

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

DECEMBER EXAMINATION – DECEMBER 2020

LAW 231.004
Property Law

Professor Graham J. Reynolds

EXAM PASSWORD: GpfBA3
RESUME CODE: ABB157

TOTAL MARKS: 100

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

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 1 HOUR AND 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.

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. You are not permitted to access the Internet for assistance in responding to exam questions.

This examination has two questions. For question 1, please answer both 1A and 1B. For question 2, please answer either 2A or 2B. In responding to the questions in this exam, please limit yourself to materials studied or discussed this term in the context of our Property Law class.

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) 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 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, 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., **XXXX LAW 231.004 Property Law - Reynolds**

- **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, 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.

- **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 immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

I hope you have a safe and relaxing holiday break

LAW 231, Section 4

Question 1 of 2 [65 marks, 49 minutes]:

Kevin Dhanoa is a lawyer who lives in Vancouver, British Columbia. While he loves his busy life as a practicing lawyer – he is consistently ranked as one of the city’s top 10 litigators, and his name has appeared on two occasions in *The Advocate*, a BC-based legal magazine published by the Vancouver Bar Association – he also enjoys his downtime. One of his favourite weekend activities is to feed the birds at Vancouver’s Queen Elizabeth Park. One day, while bending down to feed the birds, two ducks jumped onto his left shoulder. Nothing like this had ever happened before! Imagine his surprise when a gosling then jumped onto his other shoulder.

“Smile!” Kevin looked up at the sound of the voice. Instinctively, he smiled. He couldn’t help it – this was such a bizarre occurrence. He noticed a camera lens in front of his face, and then saw a bright flash. The photographer introduced herself as Lisa Ng, from the Vancouver Free Press. Lisa quickly secured Kevin’s permission to use this photo in the front page of the Free Press’s Saturday Arts & Leisure section.

Mary Stefanyk is a Vancouver Free Press subscriber, an amateur artist, and a small business owner. At her kitchen table in Vancouver on Saturday morning, Mary was reading the Free Press when she came across Lisa’s picture of Kevin and the birds. The photo took up most of the front page of the Arts & Leisure section, and featured the caption “Duck, Duck, Goose”. Mary thought it would be the perfect image for the upcoming 25th anniversary celebration of her store, Fowl Play. This store, based in Vancouver on Main Street, sells bird-themed crafts, clothing, and other products. Mary took out a pencil and a pad of paper and set out to create a copy of Lisa’s image. Mary began by sketching the outline of Kevin’s face and features. A few of Kevin’s features appeared a bit different in her sketch than in Lisa’s picture, but on the whole Mary was happy with the accuracy of her work. Mary then sketched the ducks sitting on Kevin’s left shoulder, and the gosling on his right. On the bottom of the page, instead of writing “Duck, Duck, Goose,” she wrote the words “Fowl Play: Paradise for Bird-Lovers Since 1995.” Mary created a digital scan of the pencil sketch and, using her home printer, printed it on the front of 25 t-shirts. On the back of the t-shirts, she printed information about the history of the store. Mary then hurried down to the store to start preparations for the day’s events.

Meanwhile, Kevin had decided to go for a neighbourhood walk. As luck would have it, he walked past Fowl Play just as the anniversary celebrations were getting underway. Despite living in the area and having a keen interest in birds, he had never visited the store. Next to the store was a vacant green space, which the store had decorated with bird feeders. Music played loudly, accompanied by a chorus of artificial bird sounds. People were cheering on the green space as a person dressed in a bird costume danced around. Merchandise was set out on racks, including the t-shirts with Kevin’s face on them. The 25th anniversary t-shirts were on sale for \$25, with a portion of the cost of every shirt going to charity (\$5/shirt). Kevin was shocked to see these reproductions of his image. One of the birders noticed him and yelled – “it’s the duck, duck, goose guy!” He found himself surrounded by fellow bird-lovers who were eager to ask him questions about the photo. Apparently, the photo had gone viral after various people had posted copies of it to social media. For instance, in the previous six hours

alone, a video of the photo accompanied by the Tom Petty song Learning to Fly had accumulated 12,000 views on YouTube's video streaming service. Some of the group of people wanted Kevin to sign their Fowl Play t-shirts. One person – Nancy Morris – even took the opportunity to ask Kevin if he would consider being in an advertisement for her sweater company (Birds of a Feather).

At that moment, Mary burst out of the door of the store with a balled-up t-shirt secured with elastic bands and shouted to the crowd: "Who wants a free 25th anniversary t-shirt"? Kevin was annoyed to see his picture on the t-shirt, and thought that the least that the owner of the store could do after putting his picture on the t-shirt without his permission would be to give him a free t-shirt. He decided to try and catch this one. The crowd bunched together as Mary threw the shirt in a high arc. While no-one seemed to intentionally try to pull anyone to the ground, there was some incidental contact and mild jostling as the group moved to adjust to the flight of the shirt. Kevin stood in the middle of the group and watched as the balled-up shirt curved towards him. He jumped. The shirt hit Kevin's fingers. Its forward trajectory stopped, and the shirt popped back into the air. Kevin closed his fingers around the balled-up shirt. Before his feet hit the ground, Kevin was bumped by another person in the crowd. "I'm so sorry", he heard the person yell. "It was an accident!" The contact caused Kevin to drop the shirt. Kevin fell to the ground in a heap. By the time he recovered his footing, the shirt had rolled a few feet away from him, where it was picked up by Nancy.

You are an Associate Lawyer in the Vancouver firm of Robin, Scaup, and Merganser LLP. Kevin approaches you for answers to the following questions related to the situation described above. Please answer **both 1A and 1B**:

- 1A) Kevin would like to bring an action against Mary for misappropriation of personality for putting his image on her 25th anniversary t-shirts. Discuss whether this action is likely to succeed. In your response, consider both common law and statutory claims **(40 marks, 30 minutes)**.

AND

- 1B) Between Kevin and Nancy, who has the better claim to the t-shirt thrown by Mary? Discuss. In the context of your response, discuss the strength of the claims of both parties. **(25 marks, 19 minutes)**

Question 2 of 2 [35 marks, 26 minutes]

Please answer **either 2A or 2B**:

- 2A) "[W]hen private rights impede the public good, the private rights must give way" (Margaret McCallum, "The Sacred Rights of Property", p. 380). Drawing from course materials from this past term of Property Law, discuss whether and the extent to which you agree or disagree with this statement. In the context of your response, discuss whether legislative and/or constitutional reforms would be useful in seeking

either to protect the public good, or to reinforce protections for private rights. If legislative and/or constitutional reforms would be useful, which reforms would you recommend, and why?

OR

2B) "Property rights are not given sufficient protection in Canada." Drawing from course materials from this past term of Property Law, discuss whether you agree or disagree with this statement. In the context of your response, discuss whether legislative and/or constitutional reforms would be useful in seeking either to provide additional protection for property rights, or to limit protection for property rights. If legislative and/or constitutional reforms would be useful, which reforms would you recommend, and why?

END OF EXAMINATION