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

**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION – APRIL, 2019

**LAW 231
PROPERTY LAW**

**Section 4
Professor Sheppard**

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

- NOTE:** 1. This is an open book examination. You may bring into the examination room and refer during the examination to the required materials for the course, handouts and your notes and summaries, but use of library or textbooks is prohibited.
2. **You may answer question 5(a) or 5(b) (one part only), do not answer more than one.** If you need additional facts to answer a question, state what the facts are, and why they are necessary. If you feel that an answer requires discussion of the same issue that you dealt with in an earlier answer, you may refer to your previous answer and limit your subsequent answer to additional matters. Give reasons for each answer.
3. Suggested times are given for each question based on the allocation of marks. The times have been allocated based on the duration of three hours or **180** minutes, less **9** minutes for reading or review or **171** minutes in total.

THIS EXAMINATION CONSISTS OF 5 QUESTIONS

MARKS**10**

1. (*Suggested time: 17 minutes*) Lisa Simpson is an activist member of the Springfield Animal Rights Society (“SARS”). Lisa wants to organize a protest against Springfield’s meat processing plant, which is called the Slaughter House, and its associated feedlot, which are owned by Abattoir & Costello Ltd (“A&C”). Charismatic Lisa convinces the adult members of SARS to mount an “occupy” protest against A&C. Before actually carrying out their protest, Lisa and the other members of SARS want your advice on the legality of their proposed actions as follows:

- (a) SARS plans to lease the property adjoining (next door to) the slaughterhouse and to anchor a large hot air balloon with the mooring peg just inside SARS’s side of the boundary line between the two properties. The balloon (depending on the direction of the wind) will fly at a height of ten (10) metres above the slaughterhouse. On the side of the balloon it is proposed to paint “stop the massacre!” The balloon will be visible throughout the neighborhood.
- (b) SARS will hire an unmanned drone, to circle at a height of 50 metres over the slaughterhouse with the slogan on a banner flying behind it, saying, “stop the massacre!” The banner will be illuminated so as to be visible day and night from anywhere in Springfield.

Advise SARS if each of (a) to (b) is a lawful form of protest, or if not, what judicial remedies A&C might invoke against SARS.

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2. (*Suggested time: 26 minutes*) For the last twenty-five (25) years Herman, a reclusive but successful artist, has lived in a shack that he built at his own expense on a remote corner of Old Macdonald’s farm, in the rural countryside near Lake Springfield. Herman’s creativity thrives on his solitude. Old Macdonald is the registered owner of the farm in the Springfield Land Title office. Herman also built a low fence around the immediate vicinity of the shack. Inside the fenced area Herman has grown vegetables for his personal consumption as long as he has lived there. Herman waters the vegetables from a stream running alongside the fence. Old Macdonald has known about Herman’s presence but has not taken any steps to remove him over the years. Quite the contrary, until very recently Old Macdonald nods and waves cordially to the reclusive Herman every time Old Macdonald sees him on the property. Old Macdonald now wishes to sell his farm and to maximize the sale price he wishes to exclude Herman from the property. Old Macdonald demands that Herman stop using the creek, which Old Macdonald regards as his since he owns the farmland through which it flows, and that Herman leave the property immediately, but Herman refuses. Neither Herman nor Old Macdonald has a water licence. Advise Herman as to his rights and remedies, if any.

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3. Assume you are employed as an associate lawyer working for Springfield, British Columbia's sole practitioner, Lionel Hutz. Hutz, who has no familiarity with the property law of British Columbia, requires your advice to the following clients:

10 (a) (*Suggested time: 17 minutes*) Marge Simpson, who is married to Homer Simpson, is one of Hutz's clients. A few years ago Marge and her twin sisters, Patty and Selma Bouvier bought a summer cottage together on Nuclear Lake, near Springfield, British Columbia. They were registered as joint tenants in the Springfield Land Title office. Marge contributed 50% of the purchase price, and Patty and Selma each contributed 25% of the price. They are thinking of selling the cottage, since they no longer have a use for it. The sisters have never been concerned about or even discussed the consequences of sale up to now. They ask Hutz, who refers the question to you: if the cottage was sold now, how would the proceeds be divided among the three sisters? Advise Marge, Patty and Selma.

10 (b) (*Suggested time: 17 minutes*) Rev. Timothy (Tim) Lovejoy was another of Hutz's clientele. In June 2016, Tim transferred a four (4) hectare parcel of vacant land on the outskirts of Springfield to Helen Lovejoy in these terms:

“To my wife, Helen, and her heirs.”

At the time of the execution of the gift, Tim and his wife Helen had one daughter, Jessica. After Tim's death in 2017, Helen started dating Mark. Helen died in September 2018, leaving a home-made will in which she devised, “Tim's gifted land” to Mark. Jessica is the only heir of Helen. Jessica is contesting Helen's devise to Mark, arguing that her mother and herself are each entitled to only two (2) hectares and no more, under Tim's gift. Advise Jessica: is Mark entitled to two (2) hectares as Jessica argues, or to four (4) hectares?

15 (c) (*Suggested time: 26 minutes*) Green Irrigation (“GI”) Ltd, another of Hutz's clientele, is a company that manufactures and installs irrigation systems on commercial farms, to provide enriched water that improves plant growth and productivity. All of its contracts clearly state that the irrigation systems remain its property until paid for in full, retaining a right of removal if the buyer fails to pay for the system within the agreed time. GI recently entered into and performed an installation contract with Stoner, who is the registered owner of title to a lawful marijuana grow-operation, located outside Springfield. Stoner's contract gives him three (3) months to pay for the irrigation system after installation. GI tells Hutz that rumors are circulating about Stoner's impending financial difficulties. GI wants your advice if it will be entitled to remove the irrigation system already installed at Stoner's grow-op in the event that he cannot pay for it within the few weeks left before the three months deadline expires.

The irrigation system installed at Stoner's farm consists of a pump house, two pumps, two electric motors, five kilometers of pipes and five water tanks. The pumps and electric motors, which are connected by plugs to the farm's electrical

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supply, are attached by removable bolts to the floor of the pump house, the bolts being intended to hold the pumps and motors in place. The pump house, which GI installed, has a slate roof, brick walls and a concrete foundation. The pipes are buried two (2) metres below the surface of the earth, and encased in concrete. The water tanks, which weigh a ton each, rest on specially prepared concrete slabs, and are only removable with difficulty by a large crane. Profitability of Stoner's grow-op depends on the irrigation system, and its removal will spell financial failure for Stoner's enterprise. Advise GI of its rights of removal of the irrigation system, if Stoner defaults.

- 10** (d) (*Suggested time: 17 minutes*) Another of Hutz's clients is Luigi Risotto (real name Lothar Folkman) the proprietor of Luigi's Italian Restaurant, located in downtown Springfield, on a parcel of land of which he is registered owner in the Springfield Land Title office. Luigi, before departing for Italy to improve his skills as a chef, entrusted Fat Tony D'Amico, his best customer, with a power of attorney and a signed transfer form over the property in blank, in case Luigi needed some emergency cash during his absence. Luigi has returned from Italy, because a cousin told him that Fat Tony has hastily left Springfield. Luigi needs urgent legal advice, even before he searches the title to his property. Luigi wants to know what can be done to recover his property if Fat Tony has fraudulently registered it in his name, or, in the alternative, if Fat Tony might have fraudulently transferred title to a third person and registered it in their name. Can Luigi make use of Torrens procedures? If Fat Tony is found would Luigi have a claim against him? Advise Luigi.

- 20** 4. (*Suggested time: 34 minutes*) Seymour Skinner, the principal of Springfield Elementary School was the registered owner of the fee simple to a 3-storey house and lot near the Springfield Institute of Technology. Back in 2015, Seymour's mother gave him half of the purchase price to acquire the property, but title is registered solely in Seymour's name. Seymour's mother explains to him that she does not want her name to appear on the land title register because she believes it would compromise his financial independence from her, but, nevertheless, Seymour's mother clearly expected him to live in the house, as long as he was employed at the school. Seymour reassures his mother that, whatever the certificate of title says, he understands that the house belongs equally to both of them.

In 2018, Seymour, who lived on the main floor of the house, orally agreed that Professor Frink could rent the top floor of the house for two years at a monthly rent of \$1,000. Without further formalities the professor moved in and regularly paid the rent on time. Needing still more money, Seymour agreed in writing with Roger to sell him for \$250,000 the right to purchase the property anytime over the next ten (10) years at a price of \$1 million, but Roger neglected to register his option.

Last month, Seymour had to raise more money and he sold the property for \$1.5 million to Iggy, who bought the property sight unseen, and is now the registered owner of the fee simple. Seymour has disappeared with both the money and his

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friend, teacher Edna Krabapple. Iggy asked Frink to leave the property, but he refused. Roger wants to exercise his option to purchase the property for \$1 million, but Iggy refuses. Seymour's mother claims "what is rightfully hers", which means to her, half the house. Iggy needs your advice: is he bound by Professor Frink's agreement, or Roger's option and what, if anything, does Iggy owe Seymour's mother? Advise Iggy.

ANSWER 5(a), OR ONE PART OF 5(b). EACH IS WORTH THE SAME TEN (10) MARKS. DO NOT ANSWER MORE THAN ONE.

ANSWER EITHER

- 10** **5(a)** (*Suggested time: 17 minutes*) Ned Flanders started a retail business, The Leftorium, with money borrowed on an unsecured loan from the National Bank of Springfield. Unfortunately, Ned's business failed, he owes the Bank \$100,000, on the loan and it is in default. Ned is the registered owner of a parcel of land worth \$150,000, but the land is subject to a first registered mortgage in favour of the First Bank of Springfield, as mortgagee, in the amount of \$75,000. What is Ned's equity in the parcel, as distinct from his equity of redemption? Also, the National Bank thinks that Ned might have entered into an agreement of purchase and sale for the land, which has not yet closed. National Bank does not know for sure if, or when Ned might have agreed to sell the property. Advise the National Bank about collecting its loan debt or any portion of it out of this land.

OR

5(b) Explain and illustrate with reference to the relevant cases and/or statutes any one of the following Maxims of Equity:

1. Equity will not assist a volunteer; or
2. Equity looks to the substance not to the form; or
3. Equity will not allow a statute to be an instrument of fraud

END OF EXAMINATION