

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

FINAL EXAMINATION – APRIL 2020

LAW 231.001  
Property Law

Professor Stepan Wood

**EXAMSOFT PASSWORD:**  
**EXAMSOFT RESUME CODE:**

**TOTAL MARKS: 100**

**WRITING TIME ALLOWED: 3 HOURS and 20 MINUTES**  
**PREPARATION TIME ALLOWED: 10 MINUTES**

Preparation Time has been given to download/print/set up for your exam once the exam has been made available online through Canvas. This time cannot be used for writing exam answers. All exam answer uploads will be monitored to ensure that typing of answers only occurred for the allotted Writing Time.

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This is an open book examination, meaning that there are no restrictions on the notes and materials you may consult.

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question.

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Your Exam Code, Course Number, Name of Course, and Instructor Name  
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## INSTRUCTIONS SPECIFIC TO THIS EXAMINATION

1. **This examination consists of three questions worth a total of 100 marks. Answer all three questions.** Question 1 is worth 34 marks. Questions 2 and 3 are worth 33 marks each.
2. **There is no dedicated reading period** but you are encouraged to use the first 20 minutes to read the questions carefully and plan your answers.
3. **Identify yourself only by your exam number.**
4. **Indicate the number of the question** you are answering at the start of each answer.
5. **All events and transactions take place in British Columbia today** unless otherwise specified.
6. 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.
7. 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.

## EXAMINATION QUESTIONS

1. **Answer the following question (34 marks, 1/3 of writing time).**

Think about an experience you have had with property law in your own life. **How, if at all, has your understanding of that experience changed since taking this course, and what does that experience reveal about the values property law serves and the functions it performs in Canadian society?** Support your answer with relevant information drawn from the examinable course materials.

2. **Answer the following question (33 marks, 1/3 of writing time).**

A decade ago, **Xavi Xaypangna** began cancer treatment. **Abel Aririatu** was part of his cancer care team. Over the course of the cancer treatments, the two men fell in love. Xavi divorced his wife, with whom he had raised three children who had left home years earlier. Xavi and Abel moved in together, and Xavi's ex-wife died soon thereafter. Xavi's children resented his desertion of their mother and his relationship with Abel. Xavi and Abel were never married, and neither depended on the other financially, but they loved each other deeply.

Last fall Xavi's cancer came back. His new cancer treatment was successful but it weakened his immune system. Earlier this year he contracted COVID-19, fell gravely ill and died in March. He left a simple handwritten will, which he wrote without legal advice, that provided:

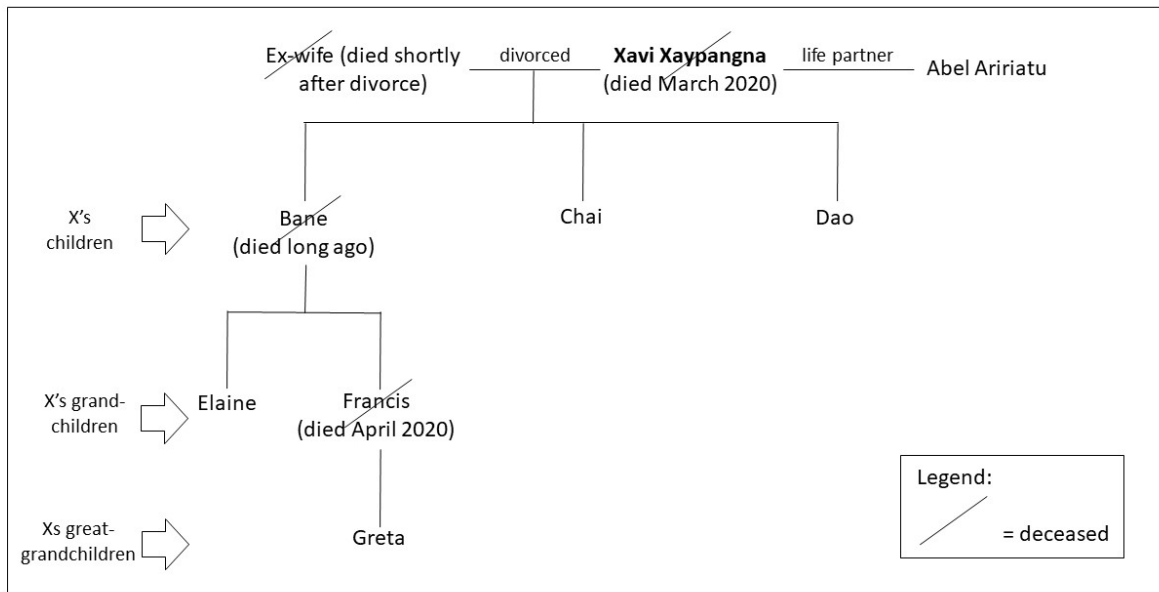
For the last ten years Abel Aririatu has been my reason to live. I give everything to him to use as he wishes during his lifetime. My children may be angry with me but I love them, and after Abel dies I want whatever is left to go to them and their descendants as follows: 1/3 to my daughter Chai; 1/3 to my daughter Dao; and 1/3 to the children of my dear departed son Bane.

The will contained no residual clause.

When he died, Xavi owned land in BC in fee simple and various personal property. He was the sole owner of these assets. No one else contributed to them. Xavi and Abel also had some joint bank accounts. They were listed as “joint tenants” of the accounts, contributed funds equally to them and shared the control and use of them. Abel’s name was not put on the accounts to enable him to help manage Xavi’s financial affairs, as some people do for elderly parents. Finally, Abel had a bank account in his sole name that Xavi had opened and to which Xavi contributed all the funds. When he opened the account, Xavi gave Abel the account paperwork along with a note saying “Dear Abel, this account is yours, to save or spend however you want. Love Xavi.”

Xavi was survived by Abel and by Xavi’s children **Chai** and **Dao**. Xavi’s other child, **Bane**, died long ago, but Bane’s two adult children, **Elaine** and **Francis**, were alive when Xavi died, along with Francis’s baby daughter **Greta**—Xavi’s great-granddaughter. Tragedy struck again in April when Francis was killed in a car accident, leaving Greta as his sole heir. The diagram below shows the family tree.

**XAVI’S FAMILY TREE**



**Advise Abel what property interests, if any, he and Xavi’s living descendants hold in the assets described above. Do not consider the ex-wife’s property interests.**

**3. Answer either part (a) OR part (b) (33 marks, 1/3 of writing time).**

**(a)** A homeless encampment has been in place in **Oppenheimer Park**, a small urban park in Vancouver's Downtown East Side, since October 2018. It has around 120 residents. In August 2019 the **City of Vancouver** ordered camp residents to remove all tents and structures, alleging violation of a bylaw that prohibits tents or structures in parks without the City's consent. The City cited serious health and safety risks in the park arising from crowding, unsanitary conditions and discarded needles; fire hazards and chronic non-compliance with a fire safety order issued in February 2019, including 17 fires in the camp since that time; increasing criminal activity, violence and weapons in the park; and the need to return the park's valuable amenities to community members who have been effectively excluded by the encampment. The City claimed that it had secured enough stable housing to house most of the camp residents, and enough shelter beds and personal property storage for the rest to use while suitable housing was identified.

This eviction order remains in effect, but the City has not applied for an injunction to enforce it, and conditions in the camp have remained the same. The COVID-19 pandemic brought things to a head again. Homeless people are highly vulnerable to COVID-19. They lack private homes in which to self-isolate. According to a homeless advocacy organization,

In Oppenheimer Park, there is no soap or hand sanitizer in the washrooms — and sometimes no washrooms at all. Running water is limited. Tent city residents, and other homeless people, often rely on crowded drop-in centres, food line-ups, and shelters with shared washrooms and showers. Many are immune compromised, with chronic disease and disability, and a high percentage are seniors. Shelters and drop-ins are already overwhelmed and under-equipped to offer additional shower, laundry and washing facilities.

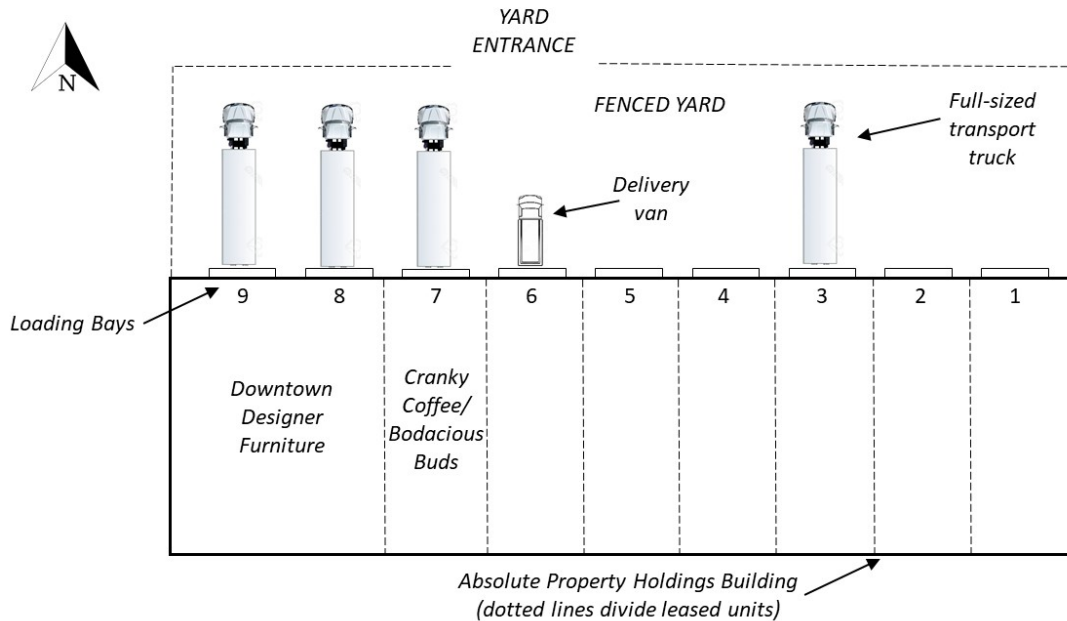
To limit the spread of COVID-19, homeless shelters have reduced their capacity (ie., number of beds). The City has opened temporary shelters that allow some physical distancing, and secured some accommodations for homeless people to self-isolate safely, but it admits that there are not enough shelter or self-isolation spaces to meet the needs of Vancouver's homeless population in this crisis.

The first COVID-19 case has now been confirmed amongst Oppenheimer Park camp residents. The City wishes to apply for an interlocutory injunction to evict all campers from the park immediately. The City fears that otherwise the virus will ravage the camp. The City knows that during the pandemic some cities, including San Francisco, are actually encouraging homeless people to erect tents on public property at least 2 metres apart instead of crowding into shelters where physical distancing and self-isolation are very difficult. The City's position is that while this might work in theory, it will not work in practice because past efforts to get Oppenheimer Park residents to separate tents for fire safety have failed repeatedly, and more drastic measures are now needed.

**Advise the City whether a court is likely to grant the injunction in the circumstances of the COVID-19 outbreak.** Focus on the evidence the court might consider and how it might weigh it, not on the legal tests for interlocutory injunctions and violations of the *Charter of Rights*. If evidence is lacking, describe what kind of evidence is needed, but please do not consult or refer to information beyond the examinable course materials and this examination question.

QUESTION 3 CONTINUES ON NEXT PAGE

(b) **Absolute Property Holdings Inc.** owns a commercial building in Vancouver. It leases space in the building to tenants who run variety of businesses. At the back of the building there are nine loading bays and a small, fenced shipping yard (see the diagram below).



**Bodacious Buds Ltd.** operates cannabis stores in Vancouver and sells cannabis products online. Its online business has boomed since the start of the COVID-19 outbreak. Its current distribution centre is too small to keep up with demand. It urgently needs to find a larger space. It believes it has found a suitable space, currently occupied by a tenant in Absolute Property's building.

That tenant is the **Cranky Coffee Company**. It leases Unit 7 in the building, where it operates a coffee roastery and distribution facility. It supplies restaurants and cafés throughout western Canada. Cranky Coffee's business has been devastated by the COVID-19 pandemic as its customers shut their doors. It laid off most of its employees and is on the verge of defaulting on its lease payments.

Bodacious Buds wants to sublet a portion of Cranky Coffee's premises for use as a cannabis warehouse and distribution centre, and to hire some of Cranky Coffee's employees. This (plus emergency government funding) will enable Cranky Coffee to keep paying rent and ensure some of its employees have work.

Cranky's lease authorizes it to operate a food and beverage business in Unit 7 and provides:

The Tenant shall not assign this lease or sublet any portion of the demised premises without the prior written consent of the Landlord, which consent shall not be arbitrarily or unreasonably withheld, however it is understood and agreed that the withholding of consent by the Landlord shall not be construed or pleaded as being unreasonable if the major tenant occupying the building objects to the nature of the business to be conducted by any sub-tenant or assignee.

Cranky Coffee requested Absolute Property's consent to the proposed sublease. Absolute Property informed its major tenant, **Downtown Designer Décor**, which manufactures home furnishings in Units 8 and 9. Trucks come and go from its loading bays a few times each workday. Its business is still strong despite the COVID-19 pandemic.

Downtown Designer Décor objected to the proposed sublease on the ground that Bodacious Buds' trucks would block access to its loading bays. Due to the narrowness of the yard and the location of the yard entrance, delivery vehicles cannot get to or from Downtown Designer Décor's loading bays if a full-sized transport truck is parked at Unit 7's loading bay.

Until now, Cranky Coffee has used vans for shipping and receiving, which do not prevent vehicles from getting to and from Downtown Designer Décor's loading bays.

Bodacious Buds plans to use full-sized transport trucks to ship and receive cannabis products at its new facility. Its trucks will come and go several times each day, each time parking at loading bay 7 for around half an hour. There will be several half-hour periods each day when vehicles cannot go to or from Downtown Designer Décor's loading bays. Downtown Designer Décor believes that this will interfere with its shipping and receiving operations and damage its business.

Absolute Property wrote to Cranky Coffee stating that it was withholding its consent to the sublease because Downtown Designer Décor objected to the nature of Bodacious Buds' business.

Cranky Coffee replied that Absolute Property will likely be better off financially with the sublease. The rent Bodacious Buds will pay to Cranky Coffee under the sublease is calculated partly on the basis of its income, and so is the rent Cranky Coffee pays Absolute Property. With Bodacious Buds' booming business, Cranky Coffee will likely pay Absolute Property more rent than normal. Cranky Coffee projects that this increase will more than offset any decrease in Downtown Designer Décor's rent. Without the sublease, Cranky Coffee will likely default on its lease, depriving Absolute Property of any rental income from this Unit for an indefinite period. Absolute Property does not dispute these predictions.

Cranky Coffee also argued that Downtown Designer Décor was merely objecting to the location of the loading bays, not the nature of the business. Downtown Designer Décor acknowledged that its loading bays would not be blocked if Bodacious Buds rented any of Units 1-5.

Bodacious Buds offered to use smaller trucks that would not block access to Downtown Designer Décor's loading bays. At this point Downtown Designer Décor told Absolute Property that they just did not want a marijuana store in the building. Absolute Property then informed Cranky Coffee that its decision to withhold consent to the sublease was final.

**Advise Cranky Coffee whether Absolute Property validly withheld its consent to the sublease.**

END OF EXAMINATION  
STAY SAFE, STAY SANE!