

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

EXAMINATION – December 2021

LAW 231
Property

SECTIONS 1 & 2
Professor Dennis Pavlich

MARKS: 100

TIME ALLOWED: 1 HOUR (plus 15 minutes reading time)

NOTE:

1. This is an open-book examination.
2. Assume all events in the questions occur in British Columbia in 2021.
3. Please discuss fully the reasons for your answers taking care to indicate the significance of facts that you may regard as absent in the problem.
4. Please answer **BOTH** questions.

THIS EXAMINATION CONSISTS OF 2 QUESTIONS.

MARKS**25 Question 1.**

The band council on behalf of a First Nation living in a small reserve close to a municipal area seeks your advice. They desire a declaration of their aboriginal interests over a large stretch of land that for time immemorial it has used intermittently for hunting and trapping of small animals in the wild. Giving full reasons for your advice, your principal seeks your opinion whether the band should seek recourse in a court of law or continue with treaty negotiations that after 3 years have shown little results.

75 Question 2.

You are a newly called solicitor and a long-time friend of a couple - Snooks and Patel – who graduated from law school five years ago. They are founding members of The Nude Sunbathers Club of B.C. and their legal practice, with the exception of the three-month period during their articles, has been exclusively in criminal law in Vancouver. They have only very vague recollections of having taken first year property at law school. Recently, they decided to "get away from it all" and are looking to go to the Prince George/Williams Lake area of the Province, and have been reviewing real estate options in that general vicinity. Through the internet they have been able to "virtually" view a 20-acre parcel of land just outside Quesnel that they find very attractive. This land (Greenacre) has, among other things, the following features:

- a) Frog Creek that flows through Greenacre and empties into Bear Lake.
- b) The members of a numerically small First Nations Band nearby fishes in Bear Lake without a fishing permit.
- c) Ten acres of Greenacre is cleared and suitable for raising crops. Snooks and Patel have always dreamt of having a dog, a horse, a cow and a small, pet deer. They understand from information on the web site that there is plenty of water in Frog Creek for irrigating the 10 acres and growing hay. Drinking water is already piped to the house from Frog Creek.
- d) A farmhouse. In the farmhouse are many built-in pieces of furniture; a free standing, wood burning potbelly stove which heats most of the house and an

(Question 2, continued)

elegant, old-fashioned steel safe housed in a specially-assembled, oak-lined recess in the wall of the bedroom. Snooks and Patel are thrilled with these amenities. Outside, on one side of the house are logs neatly stacked together in a one and a half meters square pile.

- e) A boathouse. This boathouse is located on the shores of Bear Lake. It is built on cement posts and extends 12 ft. out over the surface of the lake. Above the structure is a two-room loft with a small bathroom. Sindi, Patel's 18-year-old daughter who is a part-time fisher, is interested in occupying the dwelling unit above the boathouse. Snooks and Patel feel this will make a perfect, rental-unit situation and provide an income source that the ACME Bank has advised is likely necessary to help the couple qualify for a mortgaged loan needed to secure the purchase price of Greenacre. They have already approached Sindi with a draft lease agreement with a term of five years. It bears the signatures of both Snooks and Patel. Sindi has agreed to the arrangement with Snooks and Patel, but you know she is unlikely to sign this agreement as she is not sure she wishes to make a 5-year commitment to stay in the Quesnel area.
- f) Easy access to Bear Lake. Bear Lake is almost completely surrounded by mountainous, rugged terrain. It is impossible to access Bear Lake by road other than through Greenacre or by aircraft along a flight path over Greenacre that "lands" on the lake. Snooks and Patel surmise that the boathouse would be a perfect base for promoting a "private fishing club" to which Vancouver friends would be able to visit and fish from Bear Lake exclusively and, if so desired, in the nude – one of the reasons Snooks and Patel would prefer the general public not to have access to and use of the lake.

Snooks and Patel invite you over to their Vancouver house for a visit just before their trip to Quesnel. They excitedly tell you about items (a) to (f). They want to know whether there are any "real property issues" they should worry about if they decide to purchase Greenacre. You learn from other sources that a private air company is planning weekly flights landing on Bear Lake close to an "eco-shack" contemplated to be built on one of the mountain slopes abutting the lake. Give them your advice with full explanation of the legal situation affecting this purchase and its completion. Include in your advice reference to any relevant statutory materials and case law.

END OF EXAMINATION