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

THIS EXAMINATION CONSISTS OF 5 PAGES (INCLUDING THIS PAGE)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

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

EXAMINATION – APRIL 2019
LAW 231 - Property
Section 3 - Professor GJ Reynolds

TOTAL MARKS: 100
TIME ALLOWED: 3 HOURS
and 15 minutes reading time

NOTE:

1. This is an open book examination. There are no restrictions on the notes or materials you may bring into the exam.
2. This examination consists of four (4) questions. Answer all questions.
3. You have 15 minutes of reading time. The reading time is in addition to the 180 minutes of writing time. During the reading time, you may only make notes on the question sheet or on the scrap paper.
4. 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, and slides.
5. 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.
6. Assume the applicable law is that of British Columbia unless indicated.
7. Students writing by hand, please write legibly on every second line of your exam booklet. Write on one side of the page only. Do not put your name on the exam booklets. Use only your exam number. At the end of the exam, please return all exam booklets. No credit will be given for anything written in a booklet that is removed from the exam room, even briefly.
8. Students writing using the Exemplify computerized exam process, please ensure that you do not write or type your name at any place in the exam.
9. Do not begin your exam until you are instructed to do so.
10. At the end of your exam, please write your exam number on the cover page of your question paper and drop it on the desk at the front as you leave. I will return the question papers to Student Services who will dispose of them.
11. **Have a great summer break!**

Question 1 (20 marks, 36 minutes)

Article 26 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides that:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

As well, Article 46(2) of UNDRIP provides that:

In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

To what extent are the decisions of Canadian courts in the area of Aboriginal title consistent with Articles 26 and 46(2) of UNDRIP? Discuss, making reference both to case law as well as any other relevant materials.

Question 2 (20 marks, 36 minutes)

Until recently, Diana was the registered fee simple owner of a condominium on Thurlow Street in Vancouver, which she acquired in 2004. Diana purchased this property with the assistance of a mortgage from Capital Idea in the amount of \$300,000. The amount outstanding on this mortgage is \$100,000.

On 15 March 2019, Diana's niece Jessica forged Diana's signature on a Form A that purported to transfer the Thurlow Street property to Jessica. Jessica then took the Form A and registered it with the Land Title Office. Jessica also filed

a forged Form C with the Land Title Office that indicated that Diana's mortgage to Capital Idea had been discharged.

Jessica then approached Dependable Mortgages (Dependable) for mortgage financing. Relying on the register which showed Jessica as the holder of the fee simple interest in the Thurlow Street property, and which did not list the mortgage to Capital Idea as a charge against title, Dependable's solicitors prepared a mortgage document in the principal amount of \$500,000, which Jessica signed. This mortgage was registered against Jessica's title to the Thurlow Street property, and the money was advanced to Jessica.

Diana was about to start renovations on her condominium when she discovered that she was no longer registered as the owner. She also discovered both the existence of the mortgage to Dependable registered against title to the Thurlow Street property, and that her mortgage to Capital Idea was no longer listed as a charge against title.

You are retained by Diana's lawyer to provide research assistance. Please answer the following questions: Can Diana recover her interest in the Thurlow Street property? If she can recover her interest in the Thurlow Street property, will her title to this property be subject to Dependable's mortgage? If Dependable's mortgage is not valid, is there any way through which Dependable can recover damages? Will Capital Idea be able to have their mortgage reinstated as a charge against title to the Thurlow Street property? Discuss.

Question 3 (40 marks, 72 minutes)

Mae is a successful real estate developer who lives in Kelowna, British Columbia. She recently celebrated her 55th birthday. In 2014, Mae divorced her (now) ex-husband, Neil. They had been married for 24 years. Neil was a Member of Parliament who served four terms. During this time, Neil spent much of his time in Ottawa. Mae blames Neil's job for the breakdown of their relationship. She often warns her children against going into politics, stating that "unless you live in Ottawa, it's very hard to be a successful politician and to maintain a successful marriage." Mae and Neil have three children together (Darren (26 years old), Erika (23 years old), and Frank (20 years old)). Neil has re-married, and has one child (Grant (3 years old)) with his new partner. Recently, Mae has started dating again. On 20 February 2019 she celebrated her one-month anniversary with her partner Zack.

On 1 March 2019, Mae received some test results that suggested that she has a serious, life-threatening health condition. Mae responded to this diagnosis by starting to give away her possessions. For instance, on 5 March 2019 she called her friend Harriet who lives in Winnipeg to let her know that she wanted Harriet to have her prized book collection from her house in Kelowna. "You've always been such a great friend, Harriet", said Mae on the phone. "It makes me happy to think of my books in your home in Winnipeg. I'd like for you to have them." Mae's collection consists of almost a thousand books. Harriet indicated that she would be honoured to have her friend's book collection, but that between work

and family commitments it might take her a few months to organize a trip to Kelowna with a moving van. This timing was fine with Mae.

On 15 March 2019 Mae received some additional test results that indicated that what she thought was a serious health condition was just a false alarm. However, this health scare had made Mae realize that she needed to decide how she would like her estate to be distributed after her death.

Mae owns a number of properties in British Columbia in fee simple. Specifically, she is a co-owner, with her sister Olivia, of a house in Penticton (assessed value \$1,000,000). Mae and Olivia own this house as joint tenants. Mae also owns a home in Kelowna (assessed value \$2,000,000), a condominium in Vancouver (assessed value \$1,000,000), and a cabin just outside of Hope (assessed value \$200,000).

Mae's cabin has recently been featured in a photo shoot for Cabin Living, a monthly magazine for people who love cabins and the cabin lifestyle. The photo shoot focused on a number of aspects of the property, including the deck, the view of the mountains from the bedroom window, the beautiful old hardwood floor, and some fashionable area rugs that had been handcrafted by local artists that were connected to the floor with tacks.

On 1 April 2019, Mae met with a lawyer in a Vancouver law firm to draft and execute (sign) a will. Several conditions were set out in the will relating to the properties just described. These conditions are set out below.

1. My share in the house in Penticton is to be transferred to my son Darren.
2. My home in Kelowna is to be transferred to my daughter Erika for so long as she does not put her name forward as a candidate for elected office.
3. My condominium in Vancouver is to be transferred to my father Norman for the rest of his life. On Norman's death, the condominium is to go to my son Frank for life. On Frank's death, the condominium is to go to Frank's children in joint tenancy.
4. My cabin is to go to my daughter Erika. All of the chattels in the cabin are to be given to the Second Chances thrift store in Kelowna.

On 15 April 2019, Mae was killed in an unfortunate accident. You are an Associate Lawyer in a prominent Vancouver law firm. Erika, the executor of her mother's estate, comes to you for advice.

- A. Erika wants to know whether Darren will receive Mae's share in the house in Penticton. Discuss.
- B. Erika asks you to identify the property interests created in clauses 2-4 above. Advise of any arguments that might be raised to invalidate these gifts, as well as all counter-arguments that would tend to uphold these gifts.
- C. Erika has received a phone call from Mae's friend Harriet regarding the books. Harriet has now made arrangements to drive to Kelowna from Winnipeg to pick up the books, and is wondering when she might be able to do so. Erika loves her mother's book collection, and doesn't want to see it go to Harriet. Discuss whether a valid gift was made from Mae to Harriet.
- D. Erika is trying to decide whether she needs to give the area rugs in the cabin to the Second Chances thrift store in Kelowna on the basis that they are chattels. Discuss whether Erika can keep the area rugs or if they must be given to the thrift store. In answering this part of the question, assume the bequest is valid.
- E. Assuming that the gift in clause 2 is invalidated (the house in Kelowna), discuss how that part of the estate will be distributed under the Wills,

- F. Estates and Succession Act. For the purposes of this part of the question, assume that there is no residual clause in the will.

Question 4 (20 marks, 36 minutes)

Ethan is a business owner. He owns two plots of land in Vancouver, P1 and P2. These plots of land are six kilometers apart. On each of these plots of land, Ethan owns and operates grocery stores ("Ethan's Foods"). Ethan would like to close one of his stores and sell the plot of land on which it sits (P2). He doesn't want the new buyer of P2 (or any future buyer of P2, for that matter) to be able to establish a grocery store on this site. Rather, he hopes that customers that previously visited his store on P2 will drive a few extra kilometers to his other location on P1.

You are an Associate Lawyer in a prominent Vancouver law firm. Ethan comes to you for advice. He would like to know what are his legal options in seeking to prevent future owners of P2 from establishing a grocery store on P2. Discuss the various options he has in seeking to accomplish this goal, as well as the likelihood of success of each of these options. In responding to this question, consider whether courts have the authority to modify or cancel any of the options otherwise available to Ethan.

END OF EXAMINATION