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THE UNIVERSITY OF BRITISH COLUMBIA
Peter A. Allard School of Law

EXAMINATION – DECEMBER 2019

LAW 231
Property

Section 2
Professor Dennis Pavlich

TOTAL MARKS: 100

TIME ALLOWED: One (1) HOUR
and 15 minutes reading time

NOTE:

1. This is an open-book examination.
2. The questions are not of equal marks. Please allocate your time accordingly.
3. Give answers that explain and discuss fully the reasons for your answers.
4. Assume the contentious matters in Question 1 occur (or have occurred) in British Columbia in 2019.

THIS EXAMINATION CONSISTS OF 2 QUESTIONS.

MARKS

- 75 1. Parm, a resident of Kelowna, is very anxious to view the property mislabelled, as subsequent events showed, “Equity’s Haven.” The property is registered in the Land Title Office as Blackacre, the fee simple of which Parm purchased three months ago when he was on Vancouver Island. Laura, a local notary, did the conveyancing effecting registration in Parm’s name. The property was a beautiful piece of land, bordering on a lovely river, with a large house built fairly close to the water’s edge. The wooden-framed, front deck is attached to the house with nails, screws and bolts that are easily removable. The previous owner had constructed it by attaching the deck to the verandah of the house. The structure provides an enormous walking and seating area leading to the river. The floor is built above ground over land that consists of fill from a recent and sizeable dump of sand and soil effected by the seller of Blackacre. The deck runs to the edge of the river and then runs into mid-stream. The deck is so large that to keep it level and secure it’s construction required support with wooden footings resting on concrete, pillar foundations embedded in the land. Some pillars were outside the river and others within it.

One afternoon, Parm arrived at Equity’s Haven to take occupation. It was a hot, sunny day. He wandered down to the river admiring the spacious deck. With some surprise, he observed that the course of the river seemed to have changed somewhat and that the property next door conspicuously appeared to have lost much of its glory (as he remembered) as a spacious, sandy beach. The change, as it now seemed to Parm, stemmed from the above described apparent massive dumping of fill on Equity’s Heaven which likely changed the river flow and its course along Blackacre inflating its (Blackacre’s) beach with sand. It looked as if there are corresponding depletions of soil on the properties immediately adjacent to Blackacre.

Mulling over possible causes and effect flowing from these observations, Parm returned to the house. His shifting thoughts were startled by the sight of a drone hovering (in his mind, threateningly) about 50 feet overhead. The next-door neighbour, Diane, saw Parm gazing fixedly and anxiously at the drone. She declaimed: “Don’t be bothered, young man – I just use that thing for taking pictures. It isn’t noisy.” Parm did not respond. He was now getting bad feelings about this purchase.

Then, almost Immediately after this less-than-pleasant interaction, another interruption. A Mr. Kwok approached the property and called out to Parm: “Hey – are you the purchaser of this property?” Parm confirmed that he was the new owner. Kwok, introduced himself as a BC government official. He had come to tell Parm that he was required by law to remove the fill in the river as well as the deck and its footings. Without any success, Parm tried to

persuade Mr. Kwok that the current status of Equity's Heaven is what he had paid for - all integral parts of Blackacre. Kwok left Parm reflecting on these disappointments (and outrage) when out of sky the now ubiquitous drone swooped towards him at a fearful 20 feet above. As he looked for cover, Diane, the neighbour, chillingly called out to Parm: "Young man, you can expect a few flights a day until you compensate me for the loss of my beach."

Parm, by now was very upset. Being the kind of person adverse to any conflict, he concluded that Blackacre had been a bad purchase. He got into his Land Rover and drove to the nearest town where he visited the notary who had executed his conveyance. He told Laura of his visit to Equity's Haven and said he did not want to take on all of the issues that appeared to face him as owner. He wanted to gift the property to his brother Rav who was a very strong, decisive person and who had been very kind to Parm over the years. He asked Laura to draft a Form A Transfer to Rav, which she did and Parm signed it. Laura said she would have to prepare an electronic version and file it at the Land Title Office in order for the title to be registered in Rav's name. Parm said he understood the need for registration, but wanted to have one last look at the property. He undertook to return later in the day with the transfer form. He put the Form A Transfer in his briefcase, drove to Equity's Haven, missed the turn for the house driveway and accidentally drove the Range Rover into a rocky part of the river lost control of the car which veered into the swirling waters. Tragically, Parm drowned.

Diane, who witnessed the tragedy from pictures taken with the camera on the (dratted) drone, discovered Parm and the Form A Transfer in his briefcase.

Please discuss the legal issues that these facts raise and provide your responses on possible legal outcomes fully explaining the reasons for your conclusions. If you think there may be missing facts, please disclose this commenting on their relevance and importance to legal outcomes. In your answer, please set out and apply any principles from the material covered this term.

MARKS

- 25 2. Please choose only **ONE of the following two topics** and write a short analytical essay:
- (a) Fully discuss whether equity's law of property unnecessarily adds to Oliver Cromwell's "ungodly jumble";
 - (b) Discuss the difference between the courts of equity and the common-law courts, including the remedies available in respect of real property. What developments in the courts of equity have influenced real property law, explaining especially the distinction between equitable and legal interests in land?

******END OF EXAMINATION******