

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

FINAL EXAMINATION – APRIL 2020

LAW 359.001  
Family Law

Professors Kimberley J. Santerre and Scott L. Booth

**EXAMSOFT PASSWORD:**  
**EXAMSOFT RESUME CODE:**

**TOTAL MARKS: 40**

**WRITING TIME ALLOWED: 3 HOURS**  
**PREPARATION TIME ALLOWED: 10 MINUTES**

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If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question.

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**Part A: Short Answer (Total Marks: 20)**

**Instructions: please respond to the following short answer questions as concisely as possible.**

1. Susan has an ongoing family law case about her ex-spouse, Frank, and two children. Susan is a car sales person at BMW and earns \$25,000 per year as a salary plus commissions for vehicle sales. In 2018, her commissions were \$80,000; in 2017, commissions were \$65,000 and in 2016, commissions were \$75,000. [Note that commission income is reported as a source of income in a tax payer's personal income tax return.] Frank is a mechanic and operates a garage. His garage business is not incorporated. Frank reports net self-employment income of \$66,000 per year. Susan says that Frank writes off 100% of his car lease payments (\$24,000 per year) and cell phone (\$1,500 per year) as business expenses. In addition, Frank sold a recreational property on the Sunshine Coast in 2018. He bought the property for \$125,000 about five years ago, and sold it for \$275,000 without doing any work to it. On Frank's 2018 personal tax return, he records a taxable capital gain of \$75,000 in relation to the sale of the Sunshine Coast property. Neither party has filed their 2019 tax returns, but each has prepared tax returns for 2016, 2017 and 2018. What is Susan's income for child support purposes? What is Frank's income for child support purposes? Refer to all relevant provisions of the *Federal Child Support Guidelines*. **10 Marks.**
2. Further to question 2, Susan's hours of work are Tuesday to Saturday, 10:00 a.m. to 6:00 p.m. The children reside primarily with her. The youngest is in full time daycare Monday to Friday and the oldest is in after school care on the same days. On Saturdays when the children are not with Frank, Susan either gets her mother to look after them while she is at work or she hires an *ad hoc* babysitter. Daycare fees for the children are \$2,100 per month. The *ad hoc* babysitting costs Susan incurs for Saturdays average about \$90 per month. Are the daycare fees for the two children a s. 7 expense? What about the *ad hoc* babysitting? **3 Marks.**
3. A client meets with you a few months after separation. She describes to you that she and her spouse are still living in the same home, a rental home in New Westminster. She moved out of the master bedroom and is sleeping on a cot in the basement TV room. They fight constantly. There has been no physical contact or threat of physical

violence but her spouse constantly belittles her. After some of their fights he angrily leaves and stays with his brother, who owns a home with an extra bedroom, or with his girlfriend. He has been taking things from the home when he leaves. He works as a police officer and earns \$75,000 per year, while she works as an early childhood educator and earns \$35,000 per year. The couple own no property, other than savings accounts of similar value. Can she seek an order to effectively cause him to leave the home? In what court(s) can she seek that order? **3 Marks.**

4. Amanda and Todd were in a marriage-like relationship for 8 years. Prior to moving in together, Amanda and Todd signed a cohabitation agreement, which provided that Amanda would be able to keep her business and all of its assets (including any growth in value of the business), and Todd would have no claim against same, if there was a separation. Amanda continued to operate the business during the relationship, and it was the only asset of value owned by either spouse. Amanda draws a \$125,000 salary from her business. Todd works as a server at Minami restaurant and reports \$60,000 as income (but likely earns \$80,000 per year). Assume each party continues to earn the same level of income after separation. After separation, Todd commenced a family law case in Supreme Court. In his Notice of Family Claim, Todd claimed that the cohabitation agreement should be set aside and advanced a claim to 50% of the increase in value of Amanda's business (over the course of their relationship). Todd sought an interim distribution under s. 89 of the *Family Law Act* for \$50,000. Amanda opposed on the basis of the cohabitation agreement and that Todd had no claim against her company, and in the alternative, on the basis that she did not have sufficient liquid assets or cash to pay to Todd \$50,000. Is the cohabitation agreement fatal to Todd's claim for an interim distribution? Is the court likely to grant the \$50,000 interim distribution requested by Todd? **4 Marks.**

END OF PART A

**Part B: Long Answer (Total Marks: 20)**

**Instructions:** please review the fact pattern and respond to the questions below as concisely as possible.

**Facts:**

You have recently been retained by Jessica Towes. Jessica was in a relationship (unmarried) with Jeff Ford for over 8 years. They separated on January 15, 2018. At that time, Jessica moved out of the former family home – which was registered solely in Jeff's name – in West Vancouver. They had no children together.

Jessica is a sales associate at Nordstrom. She earns about \$55,000 per year.

Jeff is an investment banker. He spent most of his career at HSBC, but moved to CIBC in late 2017. While at HSBC, Jeff earned over \$250,000 per year in commission income and in his last three years there, he earned an average of \$350,000. However, when Jeff moved to CIBC, not all of his clients followed him, and he struggled to bring in new investments. As a result, his commission income declined dramatically. Jeff only earns about \$180,000 per year at CIBC. [Note: commission income is reported as a source of income in a tax payer's personal income tax return.]

When they separated, Jeff explained that given his fixed expenses he could only afford to give Jessica \$1,500 per month to help with her expenses. Jessica realized that her lifestyle would have to adjust, as even with Jeff's contributions, she could never afford all the perks – holidays, new vehicles, dinners at high-end restaurants, designer clothing, tech gadgets, etc. – she had while living with Jeff. In fact, even though Jessica lived modestly after separation, she was always short \$500 to \$1,000 per month and started accumulating credit card debt. Her rent alone (for her one bedroom plus den condo in the East Vancouver) consumed half her income.

Jeff also explained his position on the former family home. The home was a small home from the 1950s on a large lot, which Jeff owned prior to his relationship with Jessica. Before Jeff and Jessica started dating, Jeff hired a general contractor to demolish the home and develop a duplex [Note: assume the duplex consists of two separate property lots, i.e. two separate titles]. Most of the construction was done by the time that Jeff and Jessica got serious. It was a big project and Jeff was proud of it. After completing the project, Jeff repeatedly said that he turned the 1950s house worth \$1.2M into a home worth \$2M and a rental unit worth \$1.1M. After Jeff moved into

the larger unit, Jeff found tenants for the second unit. A few months later, Jessica moved in with Jeff (around January 5, 2010). This was the first time they lived together. Jeff explained that he always paid the mortgage, utilities, property tax, property insurance for the home and the rental unit (to the extent that the rental income did not cover those expenses). Jeff also always solely dealt with the tenants (listing, meeting tenants, signing tenancy agreements, dealing with repairs, collecting rent, etc.). As a result of this, Jeff maintains that Jessica should not have an interest in the home or the rental unit.

Initially, Jeff and Jessica worked with a mediator to try to resolve the issues arising from their separation. The mediator helped with facilitating disclosure and exchanging proposals. Jeff disclosed there is a mortgage against the home in the amount of \$1M, and a mortgage against the rental unit worth \$550,000. He produced historical mortgage statements that show that in January 2010, the mortgage against the home was \$1.5M and the mortgage against the rental unit was \$800,000. Jeff estimated that by the date of separation, the home was worth \$2.7M and the rental unit was worth \$1,550,000. Jeff also disclosed statements showing that the investments he held at the start of the relationship had increased by \$500,000 by the time of separation. Jeff acknowledges that the increase in value of the properties after cohabitation is because of the increase in the real estate market from 2010 to 2018.

Jeff and Jessica had three mediation sessions between March 1, 2018 and May 31, 2018. After the last mediation on May 31, 2018, Jessica told Jeff she can no longer afford to pay the mediator's fees. Jessica withdrew from mediation. She was really disappointed at how little Jeff was compromising – by May, he was prepared to pay \$25,000 for Jessica's interest in the home and divide some but not all of the other financial assets.

Neither Jessica nor Jeff reached out to try to work towards settlement for a while. Then, in August 2018, Jeff emailed Jessica with a settlement proposal. While his offer had increased a bit, Jessica was not happy with the proposal. She made a counteroffer, but Jeff's response was he could not entertain a settlement on those terms.

In September 2018, Jessica's mom was diagnosed with cancer. Jessica was devastated and stopped thinking about dealing with her separation from Jeff. Shortly after, Jessica's mother gave her a cash gift of \$125,000 which would be an advance on Jessica's inheritance. After travelling with her mother to Hawaii in September 2019, Jessica began thinking about hiring a lawyer to help her with her separation from Jeff.

Jessica met an aggressive lawyer in downtown Vancouver in mid-November 2019, but did not feel like it was a good fit and did not retain that lawyer. She also did not want to deal with the separation and negotiating with Jeff over the holidays.

Jessica's mother passed away on January 17, 2020. Jessica was overwhelmed with grief and loss. Jessica also was let-go by Nordstrom in March 2020. After losing her job, Jessica was living off the gift from her mother.

In early April 2020, a girlfriend asked Jessica what happened with her separation from Jeff. Jessica was embarrassed to explain that nothing had been resolved. Jessica's friend encouraged Jessica to meet with another lawyer and referred Jessica to you.

You met with Jessica on April 10, 2020.

**Questions:**

1. What advice are you going to give to Jessica in response to the questions she asks, set out below. Please identify the relevant sections of the applicable legislation that you are relying on in giving your answers:
  - a. What steps she should take, given that she thinks negotiation and mediation are not going to result in a settlement? **6 Marks.**
  - b. What is your opinion on the merits of Jeff's position that Jessica should not have any interest in the home or the rental unit? Assume that the value of the properties and the debt owing on mortgage have not changed since the time Jeff and Jessica participated in mediation. **4 Marks.**
  - c. What do you tell Jessica about the value she might expect to receive if she makes a claim to the house and the rental unit? Assume that the value of the properties and the debt owing on mortgage have not changed since the time Jeff and Jessica participated in mediation. **4 Marks.**
  - d. Is Jessica entitled to spousal support? If so, explain and address entitlement to support, duration of support and income determination. [Note: do not attempt to address quantum of support]. **6 Marks.**

END OF EXAMINATION