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**THIS EXAMINATION CONSISTS OF FIVE (5) PAGES (INCLUDING THIS PAGE)  
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**THE UNIVERSITY OF BRITISH COLUMBIA  
FACULTY OF LAW**

**FINAL EXAMINATION – APRIL 2019**

**LAW 453  
EQUITABLE REMEDIES**

**Section 1  
Professor Sheppard**

**TOTAL MARKS: 100**

**TIME ALLOWED: 3 HOURS**

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- NOTE:**
1. This is an open book examination. You may bring into the examination room and use during the examination your casebook, notes and summaries, but use of library books, textbooks, or materials prepared by someone other than you, is prohibited.
  2. Please answer each specific question asked. If, in answering a question, alternative legal arguments are reasonably possible, state and discuss them. If you need additional facts to fill in a gap or resolve an ambiguity, state what the facts are and why they are necessary. Give reasons for each answer. **You have a choice of answering question 2.1 or 2.2. Do not answer both.**
  3. Suggested times are given for each question. The times have been allocated according to the marks, and on the following assumptions:

Total examination time:	180 minutes
Allocated to general reading:	13 minutes
Allocated to questions:	<u>167 minutes</u>
<b>TOTAL</b>	<b>180 minutes</b>

**THIS EXAMINATION CONSISTS OF THREE (3) QUESTIONS. ANSWER  
QUESTIONS 1 AND 2 AND EITHER 3.1 OR 3.2.**

**MARKS**

1. Assume you are employed as an associate lawyer working for Springfield, British Columbia's sole practitioner, Lionel Hutz. Hutz, who has no familiarity with equitable remedies, requires your advice on the issues of equity arising out of the following situations.

- 15** (a) (*Suggested time: 25 minutes*) One of Hutz's clients is Jeff Albertson, "The Comic Book Guy." Jeff bought a house in the fall of 2018, without carefully investigating the neighborhood, before making the purchase. During the last few months of living there, Jeff has become only too well aware of what is going on around him. He tells Hutz that across the lane behind his home is an apartment block. In one of the apartments lives a tenant, Peppi Sanchez, known locally as the "Meth Guy." Sanchez is a small-time drug trafficker, who is known to the Springfield police and has previous convictions for drug offences. Peppi rents an apartment from complicit landlord Fat Tony D'Amico. Jeff complains to Hutz that at all hours of the night and day, suppliers make deliveries to Peppi and a steady stream of customers visits Peppi's apartment, to purchase drugs. To avoid detection by the police, the visitors use Jeff's driveway and hop over his back fence as a secret method of gaining entry into Peppi's apartment from the lane, but noise and profanity occur in Jeff's yard. Jeff has complained to the Springfield police, but to no effect. Police Chief Wiggum told Jeff that the police are focused only on apprehending "Mr. Big" and have no time to bother with Peppi, who is only a minor criminal in Mr. Big's trafficking operation. Jeff suggested to Fat Tony that he should evict Peppi, but Fat Tony said he enjoyed overcharging Peppi's substantial rent. Jeff tells Hutz that the commotion resulting from Peppi's drug trafficking cause insomnia and frayed nerves throughout the residents of the neighborhood, requiring some of them to take medication. Jeff says he can't sell his house because the drug trafficking activities through his yard have become notorious and have driven property values way down below what he paid for his home. Hutz asks you to advise Jeff on any equitable claims or remedies, immediate or long-term, that he might have against Peppi to stop the trafficking,
- 15** (b) (*Suggested time: 25 minutes*) Hutz's clientele includes Lurleen Lumpkin, a popular country and western singer and Krustylu Records. Lurleen agreed in writing to sing and record exclusively for Tumbleweeds Recording Studios for the next three (3) years and not to sing or record for any other record company without first obtaining the prior written approval of Tumbleweeds. A year after making this contract, Lurleen was offered a more lucrative singing and recording contract by Krustylu Records. Lurleen had written five (5) new songs in a rock-n-roll style of music while she was under contract with Tumbleweeds. Lurleen felt that these songs would fit better with Krustylu's customer base than with Tumbleweeds' country and western focus. Lurleen was anxious to accept Krustylu's offer, but Tumbleweeds told Lurleen that she would be held to her contract which still had two (2) years to run. Lurleen told Krustylu about her conversation with Tumbleweeds, but they decided to disregard Tumbleweeds' threats. Lurleen immediately agreed to supply Krustylu

with her five new songs and handed them over to Krustylu for safekeeping in its Springfield business premises. Having just found out about Lurleen's agreement with Krustylu, Tumbleweeds consults its lawyer. Tumbleweeds wants urgently to compel Lurleen to record for Tumbleweeds for the remaining months of their contract. Tumbleweeds also wants to enter Krustylu's premises, to search for and to recover all the song material that Lurleen handed over to Krustylu. Tumbleweeds' urgency is based partly on fact that record sales peak in the spring of the year and partly on Krustylu's denial of having any of Lurleen's recordings on its premises. Advise Lurleen and Krustylu of Tumbleweeds' possible equitable remedies against either of them and their defenses, if any.

- 15 (c) (*Suggested time: 25 minutes*) Another client of Hutz is millionaire, Artie Ziff. Artie moved to Springfield in 2015, purchased the lot next-door to the baseball diamond used by a minor league team, the Springfield Isotopes Baseball Club and Artie built a mansion on his lot. After moving into his new mansion Ziff became increasingly annoyed by the baseballs sailing into his yard from the Club's field next-door. Ziff erected a seven (7) foot wall to keep the baseballs out of his property, which is the maximum height for a fence allowed by Springfield bylaws, but the fence did not eliminate the danger of soaring baseballs landing in his yard. Ziff asked the Club to stop playing ball on the field but the club refused his request, pointing out that Ziff had moved to the area only relatively recently whereas the club had been playing baseball on that field since the 1980's. Also, the club said to Ziff that ceasing to play there would have a negative effect not only on the club, but also on all the many baseball fans in the Springfield community, as there was no other field available. Moreover, the club is planning to build new and bigger stands to accommodate the growing number of baseball fans, and the construction project will provide much-needed employment to the economically-depressed city of Springfield. Hutz asks you to advise Ziff if he can obtain an equitable remedy in these circumstances.
- 15 (d) (*Suggested time: 25 minutes*) Out-of-work and penniless ex-actor Tory McClure is another of Hutz's clients. Ruth Powers owns and lives in a fine house in swanky Springfield Heights, with a fair market value of \$4 million. Ruth met Troy, was charmed by him, and soon invited him to live rent-free with her. Troy willingly accepted her generosity, because he was homeless and penniless. Thereafter, Ruth became infatuated with handsome Troy. She began talking about their future together and told him that he could live in the house with her as a couple, now that they were a romantic item. Troy fortuitously received a \$20,000 inheritance on the passing of a distant relative, which he exhausted on redecorating the house and improving the garden. Ruth did not stop Troy from splurging on the house and garden, but she secretly disapproved of Troy's extravagantly squandering his inheritance on what she regarded as frivolous and unnecessary expenditures. She broke off their relationship and ordered him to leave her house. Troy is now broke, homeless and devastated by their breakup. Troy sought advice from Hutz, who refers him to you. Advise

Troy if he can claim a proprietary share in Ruth's home or other equitable remedy against her.

- 25 2. (Suggested time: 42 minutes) "Diamond Joe" Quimby is the mayor of Springfield and sole trustee of the Springfield Beautification Trust, which funds the enhancement of Springfield's parks. At the same branch of the First Bank of Springfield in which the trust account is held, Joe has his own personal account, which has a credit balance of \$10.

The following breaches of trust occur:

- (a) Joe withdraws \$5,000 from the trust account, deposits it in his personal account, from which he spends the entire amount to entertain his political supporters to an evening of fine food and wine at the Rancho Relaxo Spa, on the outskirts of Springfield.
- (b) To please the parents (voters) of school children, Joe withdraws \$100,000 from the trust account and gives it to the Springfield Elementary School, which the school principal, Seymour Skinner, innocently spends on much-needed seismic upgrading to the school building.
- (c) Joe withdraws \$200,000 from the trust account, which he uses to buy for the trust risky shares in Omni-Pave Contracting Ltd., a publicly-traded construction company suspected of shady transactions, including frequently bribing Joe to be awarded Springfield city contracts. As a result of bad publicity and scandal, the Omni-Pave shares fall in value to \$0. Joe tries to hide the trust's loss on the shares by taking \$300,000 in breach of trust from the Bicyclists and Walkers Trust of which Joe is also sole trustee. Joe deposits the funds from the Bicyclists and Walkers trust into the bank account of the Springfield Beautification Trust. The Springfield Beautification Trust claims all or at least 2/5ths of the \$300,000 in the account, but the Bicyclists and Walkers Trust sees through Joe's fraudulent attempt at concealment and claims the entire \$300,000 in the Springfield Beautification Trust's bank account.

Facing an upcoming mayoralty election and foreseeing political and financial disaster from the breaches of trust, Diamond Joe intends, as soon as he possibly can, to give his only valuable asset, a priceless collection of vintage comic books, to his niece, Clovis Quimby, who lives in remote Azerbaijan. Joe is quietly selling up and preparing to leave town. The accountant of the Springfield Beautification Trust has good reason to believe that unless immediate steps are taken to stop Joe from giving away the comic books to his niece, he is unlikely to have enough assets to satisfy a judgment against him personally. Advise the Springfield Beautification Trust of its various remedies, if any, against Joe personally, the Rancho Relaxo Spa, the Springfield Elementary School, or the Bicyclists and Walkers Trust, based on the scenarios (a)-(c) above.

**ANSWER EITHER OF 3.1 OR 3.2****CHOOSE TO ANSWER ONLY ONE****EITHER**

- 15 **3.1** (*Suggested time: 25 minutes*) The Stilton Hotels chain was looking to buy eight (8) adjoining city lots in downtown Springfield on which to build a ten (10) storey hotel, which would have the distinction of being the tallest building in Springfield. Realtor Cookie Kwan had assembled the ideal location of lots that exactly suited Stilton's purposes and plans. Stilton offered Cookie eight million dollars (\$8 million) for the 8 lots. Cookie accepted the offer and signed the agreement of purchase and sale but shortly thereafter Cookie received an expert valuation of the eight lots at \$12 million. Cookie reneged on the Stilton transaction because she feared being sued for negligence by the owner of the 8 lots for not getting a better price. Shortly thereafter Cookie acquired the opportunity to sell another land assembly of seven (7) adjoining lots near the same area of downtown Springfield and she offered to sell them to Stilton for a bargain price of \$5 million but Stilton rejected the offer, insisting on going through with the initial purchase of the 8 lots, because the smaller land assembly of seven lots would not stand out from comparable structures and would limit Stilton to building a smaller and less profitable hotel. Stilton sued Cookie seeking specific performance and/or damages for breach of their contract. Advise Cookie about the remedies she faces.

**OR**

- 3.2** (*Suggested time: 24 minutes*) Explain with at least one practical example, the concept of a "fusion fallacy."

**END OF EXAMINATION**