NOTE:

1. This is an open book examination.

2. The examination will account for 100% of the final grade if your mark is higher from this final mark than from the midterm exam. If your midterm exam mark is higher than the mark from this final exam, this examination will account for 70% of the final grade.

3. This examination consists of a total of 15 questions
   - All students must answer questions 1 – 14
   - For question 15, students answer only one question from two options
Law 392, Section 1

Each question in this Section is worth 2 marks

Marks 6

1. What is "intensity based" approach to regulating greenhouse emissions from industries such as LNG? Give an example of a jurisdiction that has adopted this approach. [2 marks]

2. What four dispute resolution mechanisms are available for the member states under the United Nations Convention on the Law of the Sea (UNCLOS)? [2 marks]

3. Why is Article 82 of UNCLOS of particular significance to Canada? [2 marks]

Each question in this Section is worth 4 marks

Marks 24

4. Does the new Canadian Environmental Assessment Act, 2012 apply to proposed developments or projects in national parks? If so, how does it apply? [4 marks]

5. What is the "First in Line, First in Right" principle in the British Columbia water law? Will this principle continue to exist in the new British Columbia Water Sustainability Act and if so, how? [4 marks]

6. Tree Logging Ltd. holds a tree farm license issued under the BC Forest Act to a parcel of land on Vancouver Island. What property rights, if any, does the license give to Tree Logging Ltd.? Explain your answer. [4 marks]

7. Who owns Canada's natural resources? [4 marks]
8. Recently, both Ahousaht and Haida First Nations sought injunctions to close commercial herring fishery that was opened this spring by the federal Minister of Fisheries Oceans. Ahousaht lost their application while Haida were successful. In light of what you know about the test for Aboriginal consultation, why is the outcome of these applications somewhat surprising? What might explain the different outcome in the two applications? [4 marks]

9. Can a provincial legislator enact a law that regulates oil and gas pipelines? Explain your answer. [4 marks]

Each question in this section is worth 6 marks

Marks 18

10. In her article “Act's shift to process efficiency working” (The Lawyers Weekly, December 6, 2013), Deborah Overholt concludes that the new Canadian Environmental Assessment Act, 2012 (CEAA 2012) has increased the efficiency of the federal environmental assessment process.

What components/elements of the CEAA 2012 have increased the efficiency of the federal environmental process? Are there elements in the CEAA 2012 that might have the opposite effect and result in reduced efficiencies? Explain your answer with references to the CEAA 2012 and other materials covered in this class. [6 marks]

11. Who owns offshore oil and gas on (or rather, below) Canada’s territorial sea and continental shelf? Explain your answer. [6 marks]

12. On April 2, 2015, Globe and Mail reported that the Governor of the State of California has issued an executive order requiring 25% reduction in California’s water use over the next year. The order may impose additional pressures on the British Columbia water resources. How does the existing regulatory framework address such external pressures, and is the existing framework in your view adequate? Explain your answer referring to the materials covered in this class [6 marks]
Each question in the following section is worth 10 marks

Marks 20

13. You work for the federal Department of Justice. Senior counsel has asked you to prepare a short summary of the legal considerations the federal Crown would have to take into account in its dealings with the Haida First Nation in the event the Crown wanted to proceed with the exploration and extraction of the off-shore oil and gas reserves located underneath the seabed in the submerged areas near and around the Haida Gwaii. Please refer to the recent case law in addressing the various legal issues that the Crown should keep in mind. [10 marks]

14. As you know, in Canadian Parks and Wilderness Society v. Canada (Minister of Canadian Heritage), [2003] FCJ No. 703 (FCA), the Federal Court of Appeal held that "ecological integrity" in s. 8(2) of the Canada National Parks Act is merely another factor the Parks Canada Agency is required to consider in making decisions related to the park use and management. The decision came down before Justice Binnie, in British Columbia v. Canadian Forest Products, [2004] 2 SCR 74, 2004 SCC 38 ("Canfor Decision") considered the public trust doctrine.

You are counsel for Green Litigators who are representing several environmental groups who wish to challenge an authorization issued by Parks Canada Agency to Monster Motels Inc. to construct a new hotel and related facilities in the Yoho National Park. A senior partner has asked you to consider whether, and if so how, Green Litigators could rely upon Canfor Decision and/or any subsequent case law citing Canfor Decision to distinguish and/or overrule the Federal Court of Appeal's interpretation of "ecological integrity" in the CPAWS Decision. [10 marks]
15. Please answer one of the following questions [the question is worth 12 marks]:

Marks 12

(i) In Morton v. British Columbia, 2009 BCSC 136, the British Columbia Supreme Court held that regulation of aquaculture is a federal subject matter that falls under s. 91(12) of the Constitution Act, 1867 of sea coast and inland fisheries, and struck down (almost all) provincial aquaculture regulations.

In your view, are wild fisheries now that they are subject to federal jurisdiction better protected from the negative impacts of aquaculture than they were previously under the provincial regulatory regime? Explain your answer.

(ii) Section 35 of the Constitution Act, 1982 recognizes and affirms Aboriginal and treaty rights, such as the rights to fish for any species of fish (except geoduck) and to sell the fish that were established in Ahousaht Indian Band v. Canada, 2013 BCCA 300 (leave to appeal to SCC denied).

In your view, do Aboriginal rights to fish, hunt or harvest include a right to conservation of the resources that are the subject of the rights (such as fisheries) under s. 35 as an incident of the constitutionally protected Aboriginal rights? Explain your answer.

END OF EXAMINATION