

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

FINAL EXAMINATION – APRIL 2021

LAW 231.001
PROPERTY LAW

Professor Douglas C. Harris

EXAM PASSWORD: uTch83
RESUME CODE: B10AE1

TOTAL MARKS: 100

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

(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS 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.

This is an open book examination. You may refer to any of your notes as well as the readings and statutes and any published or unpublished material.

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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
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LAW 231.001

Question 1

30 marks (15 marks each for part A and B)

Pepper Investments has come to you for a legal opinion. It is interested in acquiring the Strawberry Fields Mall, a mid-size retail shopping mall in Burnaby with space for as many as 30 separate retail units. The Mall occupies a single parcel of land and your title search reveals that Racoon Inc holds the fee simple interest in that parcel. The title search also reveals a number of charges registered against the fee simple interest including leases, mortgages, and covenants.

At the south end of the Strawberry Fields Mall is a large retail space that is occupied by Best-Foods, one of the largest retail grocery store chains in the country and one of the anchor tenants for the Mall. People come to Best-Foods for groceries, but then also make purchases from other retailers at the Mall. Several years ago, Best-Foods opened a pharmacy within the grocery store. The pharmacy occupies about 10% of the floor area, is a growing source of revenue, and Best-Foods has recently expanded that part of its business in other locations. Best-Foods occupies the premises under a 15-year lease, with 3 years remaining and with an option to renew the lease for another 6 years. Racoon Inc. has told Pepper Investments that Best-Foods has expressed an interest in exercising the option to renew the lease. The lease, including the option to renew, is one of the registered charges against the fee simple.

As is common with many shopping malls built in the same era, the Strawberry Fields Mall is surrounded by a large parking area. The parking area is part of the same parcel of land on which the Mall is located. The lease agreement between Racoon Inc and Best-Foods describes the parking area as “the Common Area” and the agreement includes the following parking provision:

The landlord Racoon Inc for itself and its successors and assigns, shall make the Common Area available for the nonexclusive use of the tenant Best-Foods for the purposes of customer parking, during the full term of this lease agreement or any renewal thereof.

In addition to the lease, there is a covenant registered against the fee simple interest. Racoon Inc signed the covenant with Best-Foods, and it includes the following provision:

The landlord Racoon Inc for itself and its successors and assigns, hereby covenants with the tenant Best-Foods and its successors and assigns, with the intent that the burden of this covenant shall run with and bind the lands in Strawberry Fields Mall, save and except the premises leased to Best-Foods (“leased premises”), and with the intent that the benefit of this covenant shall be annexed to, and run with the leased premises. That throughout the term of this lease agreement or any renewal thereof, no part of the

Strawberry Fields Mall, as bound by this covenant, shall be used for the purpose of a food supermarket.

And the landlord Racoon Inc shall not use or permit or suffer to be used, any portion of the lands bound by this covenant for such purpose.

At the north end of the Strawberry Fields Mall is another large retail space intended for another anchor tenant. It is currently empty, but Pepper Investments has been in talks with a potential occupant, Whopper's Drug Mart, one of the largest pharmacy chains in the country. Whopper's operates pharmacies, including medical and health supplies, as its core business, but it also devotes approximately one third of the shopping area within its stores to cosmetics and other beauty products. It has also been expanding its food business. In fact, food sales are an increasingly important part of its business. At one point, Whopper's limited its food sales to candy, chips, and bottled drinks, but it now offers a substantial selection of packaged and non-perishable foods, as well as a limited selection of dairy products, and even some fresh fruit and vegetables. It has told Pepper Investments that it is only interested in leasing the retail space at the north end of the Strawberry Fields Mall if it could operate at this location with approximately one third of the space devoted to a pharmacy, one third to beauty products, and one third to food stuffs.

Pepper Investments is considering several options and has come to you for help in understanding its legal obligations if it were to acquire the Strawberry Fields Mall:

- A. Pepper Investments has had preliminary discussions with Best-Foods and the retailer has made it clear that it will oppose the leasing of space in the Mall, and the large retail space at the north end in particular, to a competitor business. It regards Whopper's as a competitor. As a result, Pepper Investments is seeking a legal opinion on whether and for how long Best-Foods might be able to prevent a lease to Whopper's for it to operate a retail outlet as set out above. **(15 marks)**
- B. Pepper Investments is also interested in the Strawberry Fields Mall for its development potential. Preliminary plans include the building of one or more apartment towers on that part of the parcel that is now devoted to parking. The towers and access routes to them would permanently remove about 20% of the area available for parking and the construction phase would require another 30%. As a result, the number of parking stalls would be cut in half for the two years of construction. Pepper Investments is seeking a legal opinion on whether it would be obligated to maintain the whole of the Common Area as a parking area that is available to the customers of Best-Foods and, if so, for how long. **(15 marks)**

Provide a legal opinion with answers and explanations for them to the questions posed in A and B.

Question 2

25 marks (15 marks for Part A; 10 marks for Part B)

Sergeant Pepper and Rocky Racoon lived together as a married couple on one of the Gulf Islands in the Salish Sea. They built their home on a 10-acre waterfront parcel, which they held in fee simple as joint tenants. Pepper and Racoon had no children together, but they did have a niece, Loretta Martin, who had become something of a surrogate daughter to them. They never adopted Loretta and nor were they her guardians, at least not formally, but she had lived with them for much of her teenage years when life with her parents had been difficult.

As an adult, Loretta would return frequently from her apartment and her job in Vancouver to visit with Pepper and Racoon, and the visits became even more frequent and of longer duration when Pepper became ill and then after he died. As she grew older herself, Loretta became increasingly dissatisfied with her life in the city. On one visit to the Island, Racoon suggested that she move to the Island. He offered her a building site on the 10-acre parcel and suggested that Loretta could use the proceeds from the sale of her apartment in Vancouver to build a house.

Loretta was thrilled. Shortly after this conversation, she listed her apartment for sale. It sold quickly, and she set about planning for her house on the Island. Construction began the next year, and continued intermittently, "on Island time", over the next decade. Loretta did much of the work herself, but even so, much of the money from the sale of her apartment went into the house. Drilling a new well had proven a particularly expensive undertaking. The end result was a lovely house among the Arbutus trees on a rocky outcrop overlooking the ocean.

Perhaps the most unusual feature about the house is the deck that extends from the side of the house that overlooks the ocean. Loretta is an avid sailor and her prized possession is an old sailboat with a wooden hull. When she built the house, she arranged a lower driveway such that the sailboat could be parked on a trailer immediately in front of the house. The deck of the boat was also to serve as the deck for the house. The boat needed some work and Loretta's plan was that she could work on the boat, while it provided a deck for her house. She would then tow it back to the water when it was ready. However, over a number of years, as Loretta realized that she was not likely to get the sailboat back in the water anytime soon, she made the deck of the sailboat a more permanent deck for the house. Loretta built a frame to hold the boat (instead of the trailer), installed a wooden and glass railing around the deck, which is secured to the house and the deck with bolts, and she replaced the "gangplank" boards that had served to connect the house to the boat with a finished walkway. However, she did not sell the trailer and had not given up the dream of returning the sailboat to the water.

The arrangement with Racoon about the house had always been very informal. It had been Racoon's idea that Loretta should sell her apartment, leave the city, and build a house on the 10-acre parcel, and he had supported her every step of the way. However, he never got around to formalizing Loretta's interest in the land. He had intended to subdivide the property, but

discovered that 10 acres was the minimum lot size. He had then thought to add Loretta on title, but never did. He also never made a will.

Loretta has come to you for help. She would like guidance on her legal rights in relation to the following issues:

- A. Because Racoon died without a will, the provisions in the *Wills, Estates and Succession Act* apply. They indicate that Racoon's estate, including the fee simple interest in the 10-acre parcel which was registered in his name, are to go to his brother Maxwell Edison, Loretta's estranged father. Maxwell is now claiming the 10-acre parcel, including the house that Loretta built. Loretta has sunk years of work and the bulk of her assets into the house and very much wants to keep it. Set out and evaluate the basis for her claim to the house in response to that of her father's. **(15 marks)**
- B. In the event that Maxwell might acquire the house, would Loretta be able to keep the sailboat? **(10 marks)**

Provide a legal opinion that answers and explains your answers to the questions posed in A **and** B.

Question 3

25 marks

Describe the Nisga'a fee simple and the Nisga'a title registration system. Using several examples from the course, explain how the Nisga'a fee simple is similar to and different from fee simple interests that are held from the Crown, and also similar to and different from other ways in which First Nations recognize individual or private interests in land. Finally, explain why the Nisga'a have decided to adopt the fee simple and build a title registration system.

Question 4

20 marks

Bungalow Bill holds the fee simple interest in 2-bedroom apartment in the Marinaside condominium building on the north side of False Creek. He is registered as the owner in the land title registry, or at least he was. A title search reveals that Eleanor Rigby is now on title, although Bill never sold or transferred the apartment to Rigby. This is why Bill has come to see you.

Bill is a South African who has lived intermittently between Vancouver and Cape Town. He currently lives in Cape Town. He purchased the Vancouver apartment in the early 2000s,

granting a mortgage to Vancity to secure a loan, and had generally left it vacant when in South Africa so that he could return to it as needed. However, when the City of Vancouver introduced its Empty Homes Tax, which would have added considerably to his property tax bill if he continued to leave it vacant, he leased the apartment to Martha Mydear. Bill was recently thinking to sell his remaining assets in South Africa and to buy another apartment in Vancouver, but was put off by the foreign buyer's tax, which now adds 20% to the purchase price for those who do not hold Canadian citizenship or landed immigrant status.

Nobody is quite sure exactly what happened next, but it appears that someone hacked into Bill's e-mail account and there found a great deal of information about Bill and about the apartment. With this information, the hacker assumed Bill's identity in subsequent correspondence with a range of actors. First, the hacker corresponded with Mydear, informing her that he was intending to sell the apartment. Then the hacker contacted the strata management company for the Marinaside building and secured the necessary forms for the sale of the apartment. Next, the hacker hired a realtor who listed the apartment for sale. The listing was reasonably priced, Eleanor Rigby made an offer at the listing price, and the hacker accepted, again always corresponding as Bill. With a contract for purchase and sale in hand, the hacker contacted a lawyer to arrange for the transfer of the property. The hacker provided scanned images of a forged South African passport and driver's licence in Bill's name, and other relevant personal information gleaned from the hacked e-mail account. On the closing date, Rigby transferred the purchase price her lawyer, who transferred the funds to the hacker's lawyer, who paid off the remaining debt to Vancity, cleared the mortgage, transferred title to Rigby, and transferred the remaining funds from the purchase price to the person who everyone involved in the transaction believed to be Bungalow Bill.

Rigby was not intending to live in the apartment immediately so Mydear remained as a tenant. The following month, Mydear received a message from Bill, asking if everything was OK and whether she needed a little more time to make the rent payment because of the pandemic. Mydear was understandably confused because she had already paid the full month's rent to Rigby. Bill was even more confused when he learned that the apartment had been sold to someone named Eleanor Rigby, who is now on title. The funds that Rigby paid for the apartment have disappeared and a defunct IP address is the only trace of the hacker.

Write a memo that explains whether Bill will be able to recover title to his apartment and what other remedies, if any, he might have. Who will end up with what? Then write a commentary on that outcome. Do you think it reasonable? Why or why not?

END OF EXAMINATION