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**THIS EXAMINATION CONSISTS OF 3 PAGES, including this cover page
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A ALLARD SCHOOL OF LAW

MIDTERM EXAMINATION – DECEMBER 2018

**LAW 231
Property Law**

**Section 1
Professor Wood**

TOTAL MARKS: 100

TIME ALLOWED: 1 HOUR AND 15 MINUTES

NOTE:

1. **This is an open book exam.** You may bring any notes and materials with you except for Ziff, *Principles of Property Law*. You may not use any electronic device apart from a computer loaded with Exemplify software.
2. **There is no dedicated reading period** but you are encouraged to use the first 15 minutes to read the questions carefully and plan your answers.
3. **This examination has two questions, each worth 50 marks. You must answer both questions. Question 2 has two parts, of which you must answer either part (a) or part (b). Question 1 contains some basic facts about parties' identities, occupations and ownership interests that are relevant to Question 2, but aside from these basic facts, all the facts relevant to a question are contained in that question.** The questions use the personal pronouns preferred by the individuals concerned.
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 individuals are adults with full legal capacity and all events 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, ON EVERY OTHER LINE, preferably in ink.**

THIS EXAMINATION CONSISTS OF TWO QUESTIONS

MARKS

- 50** **1.** **Aquatic Inc.** is the registered owner of a parcel of land in a rural area of British Columbia, where it operates an aquaculture facility (fish farm) that raises salmon. Protesters occupied a portion of the fish farm. In Spring 2018, a court ordered the protesters to leave Aquatic's land within one week and prohibited them from protesting on Aquatic's land.
- Bonnie Billingsley** is the registered owner of a parcel of land immediately across the road from Aquatic's lot, where she lives with her wife and children and operates a farm that produces organic eggs and goat's milk products. She is a vocal opponent of the fish farm. When the court order was issued, she invited the protesters to park their vehicles and set up their protest camp on her front yard. They accepted the invitation and since then have camped, parked vehicles and engaged in peaceful protest against Aquatic on Bonnie's front yard.
- Shortly after the protesters moved onto Bonnie's land, Aquatic purchased an aerial drone to monitor and record the protest with zoom lens-equipped video cameras. Since then, it has flown a drone over the protest on average three times a day, for around ten minutes at a time. The drone spends a substantial portion of its flight time directly above the protesters and their parked vehicles, around 20 metres overhead. The drone weighs 900 grams. Aquatic has neither applied to the federal government for a special flight operations certificate nor completed any of the steps to qualify for an exemption.
- Bonnie has sent numerous emails to Aquatic complaining that the drone overflights constitute trespass and demanding that Aquatic cease the flights immediately. In these emails she has complained that because of the drone she now keeps the house curtains closed to protect her privacy, and she and her children spend less time playing and gardening outdoors. She also complains that the drone agitates her chickens and goats, whose production of eggs and milk has declined since the drone flights began. Finally, she complains that the drone invades the privacy and disrupts the peaceful activity of the protesters, who are her invited guests.
- Advise Aquatic whether its drone operations constitute trespass to Bonnie's land at common law.** Please discuss legislation only if and to the extent that it is relevant to the issue of common law trespass.
- 50** **2.** **Answer either Part (a) or Part (b):**
- (a)** One day shortly after the drone flights started, the Aquatic employee piloting the drone became distracted and lost sight of the drone. Unable to see the drone, she inadvertently steered it toward the back of Bonnie's lot, where after a few minutes it crashed and came to rest high up in the branches of an evergreen tree just inside the rear boundary of Bonnie's lot. Aquatic did not notify Bonnie of the mishap and took no steps to recover the lost drone. It immediately purchased another identical drone, continued the drone flights and wrote the original drone off its books (in accounting, an asset may be written off if it suffers loss or damage that renders it unusable for its intended purpose).
- Casey Chen (Casey)** and **Deepak Dhaliwal (Deepak)** are scientific researchers employed by **Excellent University of British Columbia (EUBC)**. Their research involves climbing trees to look for birds' nests and count eggs and baby birds. In Summer 2018, a few months after Aquatic's drone crashed, they entered Bonnie's land with Bonnie's permission to conduct their research. While climbing a tree to look for birds' nests, Casey saw the drone a couple of metres away on a branch. They yelled down to Deepak, "Hey, I found a drone up here! Awesome, I've been wanting one." Casey climbed over toward the drone. They dislodged it from the branch with their outstretched arm, but it slipped out of their hand before they had a firm grip on it. As it fell, Casey called down, "I dropped my drone!" Deepak caught the drone as it fell, and held it securely as Casey climbed down. Casey demanded the drone, saying "Give it back, it's mine, I

found it!" Deepak refused, saying "No way, I caught it, it's mine!" Casey tried to take it from Deepak. During the struggle they both saw a sticker on the drone with the name, address and telephone number of the owner, Aquatic. Casey eventually wrestled the drone away from Deepak. Over Deepak's continued objections, Casey took the drone away and kept it.

The rear portion of Bonnie's land where the drone crashed is densely forested, unfenced and does not have any "No Trespassing" signs. The spot where the drone was found is around a ten minute hike through forest from Bonnie's house and farmyard. No one inspects or patrols this area regularly. Bonnie and her family go back there only a few times a year, for recreation.

Neither Casey nor Deepak took any steps to contact Aquatic or otherwise publicize the recovery of the drone. A few weeks ago, by a freak coincidence, an Aquatic employee saw someone operating a drone with an Aquatic ownership sticker on it, befriended the person and got their name and contact information. That person was Casey. The employee also noted the drone's serial number, which matched that of the drone that Aquatic had lost.

Advise Aquatic who owns the recovered drone.

OR

(b). Aquatic recently received a threatening letter from a law firm representing **FishBountiful Ltd.** FishBountiful manufactures a pesticide, trade-named Lice-Ex, that is used to treat sea lice infestations in farmed salmon. Sea lice infestations cause increased mortality amongst juvenile farmed salmon and can spread to wild salmon. Unfortunately, Lice-Ex has harmful effects on salmon. FishBountiful developed a genetically modified salmon that is resistant to the harmful effects of Lice-Ex. It owns a Canadian patent for the genetically engineered genes and cells which, when inserted into fish, dramatically increase their resistance to the harmful effects of Lice-Ex. FishBountiful sells juvenile Lice-Ex resistant salmon to aquaculture operators only if they pay a licence fee and sign a licence agreement that permits them to raise and harvest the purchased Lice-Ex resistant salmon but prohibits them from selling or giving them to any third party, breeding them, and raising or harvesting their offspring.

Aquatic has never entered into a licence agreement with or paid a licence fee to FishBountiful. It has never treated its farmed salmon with Lice-Ex; it uses other methods to control sea lice.

The letter from FishBountiful's lawyers alleged that FishBountiful conducted genetic testing of a large sample of farmed salmon sold in retail stores and found that 15% of Aquatic's salmon in the sample contained the patented Lice-Ex resistant genes and cells. The letter alleged that this could not have been a coincidence, accused Aquatic of infringing FishBountiful's patent and threatened legal action. Until receiving this letter, Aquatic had no idea that its farmed fish might contain the Lice-Ex resistant genes and cells. Aquatic assures you that it never intended to raise and never attempted to isolate or grow Lice-Ex resistant salmon. In response to the letter Aquatic did its own genetic testing of its farmed fish. Aquatic was surprised when its testing confirmed FishBountiful's findings: around 15% of the tested fish contained the genetically modified genes and cells. Aquatic's scientists think that the most likely explanation is that Lice-Ex resistant salmon have escaped from licensed fish farms and passed the modified genes to the wild salmon populations from which Aquatic catches a substantial proportion of the juvenile salmon that it raises in its fish farms.

Advise Aquatic whether it has infringed FishBountiful's patent.

END OF EXAMINATION

Happy Holidays!