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

FINAL EXAMINATION – APRIL 2023

LAW 359.001/559D.001
Family Law

Professors Santerre and Cameron

TOTAL MARKS: 100

TIME ALLOWED: 27 HOURS

- NOTES:**
1. This is an open book examination.
 2. ANSWER ALL QUESTIONS.
 3. Apply the *Family Law Act*, S.B.C. 2011, c. 25, as it existed before Bill 17 was passed at 3rd Reading on April 3, 2023.
 4. Your exam response must be returned to Fiona Chan chan@allard.ubc.ca by noon on Saturday, April 22, 2023. Please ensure that your email to Fiona includes your full name, student number and exam code. If possible, please submit your exam response in Word (.doc. or .docx).
 5. Your exam response must be less than 4,250 words. For each word over that limit, we will deduct 0.2% up to a maximum of 50%.
 6. Students registered in Law 359.001/559D.001 Family Law who receive extra time accommodations through the Centre for Accessibility will NOT receive the extra time accommodation for the

take home exam distributed on April 21 at 9:00am and due at noon on April 22. The Centre for Accessibility advised the law school that extra time accommodations only apply to those exams that are fewer than 24 hours in length. If students have any questions or concerns they should contact their advisor at the Centre for Accessibility.

7. The Faculty Council at Allard Law has implemented a policy, effective March 17, 2022, for Penalties for Late Submission of a Take-Home Exam.

THIS EXAMINATION CONSISTS OF 8 QUESTIONS

PART A) LONG FACT PATTERN QUESTION

FACTS

- a) Carmen and Anthony started dating in June 2015. At that time Carmen was taking general studies classes at Douglas College. Anthony had completed his Bachelor of Business Admin at SFU in 2013. When he and Carmen started dating, he was working for his parents' construction company in Kamloops.
- b) In 2015, Carmen was living with her cousin, Jennifer, in Coquitlam. Carmen was living off of student loans and had a part-time job at the Shark Club. Carmen and Jennifer were close in age and had a strong friendship.
- c) Carmen and Anthony met at a concert at the Commodore in Vancouver. He met Carmen in line at the bar, they started talking, and as fate would have it, they ran into each other on the street after the show. Anthony asked for Carmen's number. They started texting and chatting. A few weeks later, Anthony drove from Kamloops to take Carmen out on a date.
- d) They really hit it off and dated long distance, taking turns making the trip to each other's homes. Carmen met Anthony's family in Kamloops; Anthony took Jennifer and Carmen out for dinner few times. After about 8 months, Anthony raised the subject of Carmen moving to Kamloops. He explained to her that he found the commute draining and wanted to see more of Carmen.
- e) Carmen agreed with Anthony – she was having fun with him and wanted to spend more time with him, and she appreciated that the commute was less than ideal. Carmen decided to move to Kamloops once she completed her year at Douglas College. She moved into the basement suite at Anthony's parent's house in late May 2016. She was not paying rent; Anthony's parents insisted she stay for free until she found a job. Anthony was living upstairs with his parents, but ended up spending all his time in the basement suite. By June 2016, Carmen and Anthony were living with each other in the basement suite. The basement suite does not share any bathrooms or kitchen facilities with the upstairs of the house where Anthony's parents live.
- f) A few weeks after Carmen moved to Kamloops, Anthony took a job at the Sandman Hotel in upper management and left his parents' company. While initially he was excited about the move, he quickly found himself overwhelmed with new responsibilities. He was stressed and working longer hours. At home, he was short-tempered and lacked patience. Carmen noticed that he started expecting a lot from her in terms of house-making and if she was not meeting his standards, Anthony would become more demanding and angry.

(Part A, continued)

- g) Carmen struggled to meet new people in Kamloops. When Anthony started working longer hours, she felt very alone. She really missed her cousin Jennifer.
- h) In early September 2016, Carmen learned she was pregnant. She panicked – she was not planning to get pregnant and her relationship with Anthony was still pretty new.
- i) When Carmen told Anthony about the baby, he demanded that she have an abortion. Carmen said she was not sure if she wanted to abort the pregnancy, and mentioned she wanted to see Jennifer. Anthony freaked out. He insisted that Carmen stay in Kamloops and could only fly back to the Lower Mainland – no more driving – for the safety of the baby. When she told Anthony she could not afford to fly to Vancouver, Anthony told her “tough.” Carmen was shocked. She was taken aback by his change in position on abortion; he had never reacted that way before. Anthony had not been so uncaring before.
- j) Initially, Carmen assumed that Anthony reacted so oddly because he was struggling with the news of the pregnancy and the idea of becoming a father. She didn’t tell anyone – not even Jennifer.
- k) As the weeks passed, Carmen and Anthony decided to carry the baby to term and start a family together. Their discussions were sometimes tense, but not as aggressive as the argument that happened when Carmen told Anthony about the pregnancy.
- l) Anthony suggested that because they were starting a family together, they should join their finances. He suggested that Carmen close her bank accounts and transfer her savings to the new joint account. He also suggested that he and Carmen deposit their paycheques (Carmen had started working at Starbucks in Kamloops) to the joint account, and they would use these funds to buy baby furniture and supplies, while saving for a down payment on their own condo. Carmen was not totally comfortable with these ideas, but she agreed after Anthony raised them a few times.
- m) Anthony also suggested that Carmen transfer her cell phone to Rogers so they could have a family bundle. Carmen thought that made sense, as it would reduce their expenses, so she did it.
- n) Jennifer came to visit when Carmen was about six months pregnant. Jennifer was surprised at all the changes in Carmen’s life. Jennifer also commented on

(Part A, continued)

how lonely Carmen must be. She made a point of calling Carmen every few days.

- o) About six weeks later, Anthony raised with Carmen how much time she was spending on the phone with Jennifer. He told Carmen that it was not healthy for her to spend that much time on the phone. Jennifer kept calling. Anthony raised the issue a few more times. Eventually, he confronted Carmen with highlighted account statements – he had highlighted all of Carmen’s calls with Jennifer. The same night, Anthony showed Carmen highlighted statements for the joint account and accused Carmen of spending too much on baby items. He said he did not approve of Carmen and Jennifer’s “shopping spree.”
- p) When Carmen defended her purchases and tried to explain how helpful speaking with Jennifer had been, Anthony lost it and threw a glass of water at the wall. He yelled so loudly that his mother sent a text message to see what the commotion was about. Carmen lied and said they were watching a movie with the surround sound on and would turn it off.
- q) The next day, Carmon apologized to Anthony and she returned many of the baby items she had bought. A few days later, Anthony came home with replacement baby items – some of which were gifts from friends or hand-me-downs, but some were new.
- r) In the last few weeks of her pregnancy, Anthony and Carmen argued fairly regularly. Anthony was very stressed at work, and was not able to take the paternity leave he wanted. When they argued about finances, things would get heated. Jennifer suggested that Carmen do a cohabitation agreement to prove to Anthony that she was not after his money. When Carmen suggested this to Anthony, he agreed.
- s) Two weeks later, Anthony presented Carmen with an agreement his parents’ lawyer had drafted. Its basic terms include that, if the parties separated, each party would keep the assets in their name and the joint account would be divided 70/30 – to reflect that Anthony disproportionately contributed funds to the joint account given his higher income. When Carmen asked Anthony about what other assets he had – she remembered him telling her early on that he had a savings account, a stock account and Bitcoin, and none of those were mentioned in the Agreement – he was taken aback at Carmen’s boldness. He accused her of being two-faced. When she explained she remembered him talking about these things, he snapped at her – he told her not to try to blame this on him, called her greedy and ungrateful, and started pointing out all the generosity he and his parents had provided. He told her his parents could claim “back rent.” As he pointed at the appliances his parents gave them, Anthony got within inches of

(Part A, continued)

Carmen's face. She could feel his breath on her. She tried to back away, but when she did, he grabbed her arm and held her in place. Anthony was so angry that his face turned red. Carmen started crying and did not know what to do.

- t) When Anthony let go, he told Carmen she had better sign the Agreement or his parents would stop supporting them and what would that mean for the baby? Carmen's heart sank. She knew that even with Anthony's salary, it would be hard to afford all the additional expenses of a baby plus save for a down payment. When she got back in control of her emotions, she told him she would sign the Agreement. She did so five (5) days later.
- u) The baby, Michael, was born via C-section on June 20, 2017. Michael was generally healthy, but had some colic. Anthony's mom helped out a lot with caring for Michael and taking care of the household when he first came home. Given she was recovering from the C-section, Carmen was very tired, needed to rest, and could not lift anything. Carmen was able to breastfeed and hold Michael, change his diapers, bathe him, put him to sleep and console him. Anthony tried to care for Michael, but the baby always wanted Carmen. Anthony was able to change Michael's diaper sometimes, but not if Michael was fussy. Michael refused to take a bottle. Anthony often struggled to put Michael down for a nap or to sleep at night.
- v) After four weeks off, Anthony had to return to work. This was a nightmare because Michael would wake and cry in the night, and it was impossible for anyone to sleep. Anthony was exhausted, moody, and lacked patience. When he came home, he routinely criticized Carmen for leaving a mess everywhere and not preparing dinner. One day when Carmen was trying to comfort crying Michael during an argument with Anthony, Anthony pushed Carmen and Michael's hand got pinched under Carmen's arm – Michael started wailing. Anthony left in a huff, saying "Forget this, I am out. Deal with this on your own." Anthony moved back upstairs to his parents' home.
- w) About six weeks later, Carmen and Anthony reconciled and Anthony returned to the basement suite. Initially, things between Carmen and Anthony were good. Anthony got into the routine of sleeping on the couch while Carmen and Michael slept in the bedroom. Anthony continued to care for Michael. But after a few months, Anthony and Carmen started arguing again.
- x) In fact, the pattern of Anthony and Carmen arguing, having a heated argument or blow out and making up, repeated more times than Carmen could remember. They often yelled at each other. On a few occasions, things escalated to the

(Part A, continued)

point of Anthony pushing chairs in in an aggressive way, or throwing keys, photo frames, cell phones and other objects – sometimes throwing things at Carmen, other times throwing things towards her and other times across the room. Anthony punched a hole in the wall and the door to the bedroom. Michael was usually at home when his parents fought, although sometimes Anthony's parents would come get Michael when they could hear an argument brewing. Carmen is not sure if Michael saw Anthony throwing things or pushing her.

- y) Carmen knew that it was wrong for Michael to be exposed to the arguments, but she thought this was normal. She loved Anthony and wanted to keep her family together. Plus, she had no idea where she would go if she left Anthony. She didn't want Michael to be raised without his father, or at a shelter or in low income housing. She wanted Michael to have a strong relationship with his paternal grandparents and father.
- z) Carmen continued to stay at home with Michael until he started school. Anthony continued to work Monday to Friday, but helped to care for Michael in the evenings and on the weekend. Since Michael turned three (3), Anthony took Michael to soccer on Saturdays – that was their special activity and Michael always looked forward to spending time with his dad on the field.
- aa) Michael started kindergarten in September 2022 (assume he will graduate in June 2035). Carmen returned to work, part-time, at Starbucks in mid-October 2022. As before, she deposited her paycheques to the joint account.
- bb) In January 2023, Carmen and Anthony entered a one year lease with his parents. His parents explained that now that Michael was in school and Carmen had returned to work, Carmen and Anthony should start paying \$800 per month to live in the basement suite. Carmen thought that was a very fair amount of rent – it was about \$1,000 less than market rent and after all, she and Anthony had lived there rent free since May 2016. Also, by January 2023, Anthony was earning about \$200,000 annually as salary, so their family had more resources and could afford to pay something towards rent.
- cc) On March 29, 2023, Carmen was told that Michael was having behavioural issues at school. Michael's teacher told her that he was reluctant to play with the other children in his class. The teacher also told Carmen that when Michael was frustrated by something, he often over-responded and on one occasion, Michael threw sand at another student. During a meeting with Michael's teacher, Carmen said something to excuse his behaviour, like "he probably learned that from his father." Michael's teacher tried to have Carmen open up about what her home life was like, but Carmen deflected and changed the subject.

(Part A, continued)

- dd) A few days later, Carmen told Jennifer – who was still her closest friend – what had happened during the meeting with Michael’s teacher. She also told Jennifer what happens during her and Anthony’s arguments and how many items were broken or damaged. She told Jennifer that Anthony had slapped her a few times – most recently last week – and recently threatened to throw her out the front door. Jennifer was surprised; she knew that Carmen and Anthony’s relationship was tumultuous, but did not realize how bad things were. Jennifer suggested that Carmen speak with a family lawyer to get some legal advice.
- ee) Carmen trusted her cousin and booked a meeting with you. Carmen reached out to you, a junior family lawyer, because she cannot afford lots of legal fees. Your assistant provided an intake form for Carmen to fill out, which included questions about family assets and debts.
- ff) Carmen went to the bank to request the most recent bank statement for the joint accounts, so she could better fill out the intake form. When she reviewed the statement, she was shocked to see that the chequing account balance was only around \$5,000 and the savings account balance was only \$7,000. Based on what Anthony earned and how much was spent on groceries, household items, Michael’s stuff, her personal items and clothing and the things she bought for Anthony (note that Carmen did all the shopping and Anthony didn’t really buy anything for himself), there should have been about \$85,000 in the joint accounts – that was supposed to be the down payment she and Anthony had been saving for. Carmen asked for copies of the account statements for the past six months, which she reviewed. The balance in the joint accounts at the start of March 2023 was \$83,457 – close to what Carmen had expected. After March 15, 2023, she saw many, many transactions out of the joint accounts. Carmen had no idea where the funds went; she did not recognize the account numbers for the transactions out of the account.
- gg) When Carmen met with you, she told you that she had not confronted Anthony about the missing savings because she was afraid of what he will do if she questions him. She also expressed that she was afraid of what Anthony will do if she ends the relationship. When you ask Carmen to explain her fears, she tells you that she is worried he will damage her personal items, try to restrain her, or physically hurt her if she tells him she is ending their relationship. Carmen also advises that she and Anthony never married.

(Part A, continued)

QUESTIONS & MARKS

1. **21 MARKS:** Identify three urgent legal issues that Carmen should address and for each issue, explain what terms you recommend she seek and why. Explain your reasoning and identify any legislation that applies.
2. **15 MARKS:** Carmen asks you if Anthony will have parenting time with Michael, and if so, how much. What do you tell her? Explain your reasoning and identify any legislation that applies.
3. **13 MARKS:** Carmen asks you if she will receive spousal support, and if so for how long. What do you tell her? Explain your reasoning and identify any legislation that applies. If applicable, you should identify the name of the formula that would be used to calculate the duration of spousal support. **[NB: you are not required to address income determination or the amount of spousal support to be paid.]**
4. **11 MARKS:** Carmen asks you is the Cohabitation Agreement binding, and if so, is there any way to get around it. What do you tell her? Explain your reasoning and identify any legislation that applies.

Part B) Short Answer Questions

5. **10 MARKS:**

FACTS: Novinha and Andrew lived together in a marriage like relationship for 10 years and separated in 2019. They have an 8-year-old daughter, Valentine. They entered into a Final Order by consent in 2020, which provided, among other things, that:

- Valentine would live with Novinha primarily
- Andrew would pay child support on the first of each month to Novinha in the amount of \$1,418 per month
- The parties agreed that Andrew's *Guideline* income for child support purposes was \$158,000
- The parties will review the amount of child support payable on May 1st of each year, commencing in the year 2023
- Andrew will continue to pay child support until Valentine is no longer a child for the purposes of child support
- Andrew paid spousal support to Novinha as a lump sum and he has no further obligation to pay spousal support.

At the time the parties entered into the Final Order in 2020, Andrew worked as an accountant at KPMG.

Novinha is worried about her future ability to meet expenses for herself and Valentine because Andrew has made a number of changes in his life since separation. He left his position at KPMG and has started working for a cross-country ski tour business. He posted a picture of himself skiing on his Facebook page with the caption, "Next chapter starts now. Why work 24/7 when you can play outside?" In anticipation of the review of support, the parties have exchanged updated financial disclosure.

From Andrew's disclosure, you know the following:

1. Andrew's T1 and NOA 2020
 - a. Line 10100 (Employment income) – \$154,500

(Part B, Question 5, continued)

- b. Line 12100 (Interest and other investment income) – \$4,500
- c. Line 15000 (Total income) – \$159,000
- d. Line 21200 (Annual union, professional, or like dues) – \$1,000

2. Andrew's T1 and NOA 2021

- a. Line 10100 (Employment income) – \$148,300
- b. Line 12100 (Interest and other investment income) – \$4,800
- c. Line 15000 (Total income) – \$153,100
- d. Line 20800 (RRSP deduction) – \$20,000
- e. Line 21200 (Annual union, professional, or like dues) – \$1,000

3. Andrew's T1 and NOA 2022

- a. Line 10100 (Employment income) – \$62,400
- b. Line 12100 (Interest and other investment income) – \$4,900
- c. Line 15000 (Total income) – \$67,300
- d. Line 20800 (RRSP deduction) – \$5,000
- e. Line 21200 (Annual union, professional, or like dues) – \$600

QUESTION: What position do you advise Novinha to take with respect to Andrew's Guideline income for the purposes of the May 1, 2023, review of child support? Explain your reasoning and identify any legislation that applies.

(Part B, continued)

6. **10 MARKS:**

FACTS: Alanna and George began living together in a marriage like relationship in March 1999. They never married. They had two children, who are both now adults. Alanna was a stay at home parent for the period February 2000 until July 2014, and homeschooled both children until they had completed elementary school. Since July 2014, Alanna has worked part time in customer service at the local mall. She currently earns about \$33,000 per year. Throughout the relationship, George worked as a digital security specialist. In 2005, he started his own business, "Spy Catchers Ltd.", which has flourished. He was able to grow his business by working long hours and taking extended trips to make new connections and speak at various conferences. He was able to do this because Alanna was taking care of the children and the home while he was away or working. At the time of separation, he was earning about \$124,000 per year.

George left the relationship in March of 2019. At the time the parties separated, Spy Catchers Ltd. had been recently appraised with a fair market value of \$900,000. To the best of Alanna's knowledge, George's business has continued to be successful since then.

However, after the parties separated, Alanna did not want to talk to or think about George. She has spoken to him directly on only a handful of occasions each year since then, and has limited the topic of conversation to discussing their adult children. In October 2020, George retained a lawyer, Jonathan, who sent an offer letter to Alanna on November 15, 2020, and suggested that if Alanna did not agree to terms of the offer, then the parties should schedule a mediation. Alanna never responded to the letter. She has not heard from Jonathan since the letter dated November 15, 2020.

The date is now April 21, 2023. Alanna is speaking to you, a junior family lawyer, for the first time.

QUESTION: Alanna wants to know if she can obtain a court order requiring George to pay her spousal support or to split the value of his business with her under the *Divorce Act* or the *Family Law Act*. What do you tell Alanna? Explain your reasoning and identify any legislation that applies.

(Part B, continued)

7. 10 MARKS:

FACTS: Rick and Max started living in a marriage like relationship in 2013, were married in 2014, and have been separated since January 2021. They are the parents of Rachael, a 7-year old. Max and Rick are in the process of negotiating a separation agreement, but on an interim basis Rachael spends her time with Rick and Max about equally, on a week-on/week-off basis.

The parties purchased a recreational property at Qualicum Beach in 2018, paying the full purchase price in cash and without a mortgage. In April 2020, Rick suggested the idea of completing a significant renovation so that they could start earning rental income from the property – his idea was to build six yurts in the (rather large) backyard, each of which could be rented out individually. Max was reluctant, but given the COVID-19 pandemic, thought it would be good for the couple to have hobby. The renovations started in July 2020. Assume appropriate permits were obtained for the renovations.

After separation, Rick moved out of the family home into the recreational property at Qualicum Beach. A few weeks later, Max told Rick that he no longer supported the renovations. Max was concerned about the costs and tying up family property. After some thoughtful discussions, the parties agreed that the recreational property was worth \$600,000 as is, and that Rick could continue the renovations. In order to do so, Rick obtained a loan from his (very wealthy) father, in the amount of \$800,000 in Rick's sole name, to fund the remaining renovations. This new financing is not secured against the recreational property; but was properly documented as a personal loan owing by Rick to his father. Rick proceeded with the renovations in the summer of 2021 and completed the project in September 2021.

The yurts were a tremendous success. As soon as they hit Airbnb, Rick was able to rent them out about 90% of the remaining days in 2021 and 99% of 2022, and so far, things look great for 2023. Rick spoke to Philip, a top realtor for the region, and Philip told Rick that the value of the property had likely increased by \$1.5 million because of the renovations and successful rental enterprise. Rick believes that what Philip said is true. Rick obtained an appraisal and the fair market value of the recreational property was \$2.3 million as of April 4, 2023.

QUESTION: Rick would like to continue living in the recreational property; he thinks it is a great home for him and Rachael when she is living with him. Rick has asked you, his lawyer, how much will it cost for him to buy out Max's interest in the recreational property? What do you tell Rick? Explain your reasoning and identify any legislation that applies.

(Part B, continued)

8. 10 MARKS:

QUESTION: Identify three actions that a lawyer either must take, should take, or should consider taking, apart from seeking a court order, in order to promote the safety of a spouse who has recently left a relationship in which the spouse experienced significant family violence. Explain the purpose of each action you have identified, and identify any professional or statutory obligations that are related to the actions you have identified.

END OF EXAMINATION