

**THIS EXAMINATION CONSISTS OF 6 PAGES
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**THE UNIVERSITY OF BRITISH COLUMBIA
ALLARD SCHOOL OF LAW**

FINAL EXAMINATION – APRIL 2022

**LAW 231
Property Law**

**Section 1
Professor Mickelson**

TOTAL MARKS: 100

**TIME ALLOWED: 3 HOURS (PLUS 15 MINUTES READING TIME, DURING
WHICH YOU ARE ALLOWED TO WRITE)**

NOTE:

1. This is an open book examination.
2. The examination is made up of 4 parts.

Part A consists of a fact pattern with four accompanying questions. You must answer all of these questions. Marks: 40; suggested time allocation: 72 minutes.

Part B consists of a short statement accompanied by four questions. Answer all four. Marks: 15; suggested time allocation: 27 minutes.

Part C gives you a choice between six (short answer) questions. Answer three. Marks: 15 (5 per question); suggested time allocation: 27 minutes (9 minutes per question).

Part D gives you a choice between two essay questions. Answer one. Marks: 30; suggested time allocation: 54 minutes.

3. Please take the time to think through and outline your answers, and try to review and correct mistakes before the end of the exam. **Coherence and structure will be taken into account in evaluation.**

PART A**MARKS**

40 Adelio Albarracín, who was originally from Bolivia, moved to British Columbia in the 1970s. He purchased a small house in Vancouver which he painstakingly restored to its original 1920s state, and he was an avid gardener. Having been an active member of the BC Bolivian Society, Adelio got to know Bernicia Ballivián, a fellow Bolivian-Canadian who was as keen on gardening as Adelio was. Bernicia, who rented an apartment nearby, would often join Adelio on a Saturday or Sunday to work in his garden and share a meal. Bernicia worked for a local environmental organization and never had much disposable income, and when she retired 5 years ago she decided to move back to Bolivia in large part because of the lower cost of living. She and Adelio have maintained contact since that time.

When it came time to review his will (something that he did every five years without fail), Adelio thought about Bernicia's situation and decided he wanted to leave his house to her. He felt that this would give her the option to move back to Vancouver and live in the house, or to sell it and use the proceeds to live in comfort either in Bolivia or in Canada.

Prior to this change, Adelio had planned to divide his estate among a number of friends. Instead of dividing what would now be a much smaller amount, since the house was by far his most significant asset, Adelio decided that he would prefer to give his friends money and personal items while he was still alive. He felt that this would give him the pleasure of seeing them enjoy the gifts, while having the additional benefit of simplifying the process of dealing with his estate. He therefore instructed his lawyer to prepare a will which named Bernicia as the sole beneficiary of his estate. The new will was duly executed on October 14, 2014. Adelio proceeded to cash in a number of his investments in order to be able to arrange the gifts for the friends who would have been beneficiaries under the previous will.

Among those friends were a couple, Cecilia Campero and Duarte Daza, whom Adelio had also gotten to know through the BC Bolivian Society. When he visited Cecilia and Duarte to give them their gift (a generous cheque along with a piece of sculpture that they had always admired), Adelio asked them to act as the executors for his will, without providing any details about its content. Cecilia and Duarte agreed. After Adelio had left, Duarte told Cecilia that Adelio clearly intended to make them the main beneficiaries of his estate. Cecilia cautioned him against making such an assumption, but Duarte held to his opinion.

PART A, continued

Adelio died on December 6, 2020. When Cecilia and Duarte received a copy of the will from Adelio's lawyer, they were surprised to learn that Bernicia was the sole beneficiary. Cecilia accepted this without much difficulty; she felt that Adelio had already been more than generous with them. Duarte, in contrast, was shocked and unhappy; he felt it was deeply unfair that Bernicia would get everything when she had been living in Bolivia, while he, Cecilia and Adelio's other friends had been providing support and assistance for Adelio during the last years of his life.

Cecilia and Duarte took the required steps to become registered as the fee simple owners of Adelio's house, pending the distribution of his assets in accordance with his will. As time went on, however, Duarte became increasingly convinced that Adelio would not have asked him and Cecilia to be executors unless he intended them to derive some benefit from the arrangement. When Cecilia was out of town for an extended work trip, Duarte decided to take action. He contacted their daughter Xena, who along with her wife Yvette is stationed in Antarctica doing research on the effects of climate change. Duarte told Xena that Adelio's wish was to have the house maintained in its original state rather than torn down and replaced with new construction, and that for that reason they would be able to purchase the home for a price considerably below market value. Xena and Yvette had long hoped to purchase a house in Vancouver, and they were overjoyed. Duarte proceeded to forge Cecilia's signature on a transfer.

Xena and her partner Yvette realized that they did not have sufficient savings to cover the purchase price of the property. Yvette's parents offered to lend them money. They also learned that a close friend of theirs, Zachary Zuckerman, had decided that he wanted to move to Vancouver for five years, until his niece would graduate from high school. When Xena mentioned their dilemma, Zachary offered to provide a lump sum payment in advance for a 5-year lease. When added to the loan from Yvette's parents this would allow Xena and Yvette to cover the purchase price.

Meanwhile, Cecilia returned from her work trip and was appalled when she learned what Duarte had done. However, Duarte convinced her that it would be disastrous for their family if she were to tell Xena and Yvette what he had done. Cecilia unhappily agreed to maintain silence, consoling herself with the thought that when the proceeds of the sale were combined with the rest of Adelio's estate, Bernicia would still inherit a considerable sum of money that would enable her to live in comfort as Adelio had intended.

PART A, continued

The transfer is duly completed, and Xena and Yvette become the registered fee simple owners of the house as joint tenants. The mortgage they granted to Yvette's parents and Zachary's lease are registered as charges.

Bernicia arrives from Bolivia, learns what has happened, and asks Cecilia and Duarte why she was not consulted about the sale of the house. Cecilia is overcome with remorse and tells Bernicia everything.

Please answer all of the following questions based on the information provided above and any additional information provided in each question. If you feel that further information would have assisted you, please indicate what that information is and why it would have been useful.

- 1) Bernicia would like to know whether the transfer of Adelio's house to Xena and Yvette is irreversible, or whether the house could be recovered. Advise Bernicia. (10 marks; suggested time allocation 18 minutes)
- 2) Bernicia would also like to know whether the mortgage and the lease would remain on title as valid charges if she were to be able to reclaim the house. Advise Bernicia. (15 marks; suggested time allocation: 27 minutes)
- 3) Finally, Bernicia would like to know what her options are if she cannot reclaim the house. Advise Bernicia. (5 marks; suggested time allocation: 9 minutes)
- 4) **For the purposes of this question, assume that Xena and Yvette remain on title as co-owners of the house.** Yvette learns what Xena's parents have done, and she is horrified. When Yvette raises this with Xena, the latter defends her parents' action. In the presence of some of their co-workers, Yvette shouts at Xena that their arrangement is at an end and that she wants to sell the property and distance herself from the entire situation. Xena replies "Fine! If you're going to be so judgmental I don't want to own this property with you in any event!" Xena and Yvette each rush off and change their wills to leave their respective assets, including their interest in the house, to Climate Emergency Direct Action. Yvette falls into an ice crevice the next day, and cannot be saved. Advise Xena as to her interest in the house. (10 marks; suggested time allocation: 18 minutes)

PART B

This section consists of four questions. Answer all four, and explain your answers.

MARKS

15 Consider the following gift of Blackacre in a will:

To Ramiro for life until Domitila becomes a devout member of the Orthodox Bolivarian Believers, then, and only if that has occurred, to Domitila.

The will maker, who was of Bolivian ancestry, was a member of the Orthodox Bolivarian Believers, a faith-based group active in Bolivia. Elsewhere in her will, the will maker expressed the view that “the Orthodox Bolivarian Believers provide the only path to the salvation of Bolivia; all other faiths lead to perdition.” Domitila and Ramiro are her niece and nephew; Ramiro is a member of the Believers, while Domitila is not and has expressed skepticism about its tenets.

1. What interest does Ramiro have? Is it vested or contingent? (2 marks)
2. What interest does Domitila have? Is it vested or contingent? (2 marks)
3. In your view, is a court likely to regard the condition attached to these interests as invalid? Why or why not? (8 marks)
4. What would be the effect (if any) if this were an *inter vivos* transfer rather than a gift in a will? (3 marks)

PART C

This section gives you a choice between six short-answer questions, each of which is worth 5 marks. Answer three.

MARKS

- 15
1. Explain the current state of the law relating to the share of the profits to which co-owners are entitled
 2. Explain the background and effect of section 73.1 of the *Land Title Act*.
 3. Explain the background and effect of section 11 of the *Property Law Act*.

PART C, continued

4. Explain the distinction between “words of limitation” and “words of purchase” in the context of the common law presumptions regarding the creation of a fee simple and a life estate.
5. Explain the function of the doctrine of waste in the law governing the relationship between life tenants and those entitled to a reversion or remainder in fee simple.
6. Explain the current relationship between aboriginal title and the land title system in light of the B.C. Court of Appeal’s decision in *Skeetchestn Indian Band and Secwepemc Aboriginal Nation v. Registrar of Land Titles, Kamloops*.

PART D

This section gives you a choice between two essay questions. Answer one.

MARKS

- 30
1. A number of the areas we covered this term reflect a tension between maintaining consistency with longstanding principles and rules of property law, on the one hand, and responding to changing expectations and conditions, on the other. In your view, does the current state of property law strike an appropriate balance between these two values? Why or why not? Discuss with reference to specific examples from the material covered in this course. You must use at least two and no more than four examples, including at least one that has been the subject of law reform proposals. Note that you should feel free to draw an example from the material covered in the fall term, but there is no expectation that you do so.
 2. One of the main purposes of this section of Property Law is to provide you with an understanding of the B.C. land title system. While this complex statutory scheme is based on Torrens principles, it is well known for its own distinctive approach; the B.C. Law Institute in its 2011 *Report on Section 29(2) of the Land Title Act and Notice of Unregistered Interests* stated that “British Columbia’s land title system is a unique blend of equity and Torrens principles,” and the Land Title and Survey Authority refers to it as a “modified Torrens system” on its website. In your view, should the B.C. system be brought closer to Torrens principles, move further away from them, or maintain its current approach? Explain your answer with reference to specific examples (at least two and no more than four).

END OF EXAMINATION