

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

FINAL EXAMINATION – APRIL 2021

LAW 231.003  
Property Law

Professor Stepan Wood

**EXAM PASSWORD: T82827**  
RESUME CODE: B10E1A

**TOTAL MARKS: 100**

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

(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED:** 3 hours, 20 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 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.**

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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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- **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.**

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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**

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## INSTRUCTIONS SPECIFIC TO THIS EXAMINATION

1. **This examination is worth a total of 100 marks.** It contains four questions, each worth 33⅓ marks. Question 1 is an essay question. Questions 2-4 are fact pattern questions. You must answer any three of the four questions.
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, guest lectures, class discussions, slides, handouts, and resources posted on the course website, except to the extent that I have indicated they are not examinable.

**ANSWER ANY THREE (3) AND ONLY THREE (3) OF THE FOLLOWING FOUR (4) QUESTIONS:****MARKS**

- 33½** 1. You have been hired by the British Columbia Law Institute, a not-for-profit law reform agency housed at Allard Law School, to write a public report to be published by the Institute on racism against Indigenous and racialized persons in Canadian settler colonial property law, and what should be done about it. **Write a draft of the report (33½ marks, 1/3 of writing time).**
- 33½** 2. **Caerus Corporation** was a company formed to develop a seaside resort on the south coast of Vancouver Island. It owned a parcel of oceanfront land that had beautiful natural scenery and was perfect for spotting whales and other marine wildlife. Caerus developed the land into a luxurious, self-contained resort with almost one hundred cottages, a hotel and restaurant, and a state-of-the-art fitness centre where cottage occupants and hotel guests could play racquet sports, swim in an indoor heated swimming pool or work out in a gym. The cottages were stylish, fully functional homes suitable for year-round occupation.

Caerus subdivided the land so that each cottage occupied its own lot (the “cottage lots”) and the fitness centre, hotel and restaurant occupied a separate lot (the “resort lot”). Caerus then sold the cottage lots to purchasers. All the contracts for purchase and sale of the cottages included, among other things:

1. A covenant by the vendor, Caerus, granting the occupants of the cottage the right of full and unrestricted access to and enjoyment at all times henceforth of the fitness centre, at no cost, in common with the occupants of the other cottages;
2. A covenant by the vendor, Caerus, promising to maintain the fitness centre in good and proper condition as a state-of-the-art fitness centre with a swimming pool, racquet courts and gymnasium, at the vendor’s own cost;
3. A clause providing that all covenants in the contract were intended to bind the vendor, purchaser and their respective heirs, successors and assigns; and
4. Clear and correct identification of the cottage lot and the resort lot.

The resort is intended to accommodate a mix of permanent residents and short-term vacationers. Some cottage owners live there year round (for example, retirees and people who commute to work in Victoria), some come only for holidays. Many rent out their cottages as short-term holiday accommodations for all or part of the year. Guaranteed access to a state-of-the-art fitness centre enhances the cottages’ rental and sale value.

After selling the cottages, Caerus sold the resort lot and business to **Dionysus Destinations, Inc.**, a company that operates holiday resorts. Dionysus bought the resort with notice of the covenants in Caerus’s contracts with the cottage purchasers, but the contract between Caerus and Dionysus did not provide that Dionysus would be bound

by them. Caerus was subsequently dissolved and no longer exists.

For several years Dionysus gave the cottage owners free use of the fitness centre and kept it in excellent condition with the latest, state-of-the-art equipment. Several years ago, however, Dionysus stopped replacing old or broken equipment. The fitness centre began to deteriorate. Recently, the swimming pool developed a leak. Dionysus closed the pool indefinitely, claiming that it was too expensive to repair.

Earlier this year, Dionysus notified all cottage owners that it plans to demolish the fitness centre and build a new hotel building in its place. It also began to enforce a new policy that cottage owners must pay a monthly fitness centre fee.

You have been retained by a group of the original cottage owners who bought their cottages directly from Caerus. **Advise the cottage owners whether they can require Dionysus to honour the promises in their contracts (33½ marks, 1/3 of writing time).**

**33½** 3. **Denis** taught tennis lessons at the **Racquet Club**, an exclusive, members-only tennis club. He was also a burglar. One night, he broke into a home and stole jewelry worth \$10,000 belonging to **Bianca**. He decided to hide the jewels somewhere no one would find them, until he was ready to sell them.

One evening, when he was alone in the members' lounge at the tennis club, he went over to a display shelf holding tennis balls signed by famous tennis players, removed a ball signed by Roger Federer, slit it open, inserted the stolen jewelry, carefully glued the ball shut and placed it back on the shelf. Denis intended to recover the jewelry, but died shortly afterward without telling anyone about it. He left his entire estate to his friend **Milos**.

**Leylah** and **Eugenie** are sixteen years old. They are not members but have visited the club as guests. As a prank, they dared each other to try to sneak into the clubhouse, take autographed balls from the display shelf, play tennis with them and put them back without getting caught. They managed to get past the front desk, pretending to have forgotten their identification and signing the names of two members they knew. They went to the display shelf. When no one was looking, Eugenie whispered "Federer's my favourite!" and grabbed the one signed by him. Leylah grabbed two other balls.

They took the balls outside, hit them back and forth and snapped some selfies with them. Each of them held all the balls multiple times until suddenly, one ball burst when Leylah's racquet struck it. The jewelry spilled onto the tennis court. Leylah exclaimed "Some jewelry just fell out of the ball Roger Federer signed!" She picked up the jewelry. Eugenie ran over and asked to see it. Leylah put the jewelry in Eugenie's hand, saying "Isn't it gorgeous, I want to keep it." Eugenie said "I'm the one who picked up that ball, I should get the jewelry." As they argued, they realized the right thing to do would be to turn the jewelry in.

They went to the front desk, where Eugenie handed the jewelry to a staff member. They said they had found it on the tennis court and asked to have it back if no true owner

came forward. They didn't say anything about the autographed balls, which they left on the court. When they gave their real names and phone numbers, the staff member realized they were not members and called security. The girls panicked and ran off.

The Racquet Club rents the club premises under a lease from the landowner, **Felix AA Properties, Inc.** Entry is controlled by club staff and restricted to members and their authorized guests. Signs stating "Please secure your belongings. Personal items are left at your own risk" are posted prominently in the clubhouse and around the courts. The tennis courts and members' lounge where the autographed balls were displayed are open to all members and authorized guests.

The Racquet club's "lost and found" policy does not require any Club personnel to monitor the premises for lost items. It provides that if a staff member finds a lost item, they must bring it to the lost and found office. It also provides that if anyone turns in a found item, a staff member must record the person's contact information, a description of the item and the time, date and location of the find; place the item in a locked closet; if the item appears valuable, get it appraised; advertise the item for three months in the club newsletter and website; and sell it and keep the proceeds if no one has claimed it after six months.

In this case, the club recorded the required information, placed the jewelry in the locked cupboard, got it appraised and advertised it in the newsletter and website for the required period. No one came forward. After six months, the club put the jewelry in a locked container inside the trunk of a car it owns and instructed a staff member to deliver it to a jewelry store for sale, after first taking some tennis trophies to a trophy shop for engraving.

Upon arrival at the trophy shop, the staff member parked the car in an automated parking structure owned by **Vasek Parking, Ltd.** She drove the car onto a platform, turned it off, removed the trophies, locked the car, kept the key and went to an automated kiosk where she inserted \$10 and obtained a ticket with a bar code on it. The system immediately alerted a live operator at a remote location, who used an intercom to ask the driver to step off the platform.

The driver said into the intercom, "Keep an eye on this car, there's something special in it." Using video cameras to verify that the platform was clear, the operator activated the parking system, which moved the car into a structure that stacks multiple cars on top of each other. To get their car back, customers must scan their ticket's bar code at the kiosk, which alerts the remote operator, who reverses the process to retrieve the car.

While the driver was at the trophy shop, a fire broke out in the automated parking system. The fire was caused by the negligence of Vasek Parking, Ltd. The fire destroyed the car and the jewelry.

You have been retained by the Racquet Club. **Advise it whether Vasek Parking, Ltd. is liable to it for the loss of the jewelry, and assess the strength of its claim of ownership of the jewelry relative to those of the other parties whose names are in bold font above (33½ marks, 1/3 of writing time).**

**33½ 4. Asha and Ben** began dating 30 years ago when they were both in university. They have lived together in an intimate relationship ever since, though they never married.

Ben graduated with an engineering degree and built a career as a mining executive, creating several successful mining companies and amassing great personal wealth. He worked long hours and was often away for extended periods at mine sites around the world.

Asha graduated with a commerce degree and began working in a retail company specializing in health and beauty products, and soon moved up into managerial positions. After a few years the company put her on a fast track for promotion to the executive ranks and offered to pay for an executive MBA degree to improve her credentials. She was planning to take up this offer and had high hopes for a future career as a company executive when she became pregnant with their first child. While on maternity leave, she became pregnant again. When her maternity leaves ran out, she decided reluctantly to quit her job.

After that Asha stayed home, raised the children and took care of the family home, freeing Ben to develop his mining career. As the children got older, Asha had enough spare time to create a moderately successful personal business as a home-based blogger and social media influencer in the field of personal health and wellness. She ran this business for several years.

Five years ago, after both children left home, Asha was severely disabled in a car accident. Since then Ben, having reached a point where his businesses could run very well without his day-to-day involvement, has stayed at home several days a week to take care of Asha and the house. Since the accident, Asha has been unable to work. Her personal business ceased operating.

Asha has never been a shareholder, employee, officer or director of any of Ben's companies. Neither Asha nor Ben ever worked directly for the other's businesses.

Since the children were very small, Asha and Ben have lived together in a house that was custom built for them in Vancouver. The house is very special for Asha, who made all the important architectural and interior design choices, made the house into a unique home full of personal touches, and did all the child care, housekeeping, maintenance and gardening, while Ben spent most of his time on business.

Throughout their relationship, family was of prime importance for both Asha and Ben. They often discussed their hopes and goals for the family. They made decisions affecting the family together, including where to live, when to have children and how to raise them. They pooled their personal incomes and paid family expenses out of a joint account. They gave no thought to what belonged to whom when it came to paying for things like household expenses, taxes, cars, vacations, home renovations or personal belongings. They often discussed their business affairs and gave each other business advice. When they spoke about business or family affairs they would often use phrases like "we're in this together" and "I'm doing this for us."

Earlier this year Asha and Ben's relationship broke down. They are currently arguing over who should get what. Specifically, Ben is refusing to give Asha any share in the family home, which is worth \$4 million, or his mining companies, which are worth \$20 million. Legal title to all these assets is in Ben's sole name. Asha made no direct financial contribution to their acquisition. Asha has no significant assets in her sole name. All of her income went into their joint accounts.

You have been retained by Asha. **Advise Asha whether she is entitled to share in the value of the family home and mining companies.** For purposes of this question, please assume that section 3(1)(b) of the BC *Family Law Act*, which extends family property legislation to common-law couples, had never been enacted (**33½ marks, 1/3 of writing time**).

**DID YOU ANSWER ANY THREE (3) AND ONLY THREE (3) OF THE PRECEDING FOUR (4) QUESTIONS? Then you are done. Happy Summer!**

END OF EXAMINATION