

**THIS EXAMINATION CONSISTS OF 7 PAGES (not including this page)**

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**THE UNIVERSITY OF BRITISH COLUMBIA**

**FACULTY OF LAW**

**FINAL EXAMINATION – DECEMBER 16, 2021**

**LAW 395.001**

**Forest Law**

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**TOTAL MARKS: 124**

**TIME ALLOWED: 2 HOURS**

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- 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.

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

MARKS

- 6        1.        Name 6 primary public policy foundations for forestry law in British Columbia and for each one provide an historic or current example of how it has been reflected in the provisions of the Forest Act, Forest and Range Practices Act (FRPA) or their respective regulations.
  
- 2        2.        Where in the Forest Act (provide section number) does one find the list of agreements the government of British Columbia can use to grant rights to harvest Crown timber, and how many types of such agreements are possible?
  
- 1        3.        What is meant by a “volume based” Forest Act agreement and give the most common example.
  
- 3        4.        What has been the dominant principle applied in the decision to award most new Forest Act agreements and provide two examples (with section numbers) where this principle does not apply.
  
- 3        5.        Your client is the holder of a replaceable forest licence issued under the Forest Act. Name five (5) circumstances where the Minister is permitted by the Forest Act to decline to offer a replacement for your client’s existing forest licence.
  
- 3        6.        In ordinary circumstances, how often must the chief forester of the Province determine the allowable annual cut (AAC) of a timber supply area (TSA) and what are the four general categories of information the chief forester must account for in making that AAC determination?
  
- 1        7.        What is the essential feature of an area based agreement under the Forest Act and name an example.
  
- 3        8.        Your client owns private timberland in the Province outside any Forest Act agreement and also holds a Forest Act agreement to harvest Crown timber on provincial forest land. Describe 3 key advantages of harvesting timber on the private timberland v. harvesting Crown timber under the Forest Act agreement that don’t require you to know when the private timberland was originally granted by the Crown.
  
- 1        9.        For question #8 above, why would it be useful to know when the private timberland was originally granted by the Crown?

MARKS

- 1      10.    Your client has been approached by the holder of a Forest Act agreement who wants to borrow money from your client to finance her logging operation. Can the Forest Act agreement be collateral security for your loan to her and if so how is that achieved to obtain a measure of potential priority over her other creditors?
- 1      11.    True or False: If the AAC of a Timber Supply Area (TSA) is reduced by the chief forester then generally speaking the AAC of every Tree Farm Licence in the TSA having an AAC in excess of 10,000 m<sup>3</sup> will be reduced pro rata.
- True                          False
- 2      12.    What is stumpage and who is required by the Forest Act to pay it?
- 4      13.    Briefly describe the 3 key variables in the formulae used to determine the indicated rate of stumpage to be applied to a given volume of Crown timber, and how the formulae take those variables into account.
- 2      14.    What does the “average efficient operator” principle mean for the purposes of stumpage appraisal under Coast Appraisal Manual?
- 1      15.    True or False: a road permit is a form of Forest Act agreement that grants rights to harvest Crown timber.
- True                          False
16.    The current cut control period of a forest licence with an AAC of 400,000 m<sup>3</sup> commenced January 1, 2018. The harvesting history of the licence (including all waste assessments) is as follows:
- |   |                          |
|---|--------------------------|
| Previous cut control period (2013 – 2017 inclusive) | 1,700,000 m <sup>3</sup> |
| 2018  | 380,000m <sup>3</sup>    |
| 2019  | 120,000m <sup>3</sup>    |
| 2020  | 450,000m <sup>3</sup>    |
- 1      (a)    What volume can be cut in 2021 without a financial penalty?
- 3      (b)    If the forest licence holder cuts 600,000 m<sup>3</sup> in 2021 and another 700,000 m<sup>3</sup> in 2022, what are the Forest Act implications?

MARKS

- 1        17.    True or False: Undercut AAC volume that is not cut or wasted in a cut control period of a forest licence cannot be carried forward to be harvested in the next applicable cut control period.
- True                          False
- 1        18.    What is the principal difference between a bonus offer and a bonus bid made or given when seeking to be awarded a Forest Act agreement?
- 3        19.    Briefly describe three provisions of the Forest Act that apply to timber harvested from private land even if the land is not subject to or located within a Forest Act agreement.
20.    Your client is a major multi-national consumer goods corporation (“Lululime”) that owns 100% of the shares of a BC-based corporation (“Stumpco”) which it won in a poker game. Stumpco is the holder of several replaceable Forest Act forest licences in TSAs on the BC Coast and harvests timber under those forest licences with a combination of replaceable and non-replaceable logging contractors. Lululime wishes to get out of the business of harvesting timber from Crown land in BC and has heard you took Forest Law 395 so they have come to you for advice.
- 4        (a)    If Lululime wants to keep Stumpco but wishes to cause Stumpco to sell its forest licences, what are the 4 Forest Act conditions that must be met to make the forest licence sale effective?
- 3        (b)    If Lululime decides to sell its shares of Stumpco to achieve its objective of getting out of the BC logging business, what three circumstances could trigger the Minister’s right to take administrative action under the Forest Act after the change of control of Stumpco occurs?
- 2        (c)    Describe two administrative actions the Minister can take under the Forest Act if any of the circumstances you describe in (b) above trigger the Minister’s right to do so?
- 2        (d)    If Stumpco sells the forest licences, what becomes of Stumpco’s outstanding liabilities under the Forest Act in relation to the forest licences it has sold?
- 1        (e)    True or False: If the Minister attaches a condition to her/his approval of the transfer of Stumpco’s forest licences to 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.

MARKS

Question 20, continued.

True False 

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

True False 

- 5 21. Now through some miracle of ethical blindness you have been retained instead by the prospective purchaser of the forest licences of "Stumpco" described in question #20 above and your client is about to embark on a due diligence exercise to determine whether to buy and how much to pay Stumpco for its forest licences. Name ten (10) important Forest Act or FRPA-relevant matters you will advise your client to get checked out or confirmed as part of its due diligence and briefly describe (in just a few words) why you think they are important.

- 5 22. Describe 5 ways the Forest Act allows the Crown/Minister to reduce the AAC of a Forest Act agreement without the consent of the agreement holder, and for each way provide the relevant section number of the Forest Act and indicate whether or not compensation is payable under the Act for the AAC reduction.

- 2 23. What benefit under the Wildfire Act is gained by holders of Forest Act agreements who pay their annual rent on time?

- 3 24. Who is required to have an approved forest stewardship plan under the Forest and Range Practices Act (FRPA) and when must they have it?

- 4 25. How was the Forest and Range Practices Act designed to ensure that the BC government's objectives for forest management would be achieved on the ground?

- 4 26. Before a forest stewardship plan can be approved under FRPA, what are the primary prescribed obligations for public notice, review and comment on the plan and where are those obligations found?

MARKS

- 3        27.    Identify and provide section references for three (3) substantive forest practice requirements of FRPA (i.e. not planning or process requirements).
- 1        28.    True or False: Site plans are the only plans required under FRPA that must include a map.
- True                          False
- 3        29.    The Forest Practices Board has often been described as a “watchdog” for forest practices in BC. Give three good examples from the Board’s statutory mandate that support such a description.
30.    Your client has called you for some advice regarding a letter it received from the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (“Ministry”) about some logging of a cut block under a Forest Act agreement held by your client and performed by a logging contractor your client hired for the work. The Ministry alleges that the area where your client’s logging contractor harvested the timber is not the same as the area marked for logging on the cutting authority (a cutting permit) your client holds for the cut block. The Ministry has invited your client to attend an opportunity to be heard regarding this matter. Your client has heard that a similar letter was received by your logging contractor directly. Your client has the following questions – what are your answers?
- 1        (a)    Is there a relevant deadline for your client to respond to the opportunity the Ministry has offered your client to discuss or provide information about this matter, if so what is it?
- 1        (b)    What section of what legislation is the Ministry most likely alleging was contravened in this event?
- 1        (c)    Why is your client getting this letter if the logging outside the cutting authority was done by its logging contractor totally unbeknownst to your client?
- 2        (d)    What statutory defences might your client and its logging contractor seek to advance if they attend the opportunity to be heard, and is it possible one of them (your client or the contractor) might succeed while the other fails to establish a defence?
- 2        (e)    What factors is the district manager obliged to consider before making a determination to levy an administrative penalty for this event?

MARKS

- 2 (f) If the district manager decides not to levy an administrative penalty for this event, is that the end of the story or can the Ministry appeal, and if so to where? Can anyone else appeal?
- 3 31. Describe the key elements of the test applied by the courts since the *Sparrow* decision to determine whether an infringement of section 35(1) aboriginal rights can be justified.
- 5 32. When does the Crown's duty to consult first nations arise in the context of asserted but not yet proven aboriginal rights, what two matters most influence the strength, scope or depth of that duty and what Supreme Court of Canada decision first described the legal triggers and tests for this duty?
- 2 33. Briefly describe two provisions in the Forest Act, FRPA or their regulations we've studied that appear directed toward reconciling asserted aboriginal rights with the Crown's exercise of authority to grant timber harvesting rights on Crown land before aboriginal title or rights are declared or acknowledged (include section references).
- 1 34. What is the "inherent limit" to aboriginal title as found by Canadian courts?
- 3 35. In addition to potential administrative penalties or fines, what three (3) general categories of cost or loss may the BC government seek to recover from persons who have contravened the Wildfire Act (assuming no statutory defences or exceptions/exemptions are available)?
- 3 36. If you are advising a buyer of logs harvested from Crown land in BC, what are three (3) options you would consider suggesting to your client to protect it from liability for unpaid stumpage on those logs?
- 1 37. Why is it significant that an appeal to the Forest Appeal Commission of an administrative finding of a Forest Act or FRPA contravention is a trial *de novo*?
- 4 38. Identify four (4) key attributes of a replaceable logging contract under the Timber Harvesting Contract and Subcontract Regulation ("Bill 13 Regulation") that would make it more valuable than a non-replaceable logging contract for the same volume and type of work.

MARKS

- 1        39.    True or False: Every new contract for a phase of a timber harvesting operation in the coastal region of British Columbia that has a term of more than 6 months in a year must be a replaceable contract as required by the Bill 13 Regulation.
- True                          False
- 2        40.    What is a woodworker lien and who is entitled to assert it?
- 4        41.    What are the principal advantages and disadvantages of getting your private timberlands designated as a “manged forest” in British Columbia?

END OF EXAMINATION