of her famous number, “Can That Boy Foxtrot,” and started to yell at Armand that he was cheating on her. She threw a glass of water on Armand’s face. The incident shook Armand significantly and became the tipping point whereby he decided to end the relationship. He told Starina that their relationship was over. Starina responded: “Don’t be silly. You and I are forever.” They continued to share the same bed, but have not had any sexual relations since then.

On December 25, 2015, they celebrated Christmas with many friends and family. The three attended church for Christmas mass. And while they looked like one happy family, the tension between Starina and Armand was still in the air.

On February 4, 2016, Armand asked Starina to move out. He offered to purchase airline tickets in the event she wanted to return to Miami, or to purchase household furnishings so that she and Agador could move out into their own rental accommodation. However, Starina refused to leave, and Armand began to sleep on the sofa. A few days later, Starina offered to sleep in Agador’s room. Consequently, Armand resumed sleeping in the bedroom, alone.

On February 16, 2016, unbeknownst to Armand, Starina opened bank accounts for herself and Agador. On May 16, 2016, Starina opened mobile telephone accounts for herself and Agador. On June 11, 2016, Armand moved Starina’s and Agador’s belongings into the basement of the family home. As there was no kitchen or washroom in the basement, they continued to share a washroom and common cooking facilities until July 29, 2016, when Starina and Agador moved out of the family home into a rental accommodation.

A couple of months after she left Armand’s house, as Starina performed “I Will Survive” she saw you in the crowd. She knows you are an attorney, an expert on family law, and seeks your advice as to her and Agador’s rights and duties. She asks that you evaluate her chances of success in claims for child support (on behalf of Agador), entitlement to spousal support, division of property, and getting a divorce decree. Please write her a memo, describing her main claims, evaluating her chances of success, and foreseeing what kind of defences, arguments, and claims Armand is going to put forward.

In your answer, you can also use the following data.

- The appraised value of Armand’s home has been:

Date	Appraised Value
May 31, 2013	\$610,000
December 2015 to March 2016	\$635,000
June 2016 to July 2016	\$700,000
March 1, 2017 (the date of assumed trial)	\$930,000

- The increased value of the home is due to (post-separation) market forces.
- Armand did not have any other savings during this time.
- Starina did not save any money or incur any debt.
- The value of the business (The Birdcage) remained the same.

QUESTION II--LEGISLATIVE POLICY

Allocation: 20 points

Recommended time: 40 minutes

The Alberta Law Reform Institute provides independent, comprehensive advice to the Government of Alberta. In June 2018, the Alberta Law Reform Institute released a final report about property division for couples who live in informal relationships (unmarried couples). Under the current law in Alberta, there are no legislated rules for property division upon the breakdown of relationships between unmarried couples. The *Matrimonial Property Act* [MPA] does not apply to couples in informal relationships. That means that when partners separate, there are no presumptions or formulas about how they should divide property. The report contains 20 recommendations. For the purpose of the exam, please read the following recommendations:

RECOMMENDATION 1

There should be legislated rules describing how unmarried partners may make an agreement about ownership and division of property.

RECOMMENDATION 2

To be enforceable, an agreement about ownership and division of property should have to meet the same requirements that apply to agreements between spouses. In particular, the agreement should be in writing and each partner should meet separately with different lawyers to make the required acknowledgments.

RECOMMENDATION 6

Legislated property-division rules for unmarried partners should be based on the rules for spouses in the *Matrimonial Property Act*.

RECOMMENDATION 9

The presumption of equal division should begin on the date that the partners or spouses began living in a relationship of interdependence or the date of marriage, whichever is earlier.

You work for the Attorney General of Alberta. She wants your expert opinion on these selected recommendations. Please draft a memorandum to the AG of Alberta addressing the following elements: How does British Columbia deal with property division between unmarried partners? What can Alberta learn from BC's experience with its model of recognition? Advise Alberta's AG about the advantages and disadvantages of the proposed reforms. Are there any things you would advise changing in the recommendations? Explain why.

QUESTION III--CRITICAL COMMENT

Allocation: 20 points

Recommended time: 35 minutes

In her article “Federal Visions of Private Family Support” 67 Vand. L. Rev. 1835 (2014), Professor Laura A. Rosenbury described the United States family law system as follows:

This inquiry reveals the ultimate value underlying legal recognition of family: the value of private family support. The government affirmatively recognizes certain intimate relationships, to the exclusion of others, in order to incentivize individuals to privately address the dependencies that often arise when adults care for children and for one another. Indeed, states originally recognized marriage and the parent-child relationship as a means to encourage men to assume responsibility for women’s and children’s dependencies. Today, “the state incentivizes marriage and ensures that marital partners provide care and support for one another” in a less obviously gendered manner. As [recent] developments reveal, one man and one woman are increasingly not required; instead, almost any two consenting adults will do. Yet even as our understandings of family roles and composition have changed, legal recognition of family status remains rooted in the privatization of dependency.

To what extent does Rosenbury’s analysis fit the description of the Canadian family law system? Provide critical commentary on this excerpt and engage with the proposition that Rosenbury makes. Make sure to use illustrations from the course materials.

END OF EXAMINATION