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**THIS EXAMINATION CONSISTS OF 3 PAGES (INCLUDING THIS PAGE)
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**THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW**

FINAL EXAMINATION – DECEMBER 2019

**LAW 352.001/557C.002
Aboriginal Peoples and Canadian Law**

Professor Darlene Johnston

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

NOTES:

1. This is an open book examination. Written materials are permitted, but all electronic devices (other than those required for the use of Examsoft Exemplify) are forbidden.
2. This exam is divided into two parts, Part A and Part B. You are required to answer 3 questions in total. The questions are of equal value, that is 33.3 marks per question. You should allocate 60 minutes to each question.
3. Part A consists of Questions 1 and 2. Answer all Questions in Part A.
4. Part B consists of a CHOICE of essay questions. Choose to answer either Question 3 or Question 4.

PART A: Answer QUESTION 1 AND QUESTION 2**QUESTION 1 (60 minutes: 33.3 marks)**

Sheila and George are both members of the Beta First Nation. Their reserve is located in a remote region of Vancouver Island. They have been married for fifteen years. There are no children of the marriage. George is a commercial fisherman and Sheila teaches at the elementary school located on the reserve.

Ten years before George and Sheila married, he paid \$1000.00 to his uncle for a 10-acre parcel of land. Upon approval of the transfer, George received a certificate of possession. When George bought the land, it was vacant except for an old barn. George built a house on this land with a housing loan that he obtained from the band in the amount of \$25,000.00. George finished repaying the loan shortly before he and Sheila were married. Since their marriage, George and Sheila have lived together in this house. Five years ago, George purchased an adjoining 10-acre parcel of land for \$2,000.00.

Two years ago, Sheila decided that she would like to renovate the old barn for use as a horse stable. In addition to repairing the roof, she needed to have running water and electricity installed. She also fenced 2 acres of the adjoining lot for pasture. In order to pay for these improvements, Sheila borrowed \$10,000.00 from the band. To date, she has repaid \$4,000.00 of the loan.

This year, the salmon stocks have crashed and the commercial fishery has been closed. As a result, George now finds himself unemployed. This economic hardship has placed a strain on the marriage. George has recently told Sheila that he wants a divorce. Since he holds the certificate of possession for the property, George expects Sheila to move out. There is a housing shortage on the reserve and Sheila doubts that she will be able to find suitable accommodation. Given the remoteness of region, there is no rental market off the reserve. If Sheila is forced to leave the reserve, she would have to give up her job at the school. None of Sheila's relatives have room to take her in. Although George's mother lives alone in a large house and would be happy for his company, George is adamant that he will not move out.

Sheila has called your firm for advice. She wants to know if a court would allow her to stay in the family home and on what conditions. She also wants to know if she has an interest in the home, the lands and the stable. If so, what is her interest worth and how realistic is it that the value can be realized? Advise Sheila.

QUESTION 2 (60 minutes: 33.3 marks)

The Grizzly First Nation is located in northern British Columbia. The First Nation consists of 200 members, with 100 members living off-reserve. Historically, the First Nation was governed by clan-based hereditary system with the office of chief being passed down from father to son. In 1952, the hereditary system was displaced when the

Minister of Indian Affairs issued an order under section of 74 of the *Indian Act* thereby imposing an elected system of governance. Over the last decade, there has been growing dissatisfaction with the *Indian Act* election system. It is costly for the First Nation to hold elections every two years and the frequent high turnover of elected officials makes it difficult to sustain relationships with outside governments and businesses. There is also some pressure to return to a more traditional form of governance. The First Nation would like to leave the *Indian Act* election system and is considering whether to transition to the *First Nations Elections Act* or to convert to a custom community election code under the “Conversion to Community Election System Policy.” You have been asked to provide advice on both of these options. In particular, the First Nation wants to know the following:

- what are the advantages of the *First Nations Elections Act* as compared to the *Indian Act*?
- how do the community approval processes required to transition either to the *First Nations Elections Act* or to a custom community election code through the conversion policy differ?
- to what extent is the content of a custom community election code dictated by the conversion policy?
- will converting to a custom community election code enable a return to a clan-based hereditary system?

PART B: Answer only ONE of the following questions.

QUESTION 3 (60 minutes: 33.3 marks)

Chapter 4 of the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, entitled *Colonization as Gendered Oppression*, concludes that “Indigenous women experienced political and social marginalization through the imposition of patriarchy by Christian churches and the government of Canada.” Discuss the manner in which this marginalization was accomplished with particular reference to status and governance. To what extent has this marginalization been overcome?

QUESTION 4 (60 minutes: 33.3 marks)

There has been very little progress in negotiating treaties under the auspices of the British Columbia Treaty Commission (BCTC). Only three final agreements have been concluded in the past 25 years. Identify and discuss issues which may have prevented First Nations from entering the BCTC process or from making progress once they have begun negotiations. Consider whether and how the new Recognition and Reconciliation of Rights Policy may improve participation and progress in the treaty negotiations process.

END OF EXAMINATION