

Write Your Exam Code Here: _____

Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

**THIS EXAMINATION CONSISTS OF 6 PAGES, including this cover page
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2019

**LAW 231 – Property Law
Section 1 – Professor S Wood**

**TOTAL MARKS: 100
TIME ALLOWED: 3 HOURS AND 20 MINUTES**

NOTES:

1. **This is an open book exam.** There are no restrictions on the notes and materials you may bring with you. You may not use any electronic device apart from a computer loaded with Exemplify software.
2. **This examination consists of three questions worth a total of 100 marks. Answer all three questions.** Question 1 is worth 50 marks, Question 2 is worth 30 marks and Question 3 is worth 20 marks.
3. **There is no dedicated reading period** but you are encouraged to use the first 20 minutes to read the questions carefully and plan your answers.
4. **Identify yourself only by your exam number.**
5. **Write the number of the question** you are answering at the start of each answer.
6. **All events and transactions take place in British Columbia today** unless otherwise specified.
7. If you believe you need more information to answer a question, **indicate what additional information you need and why.** If you assume additional information, **state your assumptions clearly and explain why you are making them.** Do not make any assumptions that avoid relevant legal issues.
8. When a question asks you to refer to **course materials**, this means any information conveyed in the course, including the assigned readings, lectures, class discussions, slides, handouts, and resources posted on the course website, except to the extent that I have indicated they are not examinable.
9. **If you are handwriting, write your examination number on the front of every booklet**, along with the number(s) of the question(s) answered in the booklet, and **write your answer legibly, in ink, ON EVERY OTHER LINE.**

THIS EXAMINATION CONSISTS OF 3 QUESTIONS

MARKS

50 1. Answer the following question: (50 marks, 90 minutes)

Alphonse Abdullah (Alphonse) operates a donut shop at 5820 Ypres Street in Vancouver that is part of the **Beignet Donuts** chain of donut shops.

Alphonse owns all the bakery equipment in his donut shop. In January of this year, one of the donut ovens in the shop, valued at \$25,000, broke down and could not be repaired on site. Alphonse had to return the oven to the manufacturer for repair. This manufacturer supplies most of the shop’s bakery equipment. Normally, Alphonse and the manufacturer use a particular shipping company they know and trust to ship equipment between them; and normally, they insure the shipment for its full value. This shipping company is experienced with handling bakery equipment and has never lost or damaged any of Alphonse’s items in the nine years he has operated the donut shop.

Alphonse followed this normal practice in this case, and the oven arrived at the manufacturer’s facility without incident. The repair took a few days. **Frank Funakoshi (Frank)**, a new employee of the manufacturer, unaware of the normal practice, consigned the repaired oven to an untried shipper, **Crucial Delivery Co. (Crucial)**, for shipment back to Alphonse. The shipping contract identified Crucial as the Carrier and the manufacturer as the Shipper and provided, in part:

<p>1.(c) This contract shall inure to the benefit of and be binding upon the Shipper and Carrier and all persons claiming or asserting any right to the ownership or possession of the shipment. [...]</p>		
<p>LIMITATION OF LIABILITY</p> <p>4.(a) The maximum liability of the Carrier for any loss, damage or theft with respect to any shipment, however caused, including by reason of negligence, recklessness or intentional wrongdoing by the Carrier, its agents or employees, shall be limited to the actual value of the shipment or two hundred dollars (\$200.00), whichever is less, unless the Shipper purchases additional insurance in accordance with sub-clause 4.(b).</p>		
<p>I understand and accept this Limitation of Liability:</p>	<div style="border: 1px solid black; width: 100px; height: 40px; margin: 0 auto; display: flex; align-items: center; justify-content: center;"> <div style="font-family: cursive; font-size: 1.2em; margin-bottom: 2px;"><i>F.F.</i></div> <div style="font-size: 0.8em; margin-top: 2px;">Shipper’s Initials</div> </div>	
<p>INSURANCE</p> <p>4.(b) The Shipper may, at his or her sole option, purchase additional insurance by declaring the value of the shipment on the shipping contract and paying the applicable premium. In the event that the Shipper purchases additional insurance, the maximum liability of the Carrier shall be the declared value of the shipment as indicated below, provided that the Shipper pays the applicable premium before consigning the shipment to the Carrier.</p>		
<p>I DECLINE additional insurance:</p>	<p>I ACCEPT additional insurance:</p>	<p>Declared value of shipment:</p>
<div style="border: 1px solid black; width: 100px; height: 40px; margin: 0 auto; display: flex; align-items: center; justify-content: center;"> <div style="font-family: cursive; font-size: 1.2em; margin-bottom: 2px;"><i>F.F.</i></div> <div style="font-size: 0.8em; margin-top: 2px;">Shipper’s Initials</div> </div>	<div style="border: 1px solid black; width: 100px; height: 40px; margin: 0 auto; display: flex; align-items: center; justify-content: center;"> <div style="font-size: 0.8em; margin-top: 2px;">Shipper’s Initials</div> </div>	<div style="border: 1px solid black; width: 100px; height: 40px; margin: 0 auto; display: flex; align-items: center; justify-content: center;"> <div style="font-size: 0.8em; margin-top: 2px;">\$ _____</div> </div>

Frank read the above clauses, initialed the boxes accepting the limitation of liability and declining insurance, and left the “value of shipment” box blank. He did not purchase additional

Question 1, continued

insurance or pay the applicable premium. He made these shipping arrangements without consulting or notifying Alphonse, who was not a party to the contract and was unknown to Crucial.

The Crucial delivery truck containing Alphonse's oven was stolen along with its contents. When the manufacturer told Alphonse what had happened, Alphonse said he would never have agreed to ship the oven uninsured or to waive a shipper's liability for intentional wrongdoing. The manufacturer offered to supply a replacement oven at no charge, but informed Alphonse that there was a six month waiting list due to problems at its factory. Crucial made no attempt to explain the loss, but admitted that its employee, the truck driver (who has since absconded without a trace), may have been an accomplice. Crucial denies all liability to Alphonse.

Without the oven, Alphonse was unable to keep up with customer demand. In desperation, as a temporary measure while waiting for the new oven, he began to purchase donuts wholesale from a bakery that was not part of the Beignet Donuts chain and to sell them in his shop, hoping no one would notice. Alphonse operates his donut shop on a parcel of land owned by **Beignet Donuts, Inc. (Beignet)**, the company behind the Beignet Donuts chain. The agreement under which Alphonse operates the shop provides, in part:

LEASE AGREEMENT

THIS LEASE made the 5th day of January, 2010, between: Beignet Donuts, Inc. ("Landlord") and Alphonse Abdullah ("Tenant") [...]

2. The Landlord agrees to rent the Premises known as 5820 Ypres Street, Vancouver, BC ("the Premises") to the Tenant for a term of ten (10) years commencing on the 1st day of March, 2010 [...].

3. The Tenant shall pay the Landlord a monthly rent of nineteen thousand nine hundred and ninety-nine (\$19,999.00) dollars.

4. The Tenant covenants and agrees that:

- (a) The Premises shall be used only for the purpose of operating a Beignet Donuts™ retail shop.
- (b) Only Beignet Donuts™ products shall be sold on the Premises.
- (c) The Premises shall not be altered in any way without the Landlord's prior written consent.
- (d) No signs or advertising shall be erected or displayed on the Premises without the Landlord's prior written consent, provided that the Landlord may in its sole discretion erect or display signs or advertising on the Premises.
- (e) The Landlord, its employees and agents shall have the right to enter the Premises at any time, without notice.
- (f) The Tenant shall provide on the Premises, at its own expense, the equipment and facilities specified by the Landlord for the manufacture, storage, display and sale of Beignet Donuts™ products. [...]

The Landlord's employees conduct unannounced inspections of Alphonse's donut shop approximately three times a year to check for Agreement compliance and quality control. Aside from these inspections, the Landlord, its employees and agents enter the Premises very rarely

Question 1, continued

and always with notice to or at the request of Alphonse, to install updated advertising signage or to carry out building repairs.

During an unannounced inspection in March, 2019, Beignet's inspectors discovered that Alphonse was selling non-Beignet donuts in his shop. Beignet sent Alphonse a notice terminating the Agreement for breach of Clause 4. Last week, Beignet commenced a court action against Alphonse for possession of the Premises, using an expedited procedure that is available only for commercial leases. Alphonse does not deny that he violated the Agreement but wants to buy extra time to explore solutions that would enable him to keep the shop.

This is not the end of Alphonse's troubles. Alphonse and his sister, **Dorte Dahl (Dorte)**, own a collection of rare and expensive automobiles as joint tenants. Their relationship has been difficult for years and has now broken down. Alphonse wants to make sure that his interest in the cars goes to his independent adult daughter, **Enid Ecclestone (Enid)**, when he dies. He wants to continue to use and enjoy the cars while he is alive, and to ensure that the cars do not go to his sister if he dies before she does. He has taken the following actions to this end:

1. He wrote to his sister expressing his desire to sever the joint tenancy; her lawyer wrote back "without prejudice" saying that the sister was agreeable; but the sister and the lawyer have not responded to Alphonse's further inquiries.
2. He executed a will leaving his interest in the cars to Enid.
3. He completed and signed official vehicle ownership transfer forms for each of the cars, naming Enid as the new owner; he put the forms in a safe with his will, with instructions for his executor, immediately after his death, to take the other steps necessary to complete the transfers, including to get Enid's signature on the forms and submit the forms to the official vehicle registry; and to deliver the cars and Alphonse's set of keys to Enid; but in the meantime Alphonse and Dorte retain possession of the cars and keys.
4. He signed a document declaring that he now holds his interest in the cars in trust for Enid and declaring that he signed the document with the intent to sever the joint tenancy; he put this document in the safe along with his will.

Enid is unaware of all of these actions, and Dorte is unaware of items 3 and 4.

Last week Alphonse retained a new law firm to represent him in these matters. You are a law student at the firm. **Write a report to your supervising lawyer addressing the following questions:**

- (a) **Is Crucial liable to Alphonse for the value of the oven?**
- (b) **Is Beignet barred from bringing the expedited court proceeding?**
- (c) **Will Alphonse's interest in the cars go to Enid when he dies?**

30 2. Answer either part (a) OR part (b): (30 marks, 54 minutes)

(a) In March, 2019, the City of Maple Ridge and the RCMP evacuated the Anita Place homeless encampment pursuant to the British Columbia Supreme Court's decision authorizing them to enforce fire safety rules and resident verification. The City and RCMP later let verified residents back into the camp with heightened security and control. The question of housing for these and thousands of other homeless people around the province remains unresolved. In the meantime the courts will continue to be asked to rule on the legality of homeless encampments. The British Columbia Law Institute (BCLI), the province's leading law reform think tank, has hired you to write a report on this subject. **Drawing on relevant course materials from multiple Course Units, write an essay proposing a framework for courts to use when deciding the legality of homeless encampments.** Please confine your answer to matters covered in this course.

OR

(b) The way the settler legal system conceptualizes the relationship between people and land seems alien to many indigenous people. Many indigenous legal orders conceptualize this relationship as a sacred bond between humans and all their relations, living and dead, animate and inanimate, human and non-human, material and spiritual. The land is alive and cannot be owned. Instead, mutual respect and support are hallmarks of the relationship, and humans have a responsibility to safeguard and sustain the land. These ideas are reflected to a limited extent in the Supreme Court's proposition in the *Tsilhqot'in* case that land held pursuant to aboriginal title may not be used in a way that deprives future generations of the benefit of the land. In settler property law, by contrast, land is an object to be owned, exploited and consumed more or less as its owner sees fit, not a living subject with rights and responsibilities to be respected. **Drawing on relevant course materials from multiple Course Units, write an essay comparing how indigenous and settler law conceptualize the relationship between people and land, and answering the question: should a duty to sustain the land for future generations and our other relations be an element of fee simple ownership, and what changes to settler property law would this entail?** Please confine your answer to matters covered in this course.

20 3. Answer either part (a) OR part (b): (20 marks, 36 minutes)

- (a) Gladys Chan owned a parcel of land in fee simple in the Surrey East electoral district in British Columbia. She died several years ago, bequeathing the land “to my husband Gerald to have and use during his lifetime, then to my niece Nadine if she is alive at the time of Gerald’s death, provided that she is elected to public office”. Gerald and Nadine are both alive. Nadine owns no real property aside from the bequest in Gladys’s will. Nadine recently ran for election to the provincial legislature in the Surrey East district. She won a majority of the votes, but her opponent claims she is ineligible to hold the office. **Advise Nadine what property interest, if any, she holds in the land, and whether she is eligible to hold the office for which she was elected in two alternative scenarios in which the applicable elections statute requires the office holder to be (i) “an owner of land” in the electoral district, or (ii) “seised of land.”**

OR

- (b) Piper Jefferson is a lesbian lawyer and activist. She founded a lesbian and gay student club at her law school. After graduation she founded Out the Bar, an organization that combats discrimination against lesbian and gay lawyers. Piper and Out the Bar have been criticized for making public statements that other members of the LGBTQ+ (lesbian, gay, bisexual, trans, queer and other sexual and gender minorities) community believe demonstrate prejudice against straight, bisexual and trans people (people whose gender identity or gender expression differs from the biological sex they were assigned at birth). Piper believes that lesbian and gay people are best qualified to lead the struggle for equality. She wants to create a scholarship trust fund that would award scholarships only to Allard JD students who are lesbian or gay, are residents of Canada, have superior academic records and have demonstrated leadership in the lesbian and gay communities. She wants people who are straight, bisexual or trans to be excluded from receiving scholarships. **Advise Piper whether and how she can create a valid scholarship trust that achieves these goals.**

END OF EXAMINATION

Enjoy your summer!