

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

FINAL EXAMINATION – April 2021

LAW 359.002
Family Law

Professor Erez Aloni

EXAM PASSWORD: At8Hj9
RESUME CODE: B12838

TOTAL MARKS: 100

(8:50 AM PDT) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS 15 MINUTES**

8:50-9:00 AM Preparation Time (Exam writing not permitted) – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

9:00 AM Exam Writing Time – At **9:00 AM**, you may **proceed past the STOP SIGN** in Exemplify and **begin typing your exam answers**. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

This is an open book examination. Students may use 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.

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. Do not email your professor or anyone else about this while the exam is in progress.

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Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

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- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

If you experience technical difficulties with Exemplify at the very beginning or during an exam, you may attempt to solve your problem/reboot your computer **BY YOURSELF**. You are **STRONGLY** encouraged to spend **NO MORE THAN 5 minutes** attempting to do so. You will **NOT BE GIVEN ANY EXTRA TIME** to complete the exam. **If your attempt to solve the problem is unsuccessful**, or if you choose not to make such an attempt, you **MUST** immediately **begin hand-writing** your exam answers with pen on lined paper. **You may NOT type your exam answer in word-processing software.**

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You must also upload to Canvas your hand-written exam answers into the "Exam Answer File Upload (Word Processor or Hand-written ONLY)" folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file should be named, and the coversheet of your answers should be titled with:
Your Exam Code, Course Number, Name of Course, and Instructor Name
i.e., **9999 LAW 100.001 Law of Exam Taking – Galileo**

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NOTES:

1. This exam is open book. Students may use 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 3 questions, worth a total of 100 points. The first question is worth approximately 35 points, question 2 is worth approximately 45 points, and question 3 is worth approximately 20 points.
3. The time allocation next to each question is a recommendation only; you should divide your time as you think best.
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

Recommended time: 60 minutes

David Rose used to be rich, but after his parents went through a bankruptcy, he was left destitute. He moved with his family to Schitt's Creek, a small town in the BC Interior. In 2014 he started working as a salesperson for Blouse Barn, an upscale, high-end boutique. After a year of work in which he lived with his parents and was penny pinching, he was able to save \$30,000 and buy a one-bedroom condominium in Schitt's Creek. The condo was sold for \$100,000 and he paid \$30,000 as a down payment, and the rest he borrowed by mortgage.

In December 2015, he met Patrick Brewer, a confident and even-tempered person. Things heated up quickly between them and soon they started spending lots of time together. Patrick was living then in a small rented room and had a housemate who constantly made noise and often did not respect Patrick's privacy. Therefore, Patrick and David started to spend much of their time at David's place. They saw each other virtually every day, ate meals together, and slept mostly at David's place (about four to five nights per week). They spent the remainder of the time at Patrick's room or individually. David also gave Patrick a key to his condo, and one dresser drawer for his personal possessions at David's place. When David was out of town, Patrick returned to his own residence pending David's return. Around January 2016, when Patrick suffered from back pain because of a herniated disc, David took steps to add Patrick to his extended health benefits package with his employer, so Patrick could use covered meetings with a chiropractor.

The couple had good, positive relationships. As they are polyamorous, their relationships were not exclusive. They both agreed that they could have casual sexual relationships with other people, as long as they were honest about it. Although Patrick was sometime jealous, he was okay with this arrangement, and, in fact, twice during their first year he had a one-night stand.

In December 2016, Patrick suggested that it was a waste that he kept paying rent on his own place when he spent most of the time at David's condo. David was hesitant; he had never lived with someone before and liked having a place for himself. Although Patrick was often there, the knowledge that he had his own place was comforting. David wasn't sure yet that Patrick was the one for him. But he felt bad for the waste of money and also didn't want to offend Patrick. After taking a day to think, he wrote to Patrick in a text message that he agreed, and ended the text with "I am so very excited and can't wait to share my life with you."

In January 2017, Patrick moved in with David. They maintained separate bank accounts, credit cards, and debts. Patrick paid a monthly payment of \$1,000 for rent to David. They shared the same living space and household chores, such as cooking and cleaning, generally equally. David made all the mortgage payments and took care of all of the property-related expenses, including inspection fees, property tax, insurance, special assessments, condominium management fees, maintenance and repairs, and capital expenses. David paid a substantial portion of the parties' joint living expenses, as he then earned nice commissions on his sales at Blouse Barn. Patrick suffered from increased back pain, and worked part time in Apothecary, a store that sells rebranded local items and crafts. He was paid \$20 an hour, and worked on average 4 shifts a week.

In January 2020, they decided to break up, and Patrick moved out of the condo. Patrick comes to see you and seeks your advice about the following questions:

1. Whether he is entitled to any share of David’s assets and, if so, to what portion and whether he is liable to any debt. In your response consider the following information:

- In 2020, David finished paying the mortgage on the condo. His monthly payment was, on average, approximately \$750 a month.
- The house value is as follows:

December 2015	\$110,000
January 2017	\$140,000
January 2020	\$160,000
September 2020 (time of trial)	\$175,000

2. Whether he is entitled to non-compensatory spousal support. Discuss his chances of receiving support based on non-compensatory entitlement as well as the quantum. Further assume the following information:

- David earns a base salary plus performance bonuses. His income has grown substantially over time. He had earnings of about \$50,000 in 2018; \$60,000 in 2019; and \$72,000 in 2020.
- Patrick’s annual income has been steady at around \$30,000.
- Based on their income, the SSAG “Without Child Support” formula provides a monthly range from \$132 to \$176.

Question 2

Recommended time: 80 minutes

Homer Simpson and Marge began their relationship in 1998, were married in 2005, and had their son, Bart, in August 2011. They separated in July 2013. They reconciled in July 2016 and separated again for a final time in May 2019. In September 2019, Homer moved into a second property also owned by the couple, where he has lived since. They have lived in Vancouver, BC, the entire time.

Lisa was born on July 25, 2015. She is the biological daughter of Marge but not of Homer. She was conceived by artificial insemination without the involvement or agreement of Homer. Although Marge had separated from Homer, she had asked him to be the donor for the second child so that the children could be biologically related and have the same father. Homer, however, declined. He indicated that he did not want the burden of another child.

Lisa was just turning one year old when they reconciled, and had just turned four when they separated again. Homer has not taken on any of the significant parenting decision-making and responsibilities with respect to Lisa since reconciling with Marge. Lisa is, however, emotionally

connected to Homer. She considers Homer to be her father. She and Bart prepared Father's Day cards for Homer with the assistance of Marge. They continued to do that together even after Homer and Marge decided to separate. She calls Homer "Daddy." He has not paid child support for Lisa since she was born. He has been paying the table rate for Bart since their separation.

Marge has had the primary parenting responsibilities for both children since birth, even when Homer and Marge were still together. This included responsibility for feeding, bathing, and clothing them; packing snacks and lunches for them on weekdays and on outings; grocery shopping for the family; taking care of them when they are sick; etc. Homer has left most of this work to Marge throughout the relationship, though he contributed to dinners and weekend breakfasts when he could. He also generally gave the kids a last goodnight after they were all settled in bed. Marge made most of decisions about the children's lives.

On September 15, 2019, upon the application of Marge, the BC Supreme Court ordered that Homer could have access to the children in public locations agreed upon between Marge and Homer. Access would be twice during the week for two hours, from 6:00 to 8:00 p.m., and for three hours every second week on either Saturday or Sunday on a schedule to be agreed upon by the parties every two weeks in advance. All of these orders were interim and by consent.

Since September 2019, Lisa and Bart have had time with Homer on a regular basis, but have not lived with him. Since the separation, Homer has had parenting time two evenings a week and on weekend days. He considers these his "personal time" with the children. Marge has remained, after the separation, a very involved caregiver to her children. She packs healthy snacks for outings, helps the children make Halloween costumes, investigates and indulges their individual and specific interests, and researches how best to manage the various issues that arise in their lives. Homer, conversely, has almost no experience with the daily care of the children. He is unfamiliar with their schools, their teachers, and their schedules.

Marge is a full-time senior software engineer at a software company. Her work provides her some flexibility with respect to working outside of the office outside of core office hours, and she often works from home in the evenings and on weekends after the children are in bed. Homer works as an inspector at the local Nuclear Power Plant. He works alternating morning and evening shifts of eight hours each, and alternating weekends.

Marge seeks to move to Edmonton. She hopes to gain the support and assistance of her extended family—all live there, and all have developed strong relationships with the children—with daily activities and requirements related to caring for the children. She also has a difficult time financially raising kids in Vancouver. Due to the lower prices of housing and childcare in Edmonton, she could afford living there without a mortgage. Finally, her company has offered to transfer her to Edmonton at the same pay and position. Having free childcare provided by her family can help her better perform her work duties, for the same salary.

Homer objects to the move. He thinks that the move has been proposed by Marge to punish him for scolding her.

Represented by lawyers, Marge and Homer filed applications to the BC Supreme Court. They applied for the following orders:

1. Marge seeks primary residency of both children with her in Edmonton, with parenting time to Homer in the form of daily video conferencing through Skype or similar technologies, weekends twice a month with Homer in Edmonton, and trips to Vancouver twice a year, all of which she is prepared to substantially contribute to financially.
2. Homer opposes the move. He applies, instead, for equal parenting time: for one week on, one week off equal parenting time with both children in Vancouver.
3. Homer also seeks guardianship of Lisa.
4. With respect to support, Marge seeks (prospective) child support for Lisa.

You are a clerk for a judge on the BC Supreme Court. He asks you to write a memo detailing the various provisions and rules relevant to the case, their application, and your analysis as to each of the parties' applications.

- Assume that the parties sought remedy based only the Family Law Act. Thus, discuss only the relevant provisions of the FLA and *not* the Divorce Act.

Question 3

Recommended time: 40 minutes

In her article, *The Justices of Rules and Standards*,¹ Kathleen M. Sullivan explains:

Here is the rules and standards debate in a nutshell. Law translates background social policies or political principles such as truth, fairness, efficiency, autonomy, and democracy into a grid of legal directives that decisionmakers in turn apply to particular cases and facts. . . . [I]n a society with laws, using the intermediary of legal directives is thought to make decisionmakers' lives easier, improve the quality of their decisions, or constrain their naked exercises of choice.

These mediating legal directives take different forms that vary in the relative discretion they afford the decisionmaker. These forms can be classified as either "rules" or "standards" to signify where they fall on the continuum of discretion. Rules, once formulated, afford decisionmakers less discretion than do standards. Although the terms "rules" and "standards" are not everyone's favorites, I hope we can stipulate to their definition as follows:

(a) Rules. — A legal directive is "rule"-like when it binds a decisionmaker to respond in a determinate way to the presence of delimited triggering facts. Rules aim to confine the decisionmaker to facts, leaving irreducibly arbitrary and subjective value choices to be worked out elsewhere. . .

¹ 106 Harv. L. Rev. 22, 57–59 (1992).

(b) Standards. — A legal directive is “standard”-like when it tends to collapse decisionmaking back into the direct application of the background principle or policy to a fact situation. Standards allow for the decrease of errors of under- and over-inclusiveness by giving the decisionmaker more discretion than do rules. Standards allow the decisionmaker to take into account all relevant factors or the totality of the circumstances. . . .

Is family law in Canada, as you learned about it in class, characterized more by the use of rule-like or standard-like legal directives? Provide two examples in which the legislature has chosen one of these legal instruments, and argue whether it is suitable or unsuitable in the particular context (put differently, what are the advantages and disadvantages of the particular choice in this area). Make sure to select examples from different contexts of the course. In addition, discuss one case in which the design of a relevant directive as rule-like or standard-like was a major factor in the court’s final decision.

END OF EXAMINATION