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**THIS FINAL EXAM CONSISTS OF 6 PAGES (INCLUDING THIS PAGE)
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**THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW**

FINAL EXAMINATION – December 2019

**LAW 359/ 559D
Family Law**

**Section 2
Professor Erez Aloni**

TOTAL EXAM TIME: 3.25 hours (3 hours 15 minutes)

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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, relevant statutes, and any student-prepared notes, *but nothing else*. No books, commercial outlines, or other texts are permitted.
2. This exam has 4 questions, worth a total of 100 points. The time allocation next to each question is a recommendation only; you should divide your time as you think best.
3. Question 2 is based on the facts of Question 1. While I encourage you to read the entire exam before you begin, it is particularly important that you read Question 2 before beginning your answer.
4. 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 possible ambiguity or error in order to address the question. If you feel additional information is required to answer a question, please indicate what additional information is necessary and why you believe that it is necessary.

Good Luck!

Question 1 (20 points)
Recommended time: 45 minutes

Ginger and Fred (the Frengers, as their friends call them) began a long-distance dating relationship in 2007. In July 2008, Ginger quit her job as a classroom assistant and moved from Alberta to Squamish, British Columbia, to begin living with Fred in the home he owned there (the “home”). The Frengers got married on August 1, 2009. They separated in early November 2016.

Ginger was born in 1958 in British Columbia. She has three adult children from a previous relationship. Ginger obtained a diploma in social work from a local college in 1986. Prior to 2005, Ginger worked mostly in contract positions as a social worker. In 2005, Ginger began working 30 hours per week as a classroom assistant in Alberta; her job was dealing with high-risk youth.

On arriving in Squamish, Ginger was unable to find employment working with high-risk youth. Instead, in 2009, she applied for a home-support position with Interior Health and was offered casual (temporary) employment. The Frengers also agreed that Ginger would not work full time, in order to have time for housework and for working on the renovations that are discussed below.

In May 2017, Ginger obtained her permanent part-time position with Interior Health, and she continues to work in the same capacity. She would be pleased to take a full-time position but says that none have been posted in her geographical area.

Based on available income-tax returns, Ginger’ earnings history (gross annual income) is:

- 2013 — \$15,313
- 2014 — \$17,093
- 2015 — \$14,819
- 2016 — \$19,552
- 2017 — \$30,812
- 2018 — \$37,575

Fred was born in 1964. He has lived in Squamish his entire life. He has one adult daughter from a previous relationship.

Fred’s highest educational attainment is a high school diploma. He works as a truck driver / equipment operator on a full-time basis. Based on available income-tax returns, his earnings history (gross annual income) is:

- 2013 — \$52,429
- 2014 — \$52,689
- 2015 — \$56,943
- 2016 — \$58,177
- 2017 — \$61,416
- 2018 — \$64,579

When Ginger moved to Squamish in July 2008, she arrived with her car and personal effects. She had no savings and did not own any property. Fred, on the other hand, owned the home and a car.

Fred acquired full ownership of the home in 2003 when he bought out his former spouse's interest for \$39,900. He had no mortgage on the home. The assessed value of the home at the time was \$79,800. The assessed value of the home in 2008 was \$203,400.

Between 2008 and 2016, the Frengers completed very substantial renovations to the home. They did the vast majority of the work themselves and incurred out-of-pocket expenses of tens of thousands of dollars.

On May 6, 2013, Fred transferred title to the home into the names of both spouses, with them registered on the title as joint tenants. Ginger did not pay Fred any money in consideration for the transfer. Ginger says she raised the possibility of holding the property as joint tenants to take advantage of an earlier increase in the homeowner's grant, given that she would turn 65 six years earlier than Fred.¹ Fred says he transferred title of the property into their joint names to "simplify things" in case of a tragedy and also to be able to claim a higher homeowner's grant when Ginger turned 65.

After the Frengers separated, Ginger requested that the British Columbia Assessment Authority reassess the value of the home. The reassessed value in December 2016 was \$206,000.

Question:

In December 2016, Ginger reaches out to your law firm and seeks your legal advice about her rights in the home. Write her a memo explaining how a court will likely determine the division of the spouses' family home and evaluate her chances of success in getting a share of the home. Make sure to mention the relevant principles, statutory provisions, and cases that the court will use—as well as to speculate about the arguments that Fred is going to raise.

Question 2 (30 points)
Recommended time: 1 hour

After Ginger met with you and read your memo, the Frengers began negotiating the terms of their divorce. While Ginger found your memo about the division of family property very helpful, she decided not to keep consulting with a lawyer. Both parties decided to end their marriage amicably, and they determined that, rather than continuing to spend money on legal fees, it would be better for them to use that money for themselves.

The course of their negotiation was friendly. Both Fred and Ginger aimed to learn the rules concerning financial obligations of ex-spouses from a website that deals with such issues. They also downloaded a boilerplate separation agreement that they used as a guide. After they had a

¹ The homeowner grant reduces the amount of property tax one pays for one's principal residence. Seniors aged 65 or older are eligible for an additional grant of \$275 on top of the regular grant.

first draft (they simply filled in some blanks in the form), they both had a month to think about their consent to the separation contract.

In that contract, they arranged to divide the home equally, with Fred buying Ginger's share of it. In terms of spousal support, they agreed that Fred would pay Ginger \$300 a month for a period of two years, followed by two more years at \$150 a month. Ginger appreciated that by the end of four years she would be able to stand on her own feet. Years later, she explains to you that she is a proud, strong, and independent woman who dislikes dependency.

In February 2017, the couple printed the agreement and they both signed it. They separated amicably, with a handshake. Fred paid Ginger her share of the house's value and started to pay support according to the agreement. In December 2017, after living separate and apart for one year, they filed for divorce using BC's e-divorce online app, and a divorce decree was granted. The terms of their separation agreement were not incorporated into the court order.

In the first two years of the agreement, the parties did not encounter any problem. However, two years after the signing of the agreement, when Ginger started to receive only \$150 a month, life had begun to be very difficult for her. She struggled to make ends meet and had to borrow from her friends to pay utilities. A few months after the \$150/month payments began, she decided to pay another visit in your office.

Question:

In July 2019, Ginger marched into your office and told you that she had made a mistake by not consulting a lawyer. She expressed regret, saying that although she had saved some money by not using a lawyer, she had potentially lost much more. She asked you whether there were a way to "reopen" the agreement regarding spousal support and whether a court could possibly—or would likely—order that Fred pay her more spousal support.

Please write her a memo describing her main claims, evaluating her chances of success in getting more support, and foreseeing what kind of defences, arguments, and claims Fred is going to put forward.

In your answer, you can use the following facts:

- Fred's and Ginger's incomes haven't changed since 2018.
- Using Fred's 2018 earnings of \$64,579 and Ginger's 2018 earnings of \$37,575, the "Without Child Support" formula from the SSAG for an eight-year relationship generates the following range:
 - Low — \$270 per month
 - High — \$360 per month

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Question 3 (25 points)
Recommended time: 45 minutes

Jason and Danielle cohabitated in a marriage-like relationship for many years, but they never married. They conceived their child, Gus, through in vitro fertilization (IVF). Jason provided, to a licensed fertility clinic in British Columbia, the sperm used in the IVF procedure. Danielle is the only parent listed on Gus's birth certificate.

Before Gus was conceived, Jason and Danielle had tried to have a baby through intercourse, beginning in 2012. Although Danielle became pregnant in December 2012, the pregnancy was not viable after six and a half weeks. In 2013, Danielle had two intrauterine insemination (IUI) procedures using Jason's sperm, but neither resulted in a pregnancy. In October 2013, after being advised that their inability to conceive might be due to issues regarding Jason's sperm count, Jason had a surgical procedure to address that problem. She and Jason also began to look into having an IVF procedure.

In May 2014, Danielle moved out of Jason's home and bought a home nearby. The following month she purchased sperm of an anonymous donor, from a sperm bank, and told Jason she was going to pursue motherhood as a single mother. In January 2015, Jason gave Danielle a letter in which he wrote that he was not ready to be a father, but if Danielle wanted to use his sperm to conceive, she had his blessing as long as she did not tell others. Danielle chose to use Jason's sperm rather than the anonymous donor's sperm that she had purchased because she preferred the known traits of Jason over the traits of a stranger who "looked good on paper."

After having an unsuccessful IUI procedure in January 2015 using Jason's sperm, Danielle decided to try an IVF procedure. Before the procedure, Danielle and Jason both signed a series of informed-consent forms provided by Canadian Fertility Partners. On each form, Danielle filled in both her name and Jason's name in the respective spaces designated for the "Intended Parent". On March 9, 2015, Jason took Danielle to Canadian Fertility Partners for the IVF procedure. The procedure was successful, and Gus was born in December 2015.

Jason maintained a relationship with Gus and Danielle over the next two and a half years. Danielle referred to Jason as "Dada" when speaking to Gus, and Gus called Jason "Dada." When Jason was working in Victoria for four months, Danielle and Gus flew there several times and stayed with Jason in his apartment. When Danielle and Gus were not in Victoria with Jason, Jason communicated with Gus over the internet by Skype.

Jason continued to maintain contact with Gus until the middle of 2019, when Danielle terminated her (and Gus's) relationship with Jason. Apparently, Danielle had met a new intimate partner, and he objected to Danielle's remaining in a relationship with Jason.

Jason is frustrated and misses Gus. He turns to you and asks you to clarify his rights and responsibilities and, in particular, whether he has any formal legal relationship to Gus and whether he has a chance to win parenting time with Gus. Write a memo describing his main claims, evaluating his chances of success, and foreseeing what kind of defences, arguments, and claims Danielle is going to put forward.

Question 4 (25 points)
Recommended time: 45 minutes

In her commentary for the *Nation* magazine, law professor Katherine Franke writes, in the context of family law in the United States:

Now that marriage is increasingly possible for same-sex couples, new spouses will find themselves governed by a set of legal rules that allocate rights and responsibilities and distribute and redistribute property in ways that were developed with heterosexual relationships in mind. After all, marriage has been one of society's most gendered institutions. . . .

The fairness of modern rules that take note of gender-based role specialization in marriage seems hard to deny. . . . But how will the rules that are sensitive to the disadvantage women often suffer in marriage impact same-sex couples when they chose to marry—or, more aptly, divorce? . . .

At the point of divorce, family-court judges will be inclined to apply the rules of equitable distribution of the marital assets in ways that are familiar to them—such as ensuring that the weaker party, usually the “wife,” is not unduly disadvantaged. . . . As a matter of policy, judges in divorces see their job as looking out for the weaker party, but the specter of same-sex couples' marrying raises the hard question of what it means to be “weaker” in a context where gender-based power is not creating an unequal playing field for the two parties' negotiating rights and responsibilities in a marriage. . . .

Yet others, myself included, worry that the diverse, non-traditional relationships and families we formed before marriage was a possibility will be shoe-horned into a one-size-fits-all kind of justice, slotting gay men and lesbians into the pre-determined gender roles of marriage: husbands and wives. Gay and lesbian couples prize how we've disorganized gender roles in our relationships in ways both mundane and significant. . . . We mix it up. It's not obvious that family law is equipped to adjudicate fair separations of same-sex couples when it encounters the ways we've busted out of gendered notions of relationship, responsibility, and family. Even worse, modern divorce law may end up gendering us into “wives” and “husbands” because that's all it is equipped to recognize.

--Katherine Franke, *Lesbian Husbands and Gay Wives: The Gendering of Gay Divorce*, THE NATION, July 3, 2013

Is Franke's critique relevant and applicable to the Canadian family law system? In other words, is family law in Canada predicated upon heteronormative² principles? Feel free to address areas in which family law is grounded in heteronormative assumptions and models beyond the concept/area of post-separation financial obligations. Make sure to provide examples for your arguments from the materials covered in class.

² Dictionary.com defines heteronormative as “noting or relating to behavior or attitudes consistent with traditional male or female gender roles and the assumption of heterosexuality as the norm.”