

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

MIDTERM EXAMINATION – DECEMBER 2020

LAW 231.003

Property Law

Professor Stepan Wood

**EXAM PASSWORD: HK3Dw6**

RESUME CODE: ABB13D

**TOTAL MARKS: 100**

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

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 90 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.

---

This is an open book examination, meaning that there are no restrictions on the materials you may consult during the examination.

**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. Do not email your professor or anyone else about this while the exam is in progress.**

---

### **ACADEMIC INTEGRITY**

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. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

### **CONFIDENTIALITY REGULATIONS – READ 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 the Student Services 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](mailto: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](mailto: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, you may attempt to solve your problem/reboot your computer **BY YOURSELF**. You are **STRONGLY** encouraged to spend **NO MORE THAN 5 minutes** attempting to do so. You will **NOT BE GIVEN ANY EXTRA TIME** to complete the exam. **If your attempt to solve the problem is unsuccessful**, or if you choose not to make such an attempt, you **MUST** immediately **begin hand-writing** your exam answers with pen on lined paper. **You may NOT type your exam answer in word-processing software.**

When you have finished writing the exam, you must upload the exam answers that you completed in Exemplify (if you are prompted for a Resume Code, it is on the coversheet of the exam questions). Email Bernie Flinn, [flinn@allard.ubc.ca](mailto:flinn@allard.ubc.ca), for help with this. Please provide your phone number in the email. Bernie or another IT Support staff person will then help you to upload any answers that you typed in Exemplify.

You must also upload to Canvas your hand-written exam answers into the "Exam Answer File Upload (Word Processor or Hand-written ONLY)" folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

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., **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](mailto: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 in the email.

If you have approved accommodations to type your answers using Word Processing Software, and experience difficulties uploading your exam answer file to Canvas, email your exam answer file to [studentservices@ubc.ca](mailto:studentservices@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](mailto:studentservices@allard.ubc.ca) immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

---

### **INSTRUCTIONS SPECIFIC TO THIS EXAMINATION**

1. **This examination consists of two mandatory questions worth a total of 100 marks.** Question 1 is worth 67 marks and you must answer either part (a) or (b); Question 2 is worth 33 marks. Both questions are fact patterns asking you to provide legal advice to a client.
2. **There is no dedicated reading period** but you are encouraged to use the first 20 minutes to read the questions carefully and plan your answers.
3. **Identify yourself only by your exam number.**
4. **Indicate the number of the question** you are answering at the start of each answer.
5. **All events and transactions take place in British Columbia today** unless otherwise specified.
6. If you believe you need more information to answer a question, **indicate what additional information you need and why.** If you assume additional information, **state your assumptions clearly and explain why you are making them.** Do not make any assumptions that avoid relevant legal issues.
7. When a question asks you to refer to **course materials**, this means any information conveyed in the course, including the assigned readings, lectures, class discussions, slides, handouts, and resources posted on the course website, except to the extent that I have indicated they are not examinable.

END OF COVER PAGES

**1. Answer either part (a) or part (b) below. (67 marks, 2/3 of writing time)**

**Liz Lemmon** and **Lara Lightfoot** were in an intimate relationship and decided to have a baby together via therapeutic insemination (in which sperm is collected and inserted into a woman's vagina to fertilize her egg naturally). Lara and Liz asked their friend **Marco Maldonato** to provide sperm. Lara, Liz and Marco never concluded a written agreement about this subject, but agreed verbally that Marco would provide sperm and would not receive anything in return.

In the presence of a few friends, Lara and Liz said: "We are planning to make a baby. Our dear friend Marco has agreed to provide sperm. We are so grateful to him for helping us in this way." Marco replied, "That's right, I'm happy to help you realize your dream of having a family."

Lara and Liz entered into a written agreement with a fertility clinic, **Progeny Reproductive Medicine Inc. (Progeny)**, under which Progeny agreed to collect and store sperm on their behalf and to perform therapeutic insemination services for them, and they agreed to pay Progeny specified storage and service fees. The agreement also provided that no one but Lara and Liz would have access to or control of the sperm samples stored for them at Progeny.

On Lara and Liz's instructions, Progeny collected sperm samples from Marco and stored them at its facility. Progeny required Lara, Liz and Marco to sign informed consent forms that outlined the risks of the procedures performed by Progeny but said nothing about ownership of the sperm or its use for research or commercial purposes. Marco's informed consent form acknowledged that he relinquished all access to and control of all sperm collected by Progeny.

Progeny performed therapeutic insemination procedures for Lara and Liz using sperm collected from Marco. Several months later, Lara and Liz told Marco that the procedures had succeeded and they were expecting a baby. Marco sent them a card in which he wrote "Congratulations! Glad to hear that the little fellows I gave you did their job!"

Liz and Lara later split up. They concluded a separation agreement that provided for equal division of their shared property. When they divided their shared property, however, they overlooked the sperm stored at Progeny.

Unbeknownst to Lara, Liz and Marco, Progeny was also in the business of researching and developing commercial fertility treatments. Without notice to or consent from Lara, Liz or Marco, Progeny conducted research on some of the sperm collected from Marco. Until this time medical science had not succeeded in generating human sperm cells *in vitro* (in a laboratory). To do so would be a major advance with huge clinical and commercial applications.

**Dr. Brian Black**, a Progeny research scientist, discovered that Marco's semen contained cells that had the unique property of causing other cells known as spermatogonia (the cells that generate sperm cells in the testes) to generate sperm cells *in vitro*. He developed a cell line from these cells, which he named the *Ma* cell line after Marco Maldonato. This immensely valuable cell line is owned by Progeny.

A dispute erupted between Progeny and Dr. Black, which culminated in Progeny firing Dr. Black. In revenge, Dr. Black sabotaged Progeny's equipment, destroying most of the *Ma* cell line and most of the remaining sperm samples collected from Marco. Despite this setback, Progeny expects to make millions from commercial exploitation of the *Ma* cell line. Also, several of Marco's original sperm samples remain viable.

Lara wants to have a baby with her new partner. She contacted Progeny to begin a new round of therapeutic insemination using the stored sperm. She claimed that half the stored sperm was hers pursuant to her separation agreement with Liz. Liz disagreed.

Federal legislation allows sperm donation but prohibits the purchase, sale, offer to sell or purchase, and advertisement for sale or purchase of human sperm or ova. It also prohibits the purchase of any human gene or cell with the intent to create a human being. Other legislation

strictly regulates how sperm is handled and disposed of in medical facilities and laboratories, but there are few legal restrictions on such handling or disposal elsewhere.

Everyone mentioned above is available to testify. Lara has retained you as her lawyer.

- (a) **Advise Lara whether Marco made a valid gift of his sperm to Lara and Liz.**  
For this question, please assume that sperm cells are property. (67 marks, 2/3 of writing time)

**OR**

- (b) **Advise Lara whether the sperm is property for purposes of the separation agreement, and whether Progeny and/or Dr. Black are liable for conversion.**  
For this question, please assume that Marco made a valid gift to Lara and Liz of any property he might have had in the sperm. (67 marks, 2/3 of writing time)

**2. Answer the following question. (33 marks, 1/3 of writing time)**

Progeny's facility was located in a building owned by **Cascadia Properties, Ltd. (Cascadia)**. Progeny rented its space from Cascadia. The entire building was occupied by medical offices, clinics and labs.

Some of Progeny's lab equipment was highly specialized and sensitive to vibration. It required vibration isolation technology to function at the unusually high level of accuracy Progeny required. Progeny purchased and installed two vibration isolation technologies in its lab.

First, to minimize vibration caused by lab technicians moving around, Progeny installed vibration-damping synthetic polymer mats on the floor. The floor underneath the mats was fully finished and suitable for use as the floor of an ordinary medical lab or office. To perform properly and avoid tripping hazards, the mats were glued directly to the floor. They had a useful life of 3-5 years, after which they had to be replaced. A few workers using tools and solvents could peel the mats off and restore the floor to its original condition in one or two days of work.

Second, to achieve even greater vibration isolation for its very large and heavy scanning electron microscope, Progeny installed a special vibration-isolating floor platform on which it placed the microscope. This platform consisted of a large steel plate weighing almost 1,000 kg, suspended between several vibration isolators. The whole apparatus rested on the floor only by its own weight. It had a useful life of 50 years. It could be removed without damage to the building, but only with great difficulty and expense, using specialized heavy equipment in an operation that would take around a week.

Progeny's lease terminated last week. Before termination, Progeny removed all its possessions to a new facility except the floor mats and floor platform. Yesterday its employees returned to remove those items, but Cascadia refused, claiming that it now owns them. Progeny's lease contained no relevant terms.

Cascadia has retained you as its lawyer. **Advise Cascadia whether the floor mats and platform belong to it.** (33 marks, 1/3 of writing time).

END OF EXAMINATION  
HAPPY HOLIDAYS!