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THE UNIVERSITY OF BRITISH COLUMBIA  
Peter A. Allard School of Law

EXAMINATION – April 2019

LAW 231  
Property

Section 2  
Professor Pavlich

TOTAL MARKS: 100

TIME ALLOWED: Three (3) HOURS (plus 15 minutes of reading time)

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NOTE:

1. This is an open-book examination.
2. The questions are not of equal marks.
3. Discuss fully the reasons for your answers.
4. Unless the question states otherwise, assume the facts occur in British Columbia in 2018/2019.
5. In answering the questions your legal analysis should identify what additional facts may be required or clarified in order to provide a likely outcome to the problem.
6. PLEASE ANSWER **ALL** QUESTIONS.

THIS EXAMINATION CONSISTS OF 3 QUESTIONS.

**MARKS**

- 20**     **1.** You are employed as a clerk in the office of IM Competent. Your principal requires you to give your reasoned opinion on two matters. On the first matter she advises you that:
- a. the firm is acting for a First Nations Band that is seeking a declaration that the title of the registered owner in fee simple of a large parcel of land is voidable,
  - b. the current registered owner in fee simple has held title in excess of thirty years but has engaged in no farming, commercial, wilderness or residential activity despite an undertaking to the Crown immediately prior to the Crown grant that the land would be used to develop a large recreational resort complex,
  - c. The Crown has indicated it may be prepared to demand retransfer of the land,
  - d. the Registrar has refused to place a caveat on the title and has indicated the office will not place notation of pending litigation (*lis pendens*) on the registered title of the owner in fee simple,
  - e. in all material respects the facts are the same as in *Skeetchestn Indian Band v. British Columbia* (2000), 30 R.P.R (3d) 272 (B.C.S.C.).

**She requires you to evaluate and discuss the likelihood of success. You are asked to examine the case only in the light of the provisions of the Land Title Act.**

On the **second** matter, she advises that the firm is acting for another First Nations Band that claims aboriginal title over a considerable area of land in close proximity to its reserved lands. The Band, familiar with the Nishga Treaty and the Supreme Court of Canada decision with regard to the Tsilhqot'in Nation, seeks your firm's advice whether to claim treaty rights by negotiation with the crown or seek a declaration of title from the courts. The tract of land to which it claims aboriginal titles is held by the Crown in some parts and, in other contiguous parts, by some 20 registered owners in fee simple.

**Briefly describe the advantages and disadvantages of both courses of action and, giving reasons, indicate which course you would advise the Band to pursue.**

**MARKS**

- 20    2** Analyze and consider the following dispositions. Indicate who is/are the transferee(s) and the interests in land each is getting. Provide full reasons and identify all assumptions you might make. Comment on the validity of the disposition and the effect on outcome of the grant/devise. Consider each disposition (granted/devised by Sid Snook) first, as an *inter vivos* transfer and then, secondly, as a gift in a will. Make sure you identify perpetuity issues that may arise and how legislation may resolve those issues.
- a. "To Jonathan and his descendants". Would your answer change if the disposition was "To Jonathan and his heirs, but if he transgresses to the eldest child of his widow"? Give full reasons for your answer [Sid is a lawyer; Jonathan is 65 years old with 2 children, 3 grandchildren and is married for the second time to someone 30 years younger than him].
  - b. "To Alexis for life remainder to her first grandchild to marry a same sex partner" [Sid is an activist in the LGBTQT community. Alexis is aged 56 years and has three children aged 20 years, 25 years and 30 years - all are married to persons of the opposite sex].
  - c. "To Jezebel until she performs in a porn movie and then to the first child of Bella Bloggs to turn 30 years of age" [Sid is the Archbishop of Vancouver; Jezebel is 24 years old and so far has been unsuccessful in developing her acting career though she is negotiating a contract for the role of a prostitute in a theatrical production; Bella is 40 years of age, living with a partner and with no children].

**MARKS**

- 50**    **3.** Samantha Snooks is the registered owner in fee simple of Blackacre and Greenacre. She had custody of the duplicate, indefeasible titles for both parcels of land which she kept in a small, wall safe in the bedroom of the house on Blackacre in which she resided. Recently, she had become involved in a romantic liaison with Betty Bloggs the 25-year old daughter of Bertie and Brenda Bloggs. During the relationship Samantha had disclosed to Betty the security code that gives access to the safe's contents.

Samantha was completely ignorant of Betty's chronic, compulsive gambling problem.

In January 2018 Samantha decided to take a 6-month tour of India. Betty did not accompany her and remained in the house. Samantha authorized Betty to take care of any matters that may arise in her (Samantha's) absence.

Her confidence in Betty's integrity was seriously flawed. Within a month of Samantha's absence, beset with debt, Betty, posing as Samantha, managed to obtain a loan of \$100,000 from ACME (Last Resort) Finances. The company had demanded Blackacre as mortgage security and so Betty forged Samantha's signature on the appropriate mortgage transfer form which, together with the duplicate she had retrieved from the safe, was handed to the notary engaged to execute the transfer. Registration was secured and ACME handed Betty (believing she was Samantha) the \$100,000.

After the registration of the mortgage, a company, Fanny Fabrics, that had taken out a writ for non-payment by Samantha Snooks of a \$10,000 business debt, obtained default judgment. (Betty had ignored Samantha's instructions to do all things necessary to defend the claim on her behalf.) The judgment was only registered against the title of Blackacre after a sale, but before transfer of, Blackacre to Samuel Snodgrass. The cause of the sale related to Betty's enduring gambling debt problems. Still unable to meet payment of her debts Betty, again posing as Samantha sold (for \$2 million) and transferred Blackacre through forgeries to Samuel Snodgrass. She also forged the signature of the CEO of ACME on a discharge of ACME's mortgage on Blackacre's indefeasible title. Interestingly, Samuel paid Fanny Fabrics' judgment debt and deducted that amount (\$10,000) from the purchase price of Blackacre. Samuel Snodgrass became the registered owner of a free and clear fee simple in Blackacre. The preparation of all transfers and their registration had been handled by Horatio Harder who failed to properly satisfy himself of the proper identities of the parties.

The money Betty realized was insufficient for her needs. More gambling debts came to light this time with threats of physical harm. Alarmed, Betty used the duplicate indefeasible title for Greenacre that she had taken when she departed Blackacre. She forged Samantha's signature, and transferred the estate in fee simple to herself and successfully registered fee simple title in the name of "Betty Bloggs". Very soon afterwards, she sold and transferred the estate in fee simple of Greenacre to Tilly Tubbs who paid Betty the agreed fair market price of \$1.5 million once the notary had indicated all transfer documents for Greenacre had been duly executed by Betty. Then, in a breathtaking coincidence of events, Tilly entered into a lease for a 20-year term of Greenacre with Bertie and Brenda Bloggs as co-tenants. The applications for registration (fee simple and long leases) were lodged with the registrar, but for some unexplained reason the LTO mistakenly did not process the registration of the transfer to Tilly and the lease to Bertie and Brenda.

In the meantime, Betty paid her debts and, with a substantial surplus of funds, she resettled secretly in Las Vegas.

After an amazing trip to India, Samantha returned to Vancouver to discover the new status of the entitlements in Blackacre and those pending in respect of Greenacre. Outraged she has consulted your firm and indicated that she expects recovery of the titles to both properties.

With horror, Brenda and Bertie also learn of the involvement of Betty in the foray of forgeries outlined above. Their inability to locate and speak to their daughter has simply added more stress to their personal and financial worries. Thereafter, Bertie overwrought by the situation suffered a fatal heart attack and died.

All the parties, including Brenda wish to know their legal position with regard to Blackacre and Greenacre and the status of all interests in it. Tilly wishes to keep Blackacre which has increased significantly in value and is estimated to be worth \$2 million. Samantha prefers to recover title to Blackacre, but wishes to know her rights of compensation for possible losses she may collect from these events.

You are an articulated clerk in I.M. Competent and have been presented with the above facts. You are required to give a reasoned opinion analyzing the law that would likely determine the outcome of pending litigation on all the issues in this fact pattern with regard to all persons who would have an interest in the outcome. You are also asked to indicate what additional facts and clarifications may be needed from the parties to complete your opinion. Betty is Bert's sole heir.

\*\*\*END OF EXAMINATION\*\*\*