

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

FINAL EXAMINATION – APRIL 2020

LAW 231.003
Property Law

Douglas C. Harris

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 100

WRITING TIME ALLOWED: 3 HOURS
PREPARATION TIME ALLOWED: 10 MINUTES

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This is an open book examination. You may refer to your notes and course summaries, any statutory material or case law, and the casebook—*A Property Law Reader*. The use of property law text 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.

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Your Exam Code, Course Number, Name of Course, and Instructor Name
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1. 25 marks (45 minutes)

Eleanor Rigby and her partner, Sergeant Pepper, a retired couple, hold the fee simple interest as joint tenants to a two-bedroom apartment in the Strawberry Fields Apartments strata property development in Richmond, British Columbia.

In 2016, the owner of the apartment next door to them in the building listed it for sale. Rigby and Pepper were interested in acquiring the apartment and then removing the wall separating the two apartments in order to double their living space.

When they went to their bank to inquire about financing to assist in purchasing the second apartment, the financial advisor told them that they were ineligible for a loan because of their relatively low incomes as retirees. However, their daughter, Molly Jones, offered to be a co-purchaser of the apartment. Jones owned a successful climbing gym, which produced a steady income, and when she agreed to join her parents as a purchaser, the bank agreed to a loan, which would be secured with a mortgage against the second apartment.

With the financing in place, Rigby, Pepper, and Jones made an offer on the second apartment, which was accepted. Rigby, Pepper, and Jones registered their interest, and the three of them are now listed on title as the holders of the fee simple interest as tenants in common, each with a one-third interest.

Although Jones is registered on title as a co-owner, it was Rigby and Pepper who advanced all the funds to make the down payment on the apartment, and it has been Rigby and Pepper who have made the monthly payments on the loan and who have paid the property tax and all other expenses connected with the apartment, including insurance premiums, utility bills, and strata fees.

At the time of apartment purchase in 2016, Jones's business was enjoying solid and steady growth, but shortly thereafter a competitor opened in the neighbourhood and her business began to struggle. In fact, the climbing gym was in a precarious state before it had to close because of the covid-19 pandemic, and that closure has pushed it over the edge. Earlier this year, with her finances in disarray and creditors demanding payment, Jones declared bankruptcy.

The trustee in bankruptcy, which is responsible for gathering her assets and distributing funds to her creditors, has claimed Jones's one-third interest in the apartment at Strawberry Fields Apartments. Rigby and Pepper insist that Jones was on title only to help them acquire the loan from the bank and that the trustee in bankruptcy has no claim to it.

Outline the legal arguments that the trustee in bankruptcy should make to advance its claim, and those that Rigby and Pepper should make to advance their claim. Once you have outlined the arguments, provide an opinion on which you think will prevail. Finally, putting aside the question of which interest will prevail, which interest do you think should prevail and why?

2. 25 marks (45 minutes)

A First Nation in British Columbia's southern interior is reviewing the different options available to it in Canadian law to secure greater recognition from the Federal and provincial governments of its ownership and jurisdiction over its traditional territories. At present, the only lands that

Canada and BC recognize as belonging to the First Nation are several Indian Reserves that the Joint Indian Reserve Commission allotted in the 1870s. The reserves include important village sites, but amount to only a tiny fraction of the First Nation's traditional territory. Canada reduced one of the Indian reserves to half its original size following the report of the Royal Commission on Indian Affairs for the Province of British Columbia (the McKenna/McBride Commission) in 1916.

Drawing from the material covered in this course, outline the different processes that the First Nation might engage with in order to secure greater recognition of the land that it claims as part of its traditional territory. In doing so, pay particular attention to, and provide a description of, the different property interests that the First Nation might secure as a result of these processes.

3. 25 marks (45 minutes)

Penny Lane is a bare land strata property subdivision on Vancouver Island that was built in the early 1990s. Owners within the 250-unit subdivision hold the fee simple interest in lots with single-family homes. The homes are fairly typical suburban-style structures with short driveways and garages at front.

The development caters to "active seniors" and its bylaws include a provision that all residents must be 50 years of age or older. Many of the owners are "snowbirds" who head south in their recreational vehicles (RVs) for the winter months.

The storage of large RVs during the off-season became an issue shortly after Penny Lane was built. Owners with RVs would store them in their driveways for months at a time, causing other residents to complain that they were an eyesore. The Penny Lane strata council proposed a bylaw to prohibit the parking of RVs in driveways, but knew that it needed a parking/storage option for those owners with RVs if the bylaw were to secure the needed 75% support in order to pass.

Ringo Star held the fee simple interest in a 10-acre parcel of the land on the south side of the Penny Lane subdivision. In 1994, he entered into an easement agreement with Penny Lane providing that the strata corporation would have the continuing use of 2 acres of his land adjoining the subdivision for the parking and storage of up to 20 RVs. Penny Lane paid Ringo a lump sum of \$40,000 in return, and it committed to maintain the land in a state that would be suitable for the intended purpose.

In order to be useable as parking and storage for large RVs, Penny Lane spent another \$40,000 in grading the land, laying down gravel, and installing drainage.

In 2012, Martha Mydear bought the 10-acre parcel from Ringo. She is now registered on title as the holder of the fee simple interest. There is no easement registered against that fee simple interest, but Martha saw the RVs parked in the easement area when she toured the property, before she made an offer on it, and she had a copy of the agreement between Ringo and Penny Lane. She did not discuss the easement with the strata council at Penny Lane before purchasing Ringo's property.

The owners in Penny Lane have continued to park their RVs in the easement area since Martha purchased the 10-acre parcel. However, over the past few years they have had to deal with increasing levels of vandalism. In 2017, with Martha's agreement, Penny Lane installed lights in

LAW 231.003

the easement area, at a cost of \$20,000, in an unsuccessful effort to discourage the vandalism. It is now proposing to spend another \$30,000 to install a 2-metre high fence topped with barbed wire around the easement area.

Martha has come to you for advice. She objects to the building of a fence around the easement area, and is generally unhappy with the RVs on her property. She indicates that she was reluctant to agree to the new lighting in 2017, but did not want to come across as a difficult neighbor. Now she wants to know if she can prevent Penny Lane from building the fence, and further, whether she is compelled to allow Penny Lane to continue parking the RVs on her land.

Write a memo providing that advice and the legal basis for it.

4. 25 marks (45 minutes)

The covid-19 pandemic is placing considerable stress on many individuals and on many of the institutions in our society. The institution of property is not immune from these stresses. Indeed, the loss of employment and the abrupt closure of many business create particular challenges for many who hold property interests. Some owners will default on loans secured with mortgages, and many residential and commercial tenants will be unable to pay their rent. Furthermore, if tenants are unable to pay their rent, then some landlords will also default on loans secured with mortgages.

In these circumstances, governments and courts will need to make choices about whether to adjust the usual remedies of mortgagees to foreclose on a mortgage loan in order to acquire the property that secures the loan, and of landlords to evict tenants, whether commercial or residential, for the non-payment of rent and recover possession of the property.

How might the different justifications for private property lead to different choices in these circumstances? Do one or more of the justifications for private property provide a particularly helpful framework for making these choices? If so, why?

END OF EXAMINATION