

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

DEFERRED EXAMINATION – DECEMBER 2020

LAW 422.001  
Intellectual Property Law

Professor Graham J. Reynolds

**EXAM PASSWORD: Tm898n**  
RESUME CODE: ABB336

**TOTAL MARKS: 100**

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

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS AND 15 MINUTES (195 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, meaning that you can refer to your casebook, class notes, course materials, and/or CANS during the exam. You are not permitted to access the internet for assistance in responding to exam questions.

This examination has four questions. For question 1, please answer 1A **and** 1B. For question 2, please answer both 2A **and** 2B. For question 3, please answer 3A. For question 4, please answer **either** 4A **or** 4B. In responding to the questions in this exam, please limit yourself to materials studied or discussed this term in the context of our Intellectual 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.**

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## 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.

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#### 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., **XXXX LAW 422.001 Intellectual Property Law - Reynolds**

- **I'm experiencing technical difficulties EXITING and UPLOADING the exam**

If you experience any difficulty exiting and uploading your Examplify 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 Examplify 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.

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**I hope you have a safe and relaxing holiday break**

**Question 1 of 4 [25 marks, 49 minutes]:**

Alison Lukas is a world-renowned author. Originally from Winnipeg, she now resides in Vancouver. In her mid-60s, Alison has published over 22 novels and seven books of poetry over a career that has spanned over 40 years. Many of her novels have featured a character named Detective Louise Wire, a hard-nosed detective with a heart of gold who acts first and asks questions later. Alison retains all copyrights in her works.

Priya Rai is an undergraduate student at the University of British Columbia. For years, she has been a fan of Alison's work, and in particular the character of Detective Louise Wire. Inspired by Alison's trajectory as a writer – Alison had published her first novel while a student at the University of Manitoba – Priya decided that she, too, would try to write a novel. Priya had previously written some short stories that could be characterized as fan fiction – works in which an author creates a story within an existing universe of characters created by another author or set of authors. For her first novel, Priya decided to adopt a similar approach to these earlier short stories. She took an existing book by Alison about Detective Louise Wire, entitled *Trouble at Spanish Banks* (the seventeenth book in the Detective Louise Wire series), and re-wrote it with a new central character: a 20 year-old student named Nisha, who is Detective Louise Wire's niece and understudy. The plot of the work remained mostly the same, with the occasional plot alteration to accommodate Nisha's presence. For the most part, what Priya added to the text were a series of conversations and interactions between Nisha and Detective Louise Wire, in which they discussed life, relationships, policing, equality, and other topics that had previously been explored only in a cursory way in Alison's works. Priya's intention was not to be critical of Alison's work, but to create a space in which she could write about the issues that are important to her, in conversation with a character that she loves. Priya called her novel *Double Trouble at Spanish Banks*.

After completing her novel, Priya sent a copy of it by email to her friend Carl Jones. Carl loved it, and encouraged Priya to share it more widely. Priya decided to do so. After a bit of research, she decided to post her work on [www.fanstream.net](http://www.fanstream.net) (Fanstream), a Vancouver-based website that is dedicated to the promotion of fan fiction. She did so by uploading a full copy of her work to Fanstream. Fanstream streams ebooks and audio books, in their entirety, to subscribers who must enter a password to access the site. Neither ebooks nor audio books can be downloaded by users. There is no fee to subscribe. There is also no fee to access individual works. In order to post the works on Fanstream, authors have to affirm that they own the copyright in the work that they are posting. Advertisements are embedded in the corner of each page of text shown on Fanstream. Authors receive a portion of the advertising revenue received by Fanstream.

Priya's work has been a huge hit on Fanstream, with 80,000 users having streamed it in the first few months of it being available on the site. Based in large part on this success, Priya has secured a publication deal with Arrow Press, a Vancouver-based independent publisher. Arrow has printed 1,000 copies of *Double Trouble at Spanish Banks* and is preparing to distribute these works to bookstores both in Vancouver and across

Canada. These books have not yet shipped. Several commentators who read Priya's novel on Fanstream have also written pieces in local newspapers and in blog posts that both celebrate Priya's novel and critique Alison's work. These pieces have highlighted how Priya's additions to the text serve to reveal the shortcomings of both Alison's portrayal of Detective Louise Wire and her writing more generally. Sales of the eighteenth installment in the Detective Louise Wire series – which was published after Priya's work was made available on Fanstream – have fallen short of expectations thus far.

**Please answer 1A and 1B:**

1A) Alison would like to bring actions for copyright infringement against Priya, Fanstream, and Arrow Press related to their unauthorised use of her work *Trouble at Spanish Banks*. Discuss whether these actions are likely to be successful. Do not discuss fair dealing in your response to this question. You may raise other relevant defences. As well, assume that copyright subsists in Alison's work *Trouble at Spanish Banks*.

1B) Assume that Priya prima facie infringed the copyright held by Alison in her work *Trouble at Spanish Banks* when Priya made her own work *Double Trouble at Spanish Banks* available on Fanstream. Discuss whether this act should be considered a fair dealing under the *Copyright Act*.

**Question 2 of 4 [25 marks, 49 minutes]:**

Jessica Cruz is a successful businessperson who loves dogs. In 2017, she combined her two passions by opening a store in Vancouver named "Be Pawsitive". In this store, Jessica sells dog food, dog treats, dog toys, dog bedding, and other dog-related accessories. She also offers a dog boarding and daycare service.

Jessica would like to register several trademarks in association with this business. First, she would like to register the trademark "Be Pawsitive" in association with the following services:

- (1) Retail store services, on-line retail store services, and mail order catalog services featuring pet food, pet supplies and pet accessories; providing information about retail stores and online retail store services featuring pet food, pet supplies and pet accessories; charitable services, namely, organizing and conducting volunteer programs and community service projects related to pets and animals.
- (2) Pet boarding, kennel services, and pet day care services; providing information about pet boarding and pet day care.
- (3) Pet grooming services; animal exercising services; providing information about pet care and pet grooming services.

Jessica would also like to register the trademark “Best in Show” in association with pet accessories. This latter trademark is used on a line of products that Jessica has developed and that she sells in the store “Be Pawsitive.”

Jessica had hired a third party to conduct a search of trademarks and tradenames prior to settling on the two trademarks noted above. Somehow, this third party had failed to note the existence of a business on Vancouver Island named “Pawsitive Rescue and Medical Centre.” This business, which opened in 1995, is an animal rescue centre and private animal medical facility. In the waiting room of this business there is a small display where people can purchase various pet accessories (ie pillows) to assist dogs with their recovery processes. The business “Pawsitive Rescue and Medical Centre” has not filed for any trademarks in association with its name.

**Please answer both 2A and 2B:**

2A) Discuss the issues that Jessica is likely to encounter when seeking to register the trademarks “Be Pawsitive” and “Best in Show” in association with the services described above, as well as whether her attempts to register these trademarks are likely to be successful.

2B) Assume that Jessica is able to register “Be Pawsitive” in association with the services described above. Her ultimate vision is to have “Be Pawsitive” stores in every city in Canada with a population of over 100,000 people. In order to do this, Jessica is considering creating a franchise model where she licenses, to others, the use of her trademark “Be Pawsitive”. Discuss the potential pitfalls (from a trademarks perspective) that could flow from Jessica adopting this type of business model, and advise Jessica how best to avoid them.

**Question 3 of 4 [20 marks, 39 minutes]:**

Eric, a Vancouver resident, is an accomplished inventor. When he isn't inventing, he loves to bake. Some of his inventions relate to baking. One such invention is a new type of rolling pin, designed specifically to help keep chilled dough stay colder for longer. Eric's rolling pin features a cylinder that can be removed from the body of the rolling pin and placed in the freezer. Once frozen, it can be inserted back into the body of the rolling pin. The handles are then screwed into the cylinder where they hold it in place. The cylinder can be re-frozen and re-used as necessary. Eric envisions using stainless steel for the body of the rolling pin, so as to help retain the cold.

Eric came up with this invention on March 5, 2020. By April 12, 2020, he had developed a prototype. On April 15, 2020, he gave the prototype to his neighbour, Darren to test. Darren loved it! He took a selfie of himself holding the rolling pin in the air, and posted it to various social media sites with the caption: “My neighbour the genius! Best cookies ever thanks to this chilled rolling pin!”

On September 1, 2020, Eric approached the Vancouver-based intellectual property boutique Speculaas, Galletas, and Lebkuchen LLP for assistance in filing patent applications for this invention. The first claim of the patent application drafted by Eric's firm reads:

- 1) A rolling pin designed to help keep chilled dough stay colder for longer, comprising: (a) hard plastic handles, (b) a stainless steel body, and (c) a cylinder made from food-grade silicone that is filled with a combination of water and refrigerant gel, and that can be placed in a freezer.

Some other facts to note:

- Through the assistance of his Vancouver-based law firm (liaising with US counsel), on November 6, 2020, Eric filed for a patent for his rolling pin in the United States (US). He filed the Canadian patent application for the rolling pin on December 11, 2020.
- Terry Stuzle, a German inventor, gave a presentation on November 10, 2020 in which he suggested that one way to keep chilled dough colder for longer would be to create a stainless steel rolling pin with a removable cylinder core which could be placed in the freezer. This core could then be secured by screws connected to the handles of the rolling pin. Terry came up with this idea completely independently from Eric's research.
- In 1972, a paper was published that suggested putting rolling pins in the freezer for a few minutes prior to working with chilled dough would help the dough stay colder for longer.
- In 1985, Anna Sigrisdottir started to sell a rolling pin with handles that screw into the body of the rolling pin, which allowed bakers to use different sets of handles with the same rolling pin.
- In 1992, the first stainless steel rolling pin was sold in North America

**Please answer the following question:**

- 3A) Given the information set out above, will Eric be able to successfully patent his invention in Canada? Why or why not? Discuss. Assume that all of the relevant prior art is set out above.

**Question 4 of 4 [30 marks, 58 minutes]:**

**Please answer either 4A or 4B:**

- 4A) "Intellectual property rights are not given sufficient protection in Canada." Drawing from course materials from this past term of Intellectual Property Law, discuss whether you agree or disagree with this statement. In the context of your response, discuss whether legislative reforms would be useful in seeking either to provide additional protection for intellectual property rights, or to limit protection for intellectual property rights. If legislative reforms would be useful,

which reforms would you recommend, and why? In the context of your response, please address **all three** of the following pieces of Canadian intellectual property legislation: the *Copyright Act*, *Trademarks Act*, and *Patent Act*.

**OR**

4B) “Canada’s intellectual property legislation overprotects rights-holders at the expense of the public interest.” Drawing from course materials from this past term of Intellectual 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 reforms would be useful in seeking either to advance the public interest, or to reinforce protections for intellectual property rights. If legislative reforms would be useful, which reforms would you recommend, and why? In the context of your response, please address **all three** of the following pieces of Canadian intellectual property legislation: the *Copyright Act*, *Trademarks Act*, and *Patent Act*.

END OF EXAMINATION