1. This exam is a qualified open book exam. Only student notes, the volumes of the course materials, the handouts and the statutes are permitted in the exam.

2. Questions may raise issues that do not have one “right” answer. If so, identify and discuss fully arguments that could be raised on all sides of each issue, assessing their relative strength.

3. Support your answers by clear references to statutory provisions, case law and other relevant sources, showing how and why they apply to your answers.

4. You may use abbreviations for statute titles (eg. FLA, DA) and for names of parties. Refer to cases in short form (citations are not necessary).

5. If you find it necessary to make assumptions, state what they are and why you are making them. Make only reasonable assumptions.

6. If you are handwriting, please write LEGIBLY on EVERY OTHER LINE of your booklet. Please do not write on the back of pages.

7. Clearly identify the question you are answering.

8. Use only your examination code to identify yourself.

THIS EXAMINATION CONSISTS OF 1 FACT SITUATION AND 9 QUESTIONS. THE MARKS FOR EACH QUESTION ARE OUTLINED.
FACT SITUATION

Ezra and Emma were married on May 2, 2002. They had met in 1997 while they were both completing their last year of university. At the time, Emma was completing a bachelor of education and Ezra a bachelor of engineering. Both Ezra and Emma were born in 1973. When they met, Emma had a young daughter from a previous relationship – Zoe, who was born May 1, 1996. Zoe’s dad and Emma had never lived together, but he did pay support for Zoe of $200.00 per month based on a 1996 guideline income of $24,000.00 per year.

All three, Zoe, Ezra and Emma, began living together in January 1998 and continued to live together as a couple until they separated in October of 2013. They have continued to live in the same home, but in separate bedrooms. When they began living together in Victoria, Ezra moved in to Emma’s condo, which was owned by Emma’s dad. Emma’s dad transferred it to Emma’s name alone in 1999. At that time, the condo had a value of $200,000.00 and was clear title. Ezra moved in with his clothes and a student loan debt of $10,000.00. Emma had no student loans as her dad paid her education costs. She owned a new 1997 Honda Civic which was traded in for $3,000.00 when she bought her current vehicle, a Dodge Caravan.

After graduating in April 1997, Emma obtained a permanent teaching position at a local elementary school and Ezra obtained a permanent job at the City of Victoria as an engineer. They were both hired at a wage of $60,000.00 plus medical and dental benefits and pension. For the next 6 years they continued to live in the condo. As time went on, Zoe’s dad paid less and less attention to Zoe and Ezra became her dad. Zoe and Ezra had a good relationship until recently, when Zoe felt Ezra was not being fair to Emma. Zoe’s dad stopped paying support in 1998 once Ezra and Emma moved in together. Ezra told Emma not to bother enforcing child support as he would look after Zoe. Zoe has had little contact with her biological dad except for the occasional phone call.

After their marriage in 2002, they began talking about having children. Emma became pregnant in 2003 and on May 6, 2004, twins Harry and William were born. Fortunately it was close to the end of the school year, and Emma left work in May to go on maternity leave. She expected to return to teaching in January 2005. The boys were born premature and required a great deal of care. Emma’s mother helped a lot. Ezra was busy with his job and was not able to assist much.
Now that the twins were born, it became apparent that the condo was too small for 5 people. They decided to sell the condo and buy a home in Fairfield. They sold the condo for $150,000.00 net, as the market had gone down and bought a home in Fairfield for $300,000 in July, 2005. Emma put the $150,000.00 down from the sale of the condo and they obtained a joint mortgage for $150,000.00. The house was put into joint names as the bank required that due to the mortgage being in joint names. Ezra assured her that her down payment would be safe.

The house needed a lot of work. At this time, an uncle of Ezra’s died leaving him $50,000.00 in 2006 which was put into their joint account and used for renovations. No receipts were kept as the work was done by contractors who only wanted to be paid by cash. Emma’s parents contributed cash as well, but no one remembers how much. Both Ezra and Emma worked hard completing the renovations, receiving help from their respective parents.

When Emma went back to work, the parties hired a nanny to look after the twins and Zoe after school. Their life was difficult, but they managed. They were not big spenders. They made double payments on the mortgage to try and pay it off, as well as contributing to a RESP for the children and RRSPs for themselves.

Then in 2007, Ezra lost his job with the City of Victoria. He was unemployed for 9 months, during which he helped the nanny look after the children and took Zoe to her many activities. He applied for many jobs but was unable to secure work in B.C. He finally got a job in Fort McMurray at Suncor in 2008. The job paid well at $175,000 per year, plus a handsome benefit package of pension plan, health plan and stock options. He worked 2 weeks in Ft. McMurray and would come home for 1 week. They discussed moving to Ft. McMurray but it would be too expensive to purchase a home there and they did not want to leave extended family. At this time it was also becoming apparent that Harry was not developing normally. They had had concerns regarding his development for a couple of years, but it was not until 2008 that they received the diagnosis that he had a moderate form of autism. Emma had had to take many days off from work to attend specialists. He required an extensive pre-school behavioural program consisting of physiotherapy, occupational therapy, speech and language therapy, all of which was to be coordinated by a parent. As Ezra was earning more, it was decided that Emma would leave her
employment as a teacher in September of 2008. Unlike Ezra, she cashed in her teacher’s pension and received $50,000.00 back in contributions which she put into an investment account in her name. Ezra had left his pension at the City of Victoria which is still sitting with the City to be obtained upon retirement.

Ezra continued to work at Suncor until January 2011 when he was told he would be laid off. At this time, he had a pension plan valued at $50,000.00, and 8000 stock options which were not exercisable until November 2015 at $30.00 per share. As at April 2015, Suncor’s stock value is $39.00 per share. He transferred his pension into a locked-in RRSP.

Ezra decided that he would start his own consulting company as so many of his colleagues had done, which he did in February 2011. As a result of his many contacts, he obtained work quickly and was making a good income. The Alberta oilfield was in a boom period. He built a thriving business in a very short space of time, through hard work. His corporation was incorporated January 1, 2011 and was called Ezra and Emma’s Consulting Ltd. They each had 50% of the shares. Emma did the books, answered calls, did the invoices, paid bills and did the banking. She received a salary of $50,000.00 for her work. The company income was growing. Revenues for Jan 1 – Dec 31, 2011 were $250,000.00, Jan 1-2012 – Dec 31, 2012 were $400,000.00, Jan 1, 2013 – Dec 31, 2013 were $500,000.00 and Jan 1, 2014 – Dec 1, 2014 were $550,000.00. Ezra left some money in the corporation to reduce tax and paid himself a salary. His line 150 was:

- 2011 - $150,000.00
- 2012 - $200,000.00
- 2013 - $250,000.00
- 2014 - $250,000.00

Emma’s income for those years was $50,000.00 received from the corporation.

The corporation’s pre-tax income over these years was:

- 2011 - $10,000.00
- 2012 - $100,000.00
- 2013 - $100,000.00
- 2014 - $150,000.00

The company paid for his cell phone and his BMW lease at a cost of $1,000 per month. The corporation owned few assets and its expenses consisted of travel expenses, vehicle, cell phone
and $1,000 a month attributed to rent for use of one room in the home, which has helped reduce their personal expenses.

They were able to pay off the mortgage by late 2013, but took a line of credit on the home to buy Emma a Dodge Caravan at $35,000.00 and do some upgrading of the house at $65,000.00. Emma wanted a new kitchen. As a result of various holidays and luxury expenses, their credit cards are maxed out at $20,000.00 each. They have no other debts. They did contribute to an RESP valued now at $50,000.00 and RRSPs in each of their names with Emma now having $50,000.00 and Ezra $100,000.00.

Zoe has done well at school. She is now 19 years of age and will be starting at the University of Victoria in September 2015. She wants to be a lawyer. She lives at home but has had difficulties with Ezra since the separation. She and Ezra are not speaking to each other. William has struggled in school. He is now 11 and attending public school in grade 5. He requires tutoring at a cost of $700 per month. Harry struggles even more. Although he does well at math and science, he is behind in language arts and social studies. He still receives special programming but that is paid for by the government. He does not do well with strangers. He requires stability and consistency. Emma has investigated alternative schooling as she is unhappy with his public school. She has obtained a place for him at a specialized private school starting in September 2015, but the cost will be $10,000.00 per year. Ezra is not happy with that proposal as he believes in the public school system. They have no child care costs at present but if Emma were to return to work, they would need after school care, at least for 1-2 years until the boys are older. As Zoe is in school, she won't be able to provide that care.

For a number of years, Ezra and Emma have been having some marital issues. The stress of raising the twins has essentially cost them the relationship. They are both unhappy. This has resulted in many verbal fights with each of them yelling at the other. There has been only one physical altercation when Ezra pushed Emma on to the floor, which happened in October 2014. They went to counselling but it has become apparent that they cannot continue as a couple. At this point, neither has been involved with third parties, but Emma has met someone online recently who lives in Red Deer, Alberta. They have yet to meet in person. They continue to live in the home which has worked to the present, because Ezra is required to be away for his work.
That is changing as he now has a large contract with the City of Victoria and will be living in Victoria on an ongoing basis. As such he will be more available for the children, but will also be at home every day.

Emma has come to see you regarding her situation. She does not want to continue to live together and wants to separate physically from Ezra. She wants to maintain primary parenting of the children and would like to maintain the home.

**She has the following questions.** What advice would you give to her? Cite relevant legislation and any relevant case law.

1. Can she start a divorce action, and if so, what would her grounds be – name the specific section in the relevant act. **(2 marks)**

2. What are her options if she does not want to go to court? What information would you give her about the dispute resolution process? **(5 marks)**

3. Can she have Ezra leave the home? What would the process be for her to get occupancy of the home if he will not leave voluntarily? What would she have to prove? **(5 marks)**

4. How will parenting of the children be resolved? Which factors will the court look at to determine where the children should live? At what age are the children old enough to decide? What ways are there for courts to determine the children's wishes. If disputes arise after the final Order, are there any mechanisms that can be put in place to assist with ongoing disputes re parenting? **(10 marks)**

5. How is child support determined? What will Ezra have to pay? Will he have to pay for Zoe now that she is over 19? What about extra costs for schooling, activities? Does the amount of time Ezra has with the children affect the child support? What advice would you give her? Include calculations of what she would receive. **(10 marks)**

6. Ezra has told her he will not pay support for her. She has looked for work but cannot find work as a teacher. She is having trouble competing with young persons just out of school as she's been out of the work force for 7 years. Is she entitled to spousal support? What would she be looking at for quantum and for how long? **(12 marks)** (Remember to use without child guidelines calculation)

7. How will property be divided between them? How will the company be valued? She would like to stay in the Fairfield home. The current value of the assets as best she knows them are:

    **ASSETS:**
    Fairfield home: $600,000.00
    Her pension investments: $100,000.00 (current)
Furniture: $25,000.00 (estimated)
Caravan: $20,000.00 (estimated)
Consulting Firm: Unknown value
City of Victoria Pension: Unknown value
Suncor Pension: $85,000.00 (current)
Stock options: Unknown value
RESP: $50,000.00 (current)
RRSP: Emma has $50,000 and Ezra has $100,000 (current)

DEBTS:
Line of Credit: $100,000.00
His VISA $20,000.00
Her VISA $20,000.00

Prepare a chart of a possible division. (15 marks)

8. Emma asks you about what would happen if she wanted to move to Alberta with the children (Harry & William). She knows Zoe would want to stay at the University of Victoria. Could she move? She has met a fella online who lives in Red Deer. How difficult would it be for her to move with the children? What would the court consider? (6 marks)

9. Emma asks you about pursuing child support for Zoe against the biological dad. She has never registered with Maintenance Enforcement, but she calculates his arrears are $2,400.00 per year for 17 years when he stopped support. She does not know where he lives, but has been told he went back to University and obtained a teaching degree. Could she seek a retroactive increase? Could she seek a retro-active increase? How would it be calculated? How far back would she be able to go? (5 marks)