

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

FINAL EXAMINATION – APRIL 2020

LAW 231.004  
Property Law

Bruce Woolley

**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.

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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.

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**LAW 231.004 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****30 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. “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 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 Xenigwet'in First Nations case (SCC 2014) and the Delgamuukw case (SCC 1997):

“Since aboriginal title was a common law right whose existence was recognized well before 1982 (eg Calder) section 35(1) of the Constitution Act has constitutionalized it in its full form.” (Delgamuukw)

“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)

“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)

“Aboriginal title confers ownership rights similar to those associated with fee simple...” (Xeni Gwet’in First Nations)

**Given the findings in the two cases and considering the above comments, together with any others you think relevant, do you think that the SCC would come to the same conclusion today that the BCCA came to and not allow the filing of the certificate of pending litigation? In your discussion, please consider the references to the common law and aboriginal title, as well as 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? 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? How are First Nations supposed to protect their claims? Your answer should include a discussion of the nature of aboriginal title and its infringement. You may also consider whether the treaty process plays a role in this issue.**

**MARKS****25 QUESTION 2.**

You are an articling student. Your principal has just had the following discussion with you on January 16, 2020. “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 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 concluded on January 3, 2020. The renovations included the back of the property, where a loading dock extended out to a fence between the commercial building and another property behind, there being no lane between the two properties. Pat called me on January 6, after giving 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 15<sup>th</sup>, 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 builders lien against the property. And, to top it off, the neighbour in

the commercial building behind phoned Pat this morning to tell her that the renovations that extend up to the fence are actually partly on the neighbour's property. 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**

### **30 QUESTION 3.**

Ari is the registered owner in fee simple of a house. There are no charges on his title, but 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****15 QUESTION 4. (Total of five questions, three marks each)**

Please comment on the following dispositions of a piece of BC real property made in a properly executed Form A Transfer in BC in 2020. Please discuss any missing facts/ assumptions.

A is the transferor:

1. To B (Three marks)
2. To B for life (Three marks)

Please comment on the following gifts made in a will in BC in 2020. The gift is a piece of BC real property and the residue of the estate, real and personal. Assume proper execution of the will and that the testator died in 2020 after making the will. Please discuss any missing facts/ assumptions.

A is the testator:

1. To B (Three marks)
2. To B and what is left over on B's death to C (Three marks)
3. To B for life without impeachment for waste" (Three marks)

**END OF EXAMINATION**