

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

FINAL EXAMINATION – APRIL 2020

LAW 231.002
Property Law

Professor Dennis Pavlich

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 100

WRITING TIME ALLOWED: 3 HOURS
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.

This is an open book examination, meaning that you can refer to class notes, casebooks and other class readings. The use of library books is not permitted.

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.

*****PLEASE READ THE BELOW CONFIDENTIALITY REGULATIONS CAREFULLY*****

As this exam is being written off-campus and is unsupervised, any communication whatsoever (including but not limited to in person, telephone, e-mail, text, social media etc.) concerning the contents of this examination with anyone (other than your instructor or staff of the Allard School of Law) is strictly prohibited.

In the event any information comes to your attention regarding a breach of these regulations (by others, or inadvertently by you), please immediately contact Student Academic Services (studentservices@allard.ubc.ca) and make full disclosure.

A breach of these regulations may constitute student misconduct and you may be subject to penalty or discipline under UBC's Academic Misconduct policies.

What Do I Do If:

- **I cannot access the exam questions on Canvas**

If you experience technical difficulties accessing the exam questions on Canvas, email studentservices@allard.ubc.ca and the exam questions will be emailed to you. Please provide your phone number when emailing Student Services.

- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

If you experience technical difficulties with Exemplify at the very beginning or during an exam, we encourage you to spend NO MORE THAN 5 MINUTES attempting to troubleshoot your technical difficulties with Exemplify by restarting your computer. You will NOT BE GIVEN ANY EXTRA TIME to complete the exam if you experience technical difficulties with Exemplify.

If your attempt to solve the technical problem is unsuccessful, or if you choose not to make such an attempt, you MUST immediately begin typing your exam answers in a word processing software (i.e., MS Word, Apple Pages). Only if your computer or word processing software is not working, should you begin hand-writing your exam using paper and pen.

When you have finished writing the exam, you must upload via Exemplify any exam answers that you were able to complete in Exemplify, if possible. See below for technical support contact information if you cannot upload your Exemplify file.

You must also upload to Canvas any exam answers that you completed in a word processing software or via hand-writing. Please convert your word processing software file into PDF format, or take a picture or scan of your handwritten pages putting them into one folder. Upload the answer file/folder into the "Exam Answer File Submission (Word Processor or Hand-written ONLY)" link in the Law Exams – April 2020 course on Canvas. Your answer file/folder should be named, and the coversheet of your answers should be titled with:

Your Exam Code, Course Number, Name of Course, and Instructor Name
i.e., **9999 LAW 100.001 Law of Exam Taking (Galileo)**

- **I'm experiencing technical difficulties EXITING and UPLOADING the exam**

If you experience any difficulty exiting and uploading your Exemplify exam answers, you must wait until the allocated time period specified on the coversheet of the exam has ended, then email Bernie Flinn, flinn@allard.ubc.ca, and he or another IT Support staff person will help you to upload your Exemplify exam file. Please provide your phone number when emailing Bernie.

If you had to type using word-processing software or hand-write some or all of your answers, and experience difficulties uploading your exam answer file/folder to Canvas, email your exam answer file/folder to studentservices@allard.ubc.ca.

- **I fall ill in the middle of an exam, or am otherwise interrupted such that I'm unable to continue writing my exam**

Please stop writing, note the time that you stopped, and email studentservices@allard.ubc.ca immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

LAW 231.002 EXAM NOTES:

1. The questions are **not of equal marks**.
2. Discuss fully the reasons for your answers.
3. Unless the question states otherwise, assume the facts occur in British Columbia in 2019/2020.
4. In answering the questions your legal analysis should identify what additional facts may be required or clarified in order to provide a likely outcome to the problem.
5. PLEASE ANSWER **ALL** 4 QUESTIONS.

MARKS

25 Question 1.

In the Skeetchestn Indian Band case Lamperson, J of the BCSC upheld the refusal of the Land Title Office registrar to register the certificate of pending litigation filed by the Band. The basic reason was that aboriginal title is not an estate or interest that is registrable under the Land Title Act. As was said in *Skeetchesin* “the Torrens system is designed to register interests in land that have a clear identity recognized by the rules of real property law.” Because aboriginal title is *sui generis*, is not derived from fee simple, and does not fit within the scheme of current, common-law, real-property law, it is not registrable under the Land Title Act. [The decision was upheld by the BCCA.]

Consider the following excerpts from the *Xeni Gwet'in* First Nations case (SCC 2014) and the *Delgamuukw* case (SCC 1997):

- (a) “Since aboriginal title was a common law right whose existence was recognized well before 1982 (e.g. Calder) section 35(1) of the Constitution Act has constitutionalized it in its full form.” (*Delgamuukw*)
- (b) “What makes aboriginal title *sui generis* is that it arises from possession before the assertion of British sovereignty, whereas normal estates, like fee simple, arise afterward...What this suggests is a second source for aboriginal title – the relationship between common law and pre-existing systems of aboriginal law” (*Delgamuukw*)

- (c) “The Aboriginal interest in land that burdens the Crown’s underlying title is an independent legal interest, which gives rise to a fiduciary duty on the part of the Crown.” (Xeni Gwet’in First Nations)
- (d) “Aboriginal title confers ownership rights similar to those associated with fee simple...” (Xeni Gwet’in First Nations)

Given the findings in *Skeetchesin* and considering the above comments, together with any others you think relevant, do you think that the SCC would follow *Skeetchesin* concerning the filing of a certificate of pending litigation? In your discussion, please consider the references to the common law and aboriginal title, as well as:

- (a) the use of common-law terms such as “interest in land.” For example, should one be able in the land title system to give notice of all common-law land rights?
- (b) Are there public policy reasons to allow or disallow the filing of certificates of pending litigation in respect of aboriginal title? Should the Land Title Act be amended to specifically allow or disallow certificates of pending litigation concerning claims of aboriginal title?
- (c) How are First Nations supposed to protect their claims? Your answer should include a discussion of the nature of aboriginal title and its infringement.
- (d) You may also consider whether the treaty process plays a role in this issue.
- (e) Other matters you consider germane to this subject.

MARKS

25 Question 2.

You are an articling student. Your principal has just sent you this memo following a discussion with you had with him on January 16, 2020:

“As advised, we act for Pat, the purchaser of a commercial building in Vancouver. She signed the contract to purchase the building on January 4,

2020. She did not inspect the property, Blackacre, as she had viewed it many times a couple of years ago and said she was satisfied it was a good deal. The closing date was originally January 31, 2020. Apparently, the current owner, Sam, had done some major renovations to the building that were completed on January 3, 2020. The renovations included the back of Blackacre, where a loading dock extended out to a fence between the commercial building and another adjacent property (Redacre) behind, there being no lane between the two properties. Pat called me on January 6, after having given me a copy of the contract on January 4, and said she had discovered that there was a tenant in part of the property and she was not aware of this when she signed the contract. Pat found out that the rent was very low and she is not happy about the tenant. I did a title search and discovered that there were no leases registered against the property. Pat and I both agreed that it would be smart to “move up” the closing date to January 15 so the tenant would not find out about the sale and try to register something. The seller was happy to have an earlier closing as he would get his money sooner. He did not ask why we wanted to close earlier.

“We closed yesterday on the 15th, and I paid out the purchase price to the seller. When we closed, the Form A transfer was the only pending registration on the seller’s title. Out of an abundance of caution, I did another title search this morning. I feel sick about the results – can you figure out what I should do? Apparently, the tenant has filed a caveat for its lease. As well, the contractor who did the major renovations has not been paid and has registered a claim of builder’s lien against the title of Blackacre. And, to top it off, the neighbour in the commercial building (Redacre) behind Blackacre phoned Pat this morning to tell her that the renovations that extend up to the fence are actually partly on the neighbour’s property (Redacre). I thought the plans at the Land Title Office were correct and the property extended to the fence. I have told Pat that everything will be fine as we relied on section 23 of the Land Title Act and it will all be sorted out. Can you please tell me what the issues are, what facts I need to find out because I think I may be missing some important facts, and what the possible outcome of all of this may be? I am afraid I may have done something wrong.”

Please draft a memo to your principal answering his request and dealing with all of the issues that arise out of these facts. The facts are incomplete and part of your memo should deal with missing facts and possible outcomes that depend on those facts.

MARKS**20 Question 3.**

Ari is the registered owner in fee simple of a house. There are no charges on his title, but he had taken his duplicate certificate of title out of the land title office and had it in one of his kitchen drawers. He entered into a one year lease with Bob. Bob took possession of the house and Ari left the country.

Bob was not a good person. The day after moving in he discovered the duplicate certificate of title in the kitchen drawer. He hatched a scheme to sell the house. First, he obtained forged identification showing that he was Ari. He went to a lawyer – Denise - and introduced himself as Ari. He told the lawyer he was interested in selling his house (really Ari's house at this time). The lawyer recommended a real estate agent. Bob met the agent and signed a listing agreement, offering the house for sale. The house was advertised and Caroline signed a contract to buy the house for \$150,000. The price was fair market value, and Caroline honestly believed that Bob was Ari, the registered owner.

The lawyer, Denise, carried out the conveyance from Ari to Caroline, relying partly on the forged identification that Bob had presented. Bob obtained the sale proceeds of \$150,000 and moved into an apartment in town. He was not finished yet. He knew that Caroline had granted a first mortgage in favour of Regal Bank in the sum of \$100,000 and that the mortgage was registered against title to the house. Bob forged an assignment of the mortgage from Regal Bank to himself, and registered the assignment. Then he contacted a mortgage broker who agreed to find a buyer for the mortgage. The mortgage broker found a buyer for the mortgage and Bob sold it to Ellen for \$90,000. Bob took the sale proceeds from the sale of the house to Caroline and the mortgage sale proceeds of \$90,000 and left the country. Presumably he felt somewhat guilty.

Ari returns to the country unexpectedly and a neighbour asks him about the sale of his house. Ari is bewildered and comes to see you, a lawyer. You do a title search and discover the above transactions at the land title office.

Please advise Ari as to whether he can recover title to the house, and whether the title will be free and clear of the assigned mortgage.

MARKS**30 Question 4.**

In his self-drawn will, Sid Snooks, who died 5 years ago wrote the following in the year 1994:

“I leave my property Whiteacre to my daughter Sally and her issue. In respect to my other property Blackacre, which I own free and clear, I bequeath this finest of earthly havens to the two persons I love most in this world: Jackie and Moses. I would like them to live together in the very large house on this inspirational site that has given me immense comfort as a get-away cottage over the years, but only when each has reached the age of 60 years. That way neither need worry about shelter in their old age. And to all of my dearest grandchildren, alive at my death, who have given me such joy in my old age, I leave my property Greenacre, that they may enjoy the richest of pleasures that only a ranch can give, and which has given me such financial security in the steady income it has produced over the years of my long life. I want them to enjoy the farm in equal shares, but only when each one has turned 25 years though, of course, if income is needed to support and maintain anyone grandchild, income can be used for that purpose. I want God to help me to protect my family and very close friends and ensure they thrive and enjoy this world as I have done through His grace. I ask my beloved and very wealthy and wise wife, Beatrice, who has no need for a share in my patrimony, to see to it that my wishes in this will are carried out.”

In March, 2020 the following is the status of the ongoing administration of his will:

- (a) Beatrice has been appointed executrix and trustee of Sid’s will and estate;
- (b) Sally is alive and at the time Sid write his will had a son Abraham aged 1 year with whom there is animosity because he believes he should own Whiteacre which his mother who has occupied the property for thirty years. She has spent \$100,000 on repairs and renovation to the aging house on Whiteacre;
- (c) Jackie is 59 years and Moses 63 years. Moses has paid all the taxes and small mortgage on maintaining the house for the last three years and is seeking a contribution for these expenses from Jackie. Also, Moses has terminal cancer and a young son he would like to support by enhancing the assets he will leave to that son;

- (d) Three grandchildren are alive at his death: Abraham (now 26 years old), Mark who has just 20 years old age and wants his share of Greenacre now as he plans to travel the world; and John who is 18 years of age and in need of support for his education.

Beatrice, thoroughly confused, seeks your firm's clarification of the words of purchase and words of limitation in this will and so to advise her on the property interests vested (or contingent) in each of the family and friends identified together with their respective entitlements and obligations. Assess whether the rights given to the beneficiaries will enable them to realise their respective needs and/or desires. Give full reasons for your answer and advise of any further information that is required and should be sought.

END OF EXAMINATION