

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 EXAMINATION CONSISTS OF 11 PAGES (including this page)

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA

FACULTY OF LAW

FINAL EXAMINATION – DECEMBER 2019

LAW 395.001

Forest Law

Instructors: Billy Garton, Garry E. Mancell

TOTAL MARKS: 145

TIME ALLOWED: 2 HOURS

- NOTE:
1. This is an open book examination. Students may use any written materials except library books.
 2. Answer all questions. Note that the questions are not all of equal value.
 3. This examination will account for 100% of the final grade.
 4. This examination is based upon the case book, materials distributed in class, and lectures.
 5. True/False questions should be answered on both the exam questions sheet and in your exam booklet/Exemplify. Question #49 may be answered on the exam questions sheet only.

DO NOT TURN THIS PAGE OVER UNTIL INSTRUCTED TO DO SO.

1. List 5 public policy objectives that have most influenced the development of forest law in British Columbia, and for each policy objective identify a clear example of the implementation of that policy in the Forest Act, Forest and Range Practices Act (FRPA) or their respective regulations in force today (include name of the relevant Act/regulation and correct section number reference).
(5 marks)
2. Name five (5) Forest Act agreements and indicate for each agreement whether the Act allows it to be a replaceable agreement.
(5 marks)
3. Your client wants to acquire the right to harvest more timber from Crown land for its sawmill in a BC Interior community. Name three (3) common ways it could acquire additional Forest Act agreements to get more timber for its mill.
(3 marks)
4. In what primary way is a volume-based Forest Act agreement different from an area-based agreement?
(1 mark)
5. True or False: A replaceable Forest Act agreement will be automatically replaced before the end of its term.
(1 mark)

True False
6. Which Forest Act agreement accounts for the most harvesting of Crown timber in British Columbia?
(1 mark)
7. What is the relevance of the Allowable Annual Cut (AAC) of a Forest Act agreement?
(1 mark)

8. Who decides what the AAC of a Timber Supply Area (TSA) will be, and name the 4 mandatory subjects the Act requires that person to consider in determining the AAC. (5 marks)
9. Describe three (3) mandatory attributes of every tree farm licence according to the Forest Act, and provide statutory references for each requirement. (3 marks)
10. True or False: If the AAC of a tree farm licence is undercut in a cut control period the holder of the agreement can carry forward the undercut AAC so it is available for harvest it in the next cut control period. (1 mark)
- True False
11. Where in the Forest Act is the list of available agreements found? (1 mark)
12. True or False: If the AAC of a Timber Supply Area is reduced after a timber supply review, the AAC of any major forest licences in the TSA will be reduced pro rata without a chance of compensation. (1 mark)
- True False
13. Identify five (5) provisions of the Forest Act or FRPA that can apply to timber harvesting on private timberlands in British Columbia (include Act and section references) (5 marks)

14. The current cut control period of a forest licence with an AAC of 300,000 m³ commenced January 1, 2017. The harvesting history of the licence is as follows:

Previous cut control period (2012 – 2016)	1,600,000 m ³
2017	280,000m ³
2018	120,000m ³
2019	450,000m ³

- (a) What volume can be cut in 2020 without a financial penalty?
(1mark)
- (b) If the forest licence holder cuts 500,000 m³ in 2020 and another 500,000 m³ in 2021, what are the Forest Act implications?
(3 marks)
15. True or False: The volume of wasted wood in a post-harvesting waste assessment is counted against the AAC of the applicable Forest Act agreement.
(1 mark)
- True False
16. Describe four (4) ways the Forest Act allows the AAC of a forest licence agreement to be reduced without compensation and provide the relevant section references in the Act for each.
(4 marks)
17. Your client wishes to sell its forest licences and has heard that it will require the approval of the Minister of Forests to do so. What mandatory criteria does the Forest Act require the Minister to consider in a request for her/his approval of the sale, and where might you look for credible guidance to predict how such criteria could be applied?
(3 marks)
18. If the purchaser of one of your client's forest licences does not also assume all your client's obligations under a replaceable logging contract made in relation to the forest licence, what is the status of the sale of that forest licence under the Forest Act, and why?
(2 marks)

19. True or False: If the Minister attaches a condition to her/his approval of the transfer of your client's forest licences which must be satisfied after the sale transaction closes, and the condition is not later met, the disposition of the forest licences was of no effect under the Forest Act.
(1 mark)

True False

20. True or False: After the transfer of your client's forest licences it remains jointly and severally liable to the Crown for any silviculture obligations on cut blocks harvested by the buyer until those cut blocks reach free to grow status.
(1 mark)

True False

21. What is "stumpage" under the Forest Act?
(1 mark)

22. Describe in general terms how the stumpage rate is determined for timber to be harvested under a cutting permit issued pursuant to a tree farm licence or major forest licence.
(5 marks)

23. True or False: Whether private land was Crown granted before or after March 12, 1906 will determine whether stumpage is payable under the Forest Act on harvesting timber from the land.
(1 mark)

True False

24. Describe 5 remedies available to the Minister under the Forest Act to enforce payment of or to collect unpaid stumpage (include section reference number).
(5 marks)

25. What is the difference between stumpage and a bonus offer made in an application for a Forest Act agreement?
(1 mark)

26. What does the principle of “licensee neutrality” mean as it applies to stumpage determinations under the Forest Act?
(1 mark)

27. If your client is unhappy with a stumpage determination made for its cutting permit(s), what rights will your client have under the Forest Act to have the determination changed? (include section references with your answer)
(2 marks)

28. What is annual rent for a forest licence and where is the obligation to pay it found?
(1 mark)

29. What advantage is gained by holders of Forest Act agreements who pay a fire levy under the Wildfire Act?
(1 mark)

30. Your client needs to purchase logs for its new sawmill operation and has come to you for advice about stumpage obligations that might attach to those open market logs. What advice can you offer about the risk of unpaid stumpage liability and how it can be mitigated?
(4 marks)

31. What are the principal advantages of having your private timberlands become “managed forest” under the BC Assessment Act, and what are some potentially significant disadvantages?
(4 marks)

32. Your client is new to British Columbia and intends to purchase a replaceable forest licence held by a local forest company. What key **Forest Act** regulatory due diligence issues would you investigate first to help your client prepare for negotiations over price and other terms of the sale, and briefly explain why?
(5 marks)
33. If your client decides to purchase all the shares of the forest company that holds the forest licence instead of the license itself, are any approvals required under the Forest Act before the transaction can proceed?
(1 mark)
34. True or False: After the transfer of a replaceable logging contract, the Forest Act stipulates the seller remains jointly and severally liable with the purchaser of the contract for any obligations to the logging contractor arising prior to the time of sale.
(1 mark)
- True False
35. What are the primary forest management legal obligations of an owner of private land that is classified under the Assessment Act as managed forest land?
(3 marks)
36. Name a Forest Act agreement that authorizes the construction of roads on Crown land.
(1 mark)
37. What two general principles best describe the Province of British Columbia's approach to regulation of forest practices under the Forest and Range Practices Act (FRPA) and provide two (2) examples of each principle in action under FRPA.
(4 marks)
38. Who must possess an approved forest stewardship plan under FRPA?
(1 mark)

39. Identify four (4) principal differences between a forest stewardship plan and a site plan under FRPA.
(2 marks)
40. How is compliance with a forest stewardship plan enforced under FRPA?
(1 mark)
41. What are the public review requirements for a forest stewardship plan and where are they found?
(3 marks)
42. What is the most common prescribed qualifier to the objectives set by government in the Forest Planning and Practices Regulation, and name two objectives that are not so qualified.
(3 marks)
43. Identify four (4) forest practice requirements of FRPA (as opposed to planning requirements) and provide section references for each.
(2 marks)
44. True or False: Intended results and strategies of a forest stewardship plan are not set by government.
(1 mark)
- True False
45. What is a silviculture obligation and in where is it found (Act and section reference)?
(2 marks)
46. If an agreement holder submits a declaration to a district manager under section 107(1) of FRPA that it has satisfied an obligation under FRPA or an operational plan or permit, what is the result of that declaration under FRPA and what limits are placed on that result?
(3 marks)

47. Briefly describe the test laid down by the Supreme Court of Canada to determine whether aboriginal title exists on any particular land, and if found to exist the principal legal attributes of that title.

(6 marks)

48. When does the Crown's duty to consult first nations arise and how is the extent of that duty determined?

(4 marks)

49. Identify the Act(s) (including its/their regulations) that primarily address each of the following topics:

(6 marks)

	FRPA	Forest Act	Neither	Both
(a) AAC determinations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) taxation of managed forest land	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) planning forest roads	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) log exports	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e) forest health and pests	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(f) liens for unpaid logging work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(g) objectives set by government for forest management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(h) licensing of timber processing mills	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(i) Tree Farm Licences	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(j) collection of unpaid stumpage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(k) certification of forest practices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(l) log scaling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

50. Describe six (6) attributes of a logging contract that is a replaceable contract under the Timber Harvesting Contract and Subcontract Regulation that make it more valuable to the contractor than a non-replaceable logging contract for the same volume and type of work.

(3 marks)

51. What are the prerequisites to be a replaceable contract governed by the Timber Harvesting Contract and Subcontract Regulation?

(1 mark)

52. How can the holder of a Forest Act agreement vary the amount of work available to the logger under a replaceable logging contract governed by the Timber Harvesting Contract and Subcontract Regulation? (provide 3 examples with section references).
(3 marks)
53. Your client has called to let you know that due to torrential rainfall last winter there was a very significant landslide event that appears to have started at a logging road your client constructed last year on a very steep slope under one of its road permits. Preliminary indications are that a plugged culvert may have caused the washout of your client's road. The Ministry of Forests, Lands, Natural Resource Operations and Rural Development ("Ministry") has invited your client to attend an opportunity to be heard regarding this event. Several hectares of forest were wiped out by the landslide but it does not appear that any fisheries streams were impacted. The client has the following questions – what are your answers?
- (a) Does the offer of an opportunity to be heard signal the Ministry is considering an administrative remedy or offense prosecution for this event?
(1 mark)
 - (b) What sections of what legislation were most likely contravened by this event?
(3 marks)
 - (c) What statutory defences might your client seek to advance if it attends the opportunity to be heard?
(2 marks)
 - (d) If the district manager intends to levy an administrative penalty for this event, what factors is she obliged to consider before making the determination?
(2 marks)
 - (e) If an administrative penalty is levied against your client by the Ministry for this event, what can be done if your client disagrees with the decision?
(2 marks)

54. You have been appointed the Minister of Forests, Lands, Natural Resource Operations and Rural Development in the newly elected Rhinoceros Party government of British Columbia. You have heard of the plight of some of the forest-industry dependant communities in the Interior of British Columbia who have faced massive sawmill and logging worker layoffs and sawmill closures due to very high log and stumpage costs, shortages of wood fibre and weak prices for forest products produced in those towns like lumber, sawdust and woodchips. Your Premier has asked you to come up with a plan to save those towns (and their workers) and do it fast, without jeopardizing the future for workers and citizens of the Province in doing so. It seems like an impossible task, but lucky for you (and your Rhino Party) you took a course in Forest Law and know a bit about the reasons we regulate forest policy in British Columbia the way we have to date. Briefly identify some key policy changes or options you think offer the best hope of saving those forest dependent communities as your Premier has asked you to do. Beware that while there may not seem to be obvious easy solutions, there can be some very bad ones.
(4 marks)

END OF EXAMINATION