

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

MID-TERM EXAMINATION – DECEMBER 2020

LAW 231.001  
Property Law

Professor Douglas C. Harris

**EXAM PASSWORD: 6VBhVr**  
RESUME CODE: ABB10A

**TOTAL MARKS: 100**

(8:50 AM PST) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PST) **READING & WRITING TIME ALLOWED: 1 HOUR & 15 MINUTES (75 MINUTES)**

**8:50-9:00 AM Preparation Time (Exam writing not permitted)** – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

**9:00 AM Exam Writing Time** – At **9:00 AM**, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

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This is an **open book** examination. There are no restrictions on the notes or materials that you may use or refer to in writing your exam. However, you are **not** permitted to access the Internet for assistance in responding to exam questions.

This examination consists of two questions. Answer **both** questions. In responding to the questions, please limit yourself to materials studied this term in this section of Property Law.

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, and continue answering the question. Do **not** attempt to contact your professor or anyone else about this while the exam is in progress.

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## ACADEMIC INTEGRITY

Exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

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

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Your answer file 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., **XXXX LAW 231.001 Property Law - Harris**

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**Best wishes for a safe and relaxing holiday break**

## **LAW 231.001**

### **PART 1**      **50 marks**      (suggested time allocation: 37 minutes)

Kevin and Susan Gray define “property” in the following terms:

‘Property’ is simply the word used to describe the particular concentrations of power over things; and every claim of ‘property’ comprises the assertion of some quantum of socially approved power as exercisable in respect of some socially valued resource.

Consider and explain this definition. Do you find it helpful in explaining what property is and what it does? Why or why not?

In addition, consider whether a definition of property should be able to provide guidance in resolving disputes over the appropriate “quantum of socially approved power”? Or should we expect to find that guidance elsewhere? Are there ideas that you find particularly compelling when assessing the creation of property and its allocation?

### **PART 2**      **50 marks**      (suggested time allocation: 37 minutes)

Sergeant Pepper lives in Burnaby, in the Forest Grove neighbourhood on the southern flank of Burnaby Mountain. He was one of the earliest residents in the subdivision when he purchased the fee simple interest in a house and lot in the early 1980s.

Eleanor Rigby is in the telecommunications business. She runs a small company that leases rooftops on which it builds towers for antennas and other electronic communication equipment. It then sells space on the towers to phone companies to expand or enhance their cellular networks. In 2019, Rigby signed a 10-year lease for the rooftop of a 4-storey commercial building in the light industrial district at Production Way, also in Burnaby. She planned to build two 5-metre cellular towers on the roof.

The main campus of Simon Fraser University is on top of Burnaby Mountain. Transportation to and from the campus has been a challenging issue for years, and last year Translink (the transportation authority in Metro Vancouver) dusted off and modified an earlier proposal for a gondola to replace the fleet of buses that transport thousands of students, staff, and faculty up and down Burnaby Mountain every day.

Translink has floated various options for the route. The one shown below in Figure 1—a direct line from the Production Way Skytrain Station to the SFU campus—is much preferred by SFU students as the most accessible (two Skytrain lines have stops at the Production Way Station) and the quickest route up the mountain.



Figure 1 Proposed route of Translink Gondola from Production Way Station to SFU

As Figure 1 illustrates, the gondola would require several towers to support the permanent cables and the gondola cars, which would travel over the light industrial district, the residential neighbourhood of Forest Grove, and then a conservation area, before reaching the SFU campus at the top of Burnaby Mountain.

Translink also considers this route to be the best option. There is broad public support for it, particularly so from the students, faculty, and staff at SFU, and other routes are longer and significantly more expensive. They also present additional safety concerns, or will have a greater impact on the conservation area.

The gondola cars would hang from the supporting cables, with the bottom of the cars a minimum of 30 metres above the ground in the light industrial district and 50 metres above the residential neighbourhood (Figure 2). At peak travel times in the morning and late afternoon, the cars could pass overhead as frequently as every 1-2 minutes. Those standing below a passing gondola might hear a humming and swishing noise, mostly from the air conditioning unit in each car and from the cars moving through the air.



Figure 2 Image from Translink showing cables and gondola car approximately as they would appear in relation to the residential neighbourhood of Forest Grove.

The zoning bylaws in Burnaby limit the height of buildings in the light industrial district to 4 storeys (approximately 12-15 metres), in the residential neighbourhood to 2 storeys (approximately 8-10 metres), so the gondola cars would be a minimum of 15 metres above the top of any commercial building and 40 metres above the top of residential buildings. Burnaby routinely approves cellular towers that extend above the 4-storey maximum in light industrial districts.

Aware of the concerns of the business owners and the residents in Forest Grove, Translink has designed the proposed route such that the gondola will pass directly over only one commercial property and one residential property. As it happens, the commercial property is the one that includes Rigby's rooftop lease, and the residential property is the one that belongs to Pepper.

Earlier this year, before Translink released its proposed gondola route, Rigby was negotiating with several cellular phone companies over space on the 5-metre towers that she was planning to install. Once Translink released the proposed gondola route, the phone companies broke off negotiations. Even though there would be at least 10 metres between the top of a 5-metre cellular tower and the bottom of the gondola, the phone companies are not interested in placing an antennae or other equipment on a tower where gondola cables and cars might interfere with the reception. Rigby believes that the rooftop is now worthless even though she has 9 years remaining on the lease.

For his part, Pepper is concerned about the potential noise, about the impact on his views, about diminished privacy, and about the loss of property value. His concerns are

shared with others in the neighbourhood, but none of the other residents would have gondola cables and cars directly overhead.

Pepper and Rigby have come to you for advice. Pepper wants to stop the Translink gondola, but failing that he wants compensation. Rigby just wants compensation. Might Pepper be able to derail the project, and does either Pepper or Rigby have a legal basis for compensation? Explain why or why not.

**END OF EXAMINATION**