

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 FIVE (5) 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 – DECEMBER 2018

LAW 359.001
LAW 559D.001

Family Law

Professor Régine Tremblay

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS
READING TIME: 15 MINUTES
TOTAL: 3¼ HOURS

.....

NOTE:

1. This is an OPEN BOOK examination.
2. If you find it necessary to make assumptions, state what they are and why you are making them. Make only reasonable assumptions.
3. Questions may raise issues that do not have one “right” answer. If so, identify and discuss fully arguments that could be raised on all sides of each issue, assessing their relative strength.
4. Clearly identify the question you are answering.
5. Write legibly and on alternate lines of your booklet.
6. Marking criteria and chart can be found in the syllabus.

THIS EXAMINATION CONSISTS OF FOUR (4) QUESTIONS

LAW 359.001
LAW 559D.001

QUESTION 1 – Fact Pattern (25 MARKS)

[25 marks total] Mike is coming to your office today because he caught Peter cheating on him with Jane last week (December 2018). He is devastated. He told Peter the relationship was over and now lives in a rented basement suite in Kits (costing \$2,500/month). He tells you his story. He had met Peter in January 2007, during an NHL Vancouver Canucks' game. The Canucks won and the men's glances met when they realized that they both wear Alex Burrows' jersey – a very interesting choice at the time. They connected right away. Things started slowly, primarily because Peter kept seeing other people. Despite that, they were very involved in each other's lives: Mike often attended official and informal events with Peter (office parties, weddings, funerals), and Mike even introduced Peter to his family. Until they moved in together, they kept their finances separate, each having his own bank accounts and they paid their common expenses proportionately relative to their respective incomes (food, activities, etc.). On December 13, 2009, Mike issued an ultimatum to Peter: he wanted to be in a loving and committed relationship, threatening to leave Peter if he was not ready for that. A few hours after this conversation, Peter officially asked Mike to move in with him and told him he would stop seeing other people. Mike was ecstatic and moved in the same day.

Peter is a senior mining engineer. His income from the past three years, as per his tax documents, is as follows: \$345,000 for 2015; \$225,000 for 2016; and \$230,000 for 2017. Mike is a real estate agent, and he specializes in investment properties for international clients. Mike's income for the last three years, as per his tax documents, is as follows: \$0 for 2015; \$80,000 for 2016; and \$40,000 for 2017. When presented with these numbers, you ask Mike what explains the inexistent income for 2015 and the reduction in 2017. Mike tells you that the couple was living in Prince George from 2010 to 2015 (Mike had no income from 2010 to 2015). They relocated because Peter got a temporary and lucrative contract that was really important for Peter. For Mike, however, it meant losing clients and income. Indeed, the real estate market is slow in Prince George and there are few investment properties attractive to international buyers. Moreover, his brand lost value from being out of Vancouver's market. In Mike's mind, such compromises are par for the course in love. He knew that the move meant losing significant income, but he was willing to take

the risk. It was worth it to him—because he wanted Peter to be happy and successful in his career and not frustrated by giving up a great opportunity. Mike cared about this relationship greatly, and, although he was a good real estate agent, he was slightly less career-oriented. While they lived in Prince George, they enjoyed a lavish lifestyle, ate out frequently, rented an expensive penthouse, drove luxury cars, travelled a lot, and more. Peter added Mark to his primary credit card. Since Mike had more free time than Peter, he took care of most household chores (groceries, cooking, managing the schedule, planning trips, cleaning, and more). Mike also fell in love with yoga, practising it often. The first year they moved back to Vancouver (2016), Mike worked as a real estate agent. He was not happy and decided, with the support of Peter, to become a full-time yoga instructor and to abandon the real estate business.

When it comes to the couple's assets, here is what Mike tells you. Peter bought a house in Vancouver in 2008 for \$800,000 with no mortgage, using an inheritance. While Mike rented an apartment back then, he spent, on average, five nights/week at Peter's house. When they left for Prince George, Peter rented out his house for \$3,000/month. This money went to a separate savings account in Peter's name. Today, the house is worth \$2,500,000. At the beginning of the relationship, Peter had \$100,000 in an account. This account is now worth \$200,000 (a cash account to which he – Peter – has contributed). Mike had \$200,000 in an account, but after years of unemployment, he only has \$15,000 in his account. He is a bit worried, because he will soon be out of savings and his income as a yoga instructor is modest (around \$40,000). They have a \$54,236 debt on Peter's credit card. Mike does not have a car, but Peter has a 2016 Land Rover Range Rover Sport Diesel Td6 HSE. It was worth \$85,000 in 2016, and now \$65,000. The car is not fully paid yet and Peter still owes \$32,000. From the beginning of their relationship until now, Peter has contributed \$110,000 to his RRSP. Mike always believed he would die young and has refused to plan for retirement.

1. [1 mark] What are your duties towards Mike? Explain and justify.
2. [8 marks] Advise Mike about the timing of the relationships. Assuming the two of them had a marriage-like relationship, when did it begin and when did it end? Explain and justify.

3. [8 marks] Mike wants to know if he is entitled to spousal support. Explain and justify his entitlement (entitlement only) to spousal support.
4. [8 marks] Mike wants to know what his situation is when it comes to the division of property. Explain, justify, and provide calculations, if necessary.

QUESTION 2 – Fact Pattern (25 MARKS)

[25 marks total] James, John, and Joan have been together for five years. They are in a committed, primary, conjugal relationship (polyamorous) and want to have a child. They live in Canada, though you do not know in which province (see questions). They need your advice as to how to expand their family. They are not sure yet who will contribute sperm (John, James, or both), but Joan will carry the child. They want to proceed via sexual intercourse. They all want to be parents, registered on the birth certificate. They come to your law office seeking information about their plan, parentage, and filiation. Specifically, they want you to answer these questions:

1. [20 marks] Could they achieve their aims in British Columbia? If so, how should they plan it from a legal standpoint and how would the child's parentage be established? Explain and justify.
2. [3 marks] Could they achieve their aims in Ontario? Answer yes or no, providing a short explanation and justification.
3. [2 marks] Could they achieve their aims in Quebec? Answer yes or no, and provide a short explanation and justification.

QUESTION 3 – Legislative Policy (25 MARKS)

[25 marks total] The Attorney General of Canada (“AG”) contacts you. She just met with the Attorneys General of the provinces. They had heated discussions about the division of powers between the Parliament of Canada and the provincial legislatures concerning family law. The AGs of the provinces have unanimously asked for the power over “Marriage and Divorce” in section 91(26) of the *Constitution Act, 1867* to devolve to the provinces. She seeks your expert opinion.

Relying on what we have learned together this term (in class, in the readings, in the statutes, and in the syllabus), please draft a memorandum to the AG of Canada addressing the following elements:

1. [5 marks] Briefly explain the division of powers in family matters, identifying the underlying reasons.
2. [5 marks] Briefly identify the advantages and disadvantages of this state of affairs.
3. [12 marks] Explain how the division of powers has materialized in British Columbia and identify the consequences of allocating the power over “Marriage and Divorce” to the province. For example, discuss areas in which the province would need to legislate assuming no existing federal legislation applied.
4. [3 marks] Assuming this reallocation of legislative authority occurs, would some areas of family law remain within the jurisdiction of the federal government? Explain and justify.

ASSUME THAT THE CONSTITUTIONAL AMENDMENT IS POSSIBLE. DO NOT ENGAGE WITH THE CONSTITUTIONAL PROCEDURE OR THE POTENTIAL POLITICAL DIFFICULTIES.

QUESTION 4 – Critical Comment (25 MARKS)

[25 marks total] In 1998, in “Reconceiving the Family: Challenging the Paradigm of the Exclusive Family,” Professor Alison Harvison Young, as she then was, wrote:

If one accepts the importance of the channeling function in family law, the law is “channeling” in favor of a simplistic, impoverished vision of family. That vision fails to contemplate the needs and realities of many children [and adults] by excluding many people who could or do contribute in various ways to their [lives].¹

Relying on what we have learned together this term,

1. [5 marks] Explain what Justice Harvison Young means when she refers to the “channeling function of family law.”
2. [20 marks] Provide a critical comment on this excerpt, including concrete examples.

END OF EXAMINATION

¹ (1998) 6 Journal of Gender & the Law 505, 510