

LAW 231.003

THIS EXAMINATION CONSISTS OF 8 PAGES (INCLUDING THE APPENDIX).
PLEASE ENSURE THAT YOU HAVE A COMPLETE EXAM.

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

FINAL EXAMINATION – APRIL 2022

Law 231.003 – Spring 2022
Property Law

Professor Alexandra Flynn

TOTAL MARKS: 100

WRITING TIME ALLOWED: 3 HOURS + 30 MINUTES Reading Time

This is an open book examination, meaning that you can refer to class notes, casebooks and other class readings.

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.

This exam includes:

- Part I - includes a fact pattern and 6 questions (3 mandatory; you choose 2 of the remaining 3)
- Part II - two questions (you choose 1)
- Appendix with relevant statutes

GOOD LUCK AND HAVE A WONDERFUL SUMMER!

PROPERTY LAW FINAL EXAM

Relevant statutory provisions and administrative materials are located in the Appendix. Rely only on the fact pattern in this exam question, including the Appendix, and the materials listed in the course syllabus to answer the following questions. You may assume that I have provided you with all relevant materials. Please use a clear short-form citation when referencing sources (e.g. *Re Cole*).

PART 1 (75%)

Please complete the three mandatory questions (1, 2 and 5). You must then complete two out of the remaining three questions (3, 4 and 6).

Fact pattern for Part 1

You are a recent graduate of Allard School of Law. You are now articling at a small general practice firm in Victoria, BC. Today a senior partner called you into her office and asked you to help with an issue concerning a new client, Amy Apple. Amy has a number of questions related to the purchase of a home and would like assistance in drafting her will. The firm has given a fee estimate of 2 hours and 15 minutes hours for you to give your opinion on her legal questions.

Background Facts

Amy owns Rural Dreams, a renovation company on Vancouver Island, British Columbia. Vancouver Island has been having a real estate and renovation boom since the COVID-19 pandemic began in March 2020, with more and more people working remotely. In September 2021, Amy started a new project in an old house (lovingly called “Sooke Manor” by the locals) that had been partially converted to a law firm by Bernie Bottle in 1985 and then sold to Duncan Doolittle in January 2020. The house is located in Sooke, approximately 30 km from Victoria, and is a grand Victorian adjacent to the ocean that needed significant work when it was sold to Duncan. There is a small stable on the property as well.

Duncan, a lawyer from Toronto, quit his busy Bay Street job in April 2020 to move to Victoria to start his own law practice. In May 2021, he decided to return to Ontario due to the illness of a close family member. On June 1, 2021, Duncan and his cousin Amy entered into an agreement for purchase and sale for Amy to obtain title to the house for a payment of \$500,000 once the renovations were complete or by April 30, 2022, whichever came first. The gap was to give Amy a chance to finance the renovations without having to worry about mortgage payments.

Bernie’s relatives had owned the house since the 1890s when her family was one of several families that moved into Sooke for industrial employment opportunities in the nearby busy shipyards serving the area. Their family had first arrived in the area earlier in the 19th century and Bernie’s parents and grandparents had been well-known community

activists. Bernie had a successful career as a wills and estates lawyer, but was an amateur historian on the side, following in her parents' footsteps by contributing to local history projects and celebrations, including the annual Activist Picnic, the longest running one in North America.

Duncan purchased the property from Bernie's nephew Ethan Elm, a renowned New York City chef who inherited Bernie's estate in 2019 when she died. Ethan already owned the adjacent lot, a much smaller plot of land to the north of the property without beach access that he used as a seasonal cottage. Sooke Manor was cluttered with stuff and was in poor shape when Bernie died, but seemed to be structurally sound. Ethan came to Sooke and spent some time looking through the house in 2019. He was considering a permanent relocation to the Island, but when COVID-19 hit he decided that he would stay in New York and focus on ensuring his restaurant could survive, and use his cottage during the summers. He left Sooke Manor as-is until selling it to Duncan with the remaining furnishings, with the sale entered into the BC land registry. Duncan and Ethan entered into an agreement stating that Ethan had an ongoing right to use the firepit and surrounding area in the back of Sooke Manor facing the beach to construct a pop-up outdoor café every August, coinciding with the annual Activist Picnic. The agreement, which was not registered, included a right to pick and use all apples and lemons from Bernie's beautiful fruit trees. As part of the agreement, Ethan agreed to always keep his small cottage the same colour as Sooke Manor and to ensure that the music played in his cottage wasn't too loud.

Duncan was anxious to get the renovations finished quickly and to finalize the sale. During one of their many conversations, Duncan said to Amy that Ethan had told him all about his eccentric Aunt Bernie who loved history and collected all kinds of "junk." Ethan told Duncan: "We saw all kinds of old papers and stuff from closets and corners. You wouldn't believe it. Who knows what you might find in there! I'd love to know if anything interesting turns up." When they met at the house, Duncan suggested that Amy "leave no drywall unturned" in clearing out the place and doing what she wished with anything there. He then exited the front door and re-entered the house. Duncan later said to Amy, in front of the lawyer who drafted the agreement for purchase and sale, "I don't want any of those useless artifacts. Whatever is there is all yours."

Amy had two part-time student employees, Frank Fritter and Gillian Griddle, working on Sooke Manor throughout Fall 2021. One day, as Frank and Gillian were taking down drywall, they found an access panel for an attic. They pushed on it and eventually it opened, dropping dust and dirt all over them. They brought over a ladder and climbed in, hoping to report to Amy that they could create another room up there. Once they got up there, they saw it was full of dusty old boxes and a bunch of old-fashioned picture frames. They called Amy, who instructed them to clear it out and throw it in the company truck to take to the dump. Amy called Duncan to report about the extra space and get instructions, joking that the workers had found some more of that "junk". Duncan joked with Amy that it was too bad there was no "hidden treasure" up there.

At the end of the day the local dump was closed. Frank loaded and took the truck home to his place as he usually did, intending to pass by the dump in the morning. He put the truck in his garage, but later got curious and started to poke around in the boxes. Frank, a history honours student at the University of Victoria, realized the boxes included a bunch of correspondence. It turned out to be letters between local Sooke activists and famous philosophers. When Frank looked at the framed pictures, he realized they were original portraits of important thinkers from that era, including one of Simone de Beauvoir and her husband, Jean-Paul Sartre, at Sooke Manor. There also appeared to be an unpublished essay co-authored by both de Beauvoir and Sartre, complete with edit marks from both authors and what looked like wine stains. Frank had just listened to a podcast about Simone de Beauvoir and Jean-Paul Sartre's unconventional relationship. Frank and Gillian spent the night googling and determined the collection was very historically significant, as well as valuable to universities and museums across the world.

Frank and Gillian also located a box of papers labelled "land title documents – destroy if necessary!" In the box was an agreement for purchase and sale of Sooke Manor as well as a handwritten deed from 1901 from Bernie's parents to Charles Cooke. There was also a contract from Charles to Harold Hunter, dated 1905, and another from Harold to Ian Ironside in 1909, both transferring title of Sooke Manor. Frank also located in the box a demand letter from Ian's daughter, June Juniper, in 1923, threatening to contact a lawyer if Bernie's parents didn't hand over possession of the house. There was no sign of any response. Gillian thought the documents were cool. She took pictures of them and posted them on Instagram, including the funny label on the box.

Frank unloaded everything into his basement near the University of Victoria to protect it from getting damaged. Frank and Gillian were not sure what to do and they kept their discovery a secret until Amy asked them about the "junk". They confessed about they had discovered. Frank says it belonged to him and Gillian. Gillian wants it all to be donated to the local Sooke community museum. Amy says it all belongs to her and wants to sell it at auction to the highest bidder. None of them have notified Duncan or Ethan.

Question 1 (20 points) – required [Suggested time 37.5 minutes]

- a) Who has the best claim to the collection of documents found in the attic?
- b) Regardless of whether Frank has the best claim, can he be considered a bailee of the boxes?

Question 2 (15 points) – required [Suggested time 30 minutes]

What non-possessory property rights and obligations does Ethan have? What happens to these rights and obligations once title passes to Amy?

Question 3 (10 points) [Suggested time 15 minutes]

Should Amy have concerns about adverse possession?

Question 4 (10 points) [Suggested time 15 minutes]

What would be the likely result if Duncan transferred the property to Kate Kettlebell between June 1, 2021 and April 29, 2022?

Assume legal title has passed to Amy.

Amy is in poor health and needs help in drafting her will. Now that the renovations are done, she wants her elderly father, Norris Nettle, to live in half of Sooke Manor for his lifetime. She wants the other half of Sooke Manor to operate as an Airbnb, to be managed by her adult daughter, Lucy Lemon. Amy and Lucy will enter into a commercial tenancy agreement related to the portion of Sooke Manor that will be operated as an Airbnb and Lucy will live in a small suite in the Airbnb half. Amy wants the entire house and all other property interests to pass to Lucy upon her death, but is concerned that Lucy won't be able to afford its upkeep. Amy wants to add conditions that the house continue to be divided, with half operated for rental until Lucy's death, and also that Lucy find a "suitable and smart" partner to marry before Amy's death, to be approved by Amy. Amy also wants to honour a promise she made to her cousin Duncan when he sold her Sooke Manor that he can use and help make all important decisions about her beloved horses, who live in the stable at Sooke Manor, even after Amy dies.

Question 5 (20 points) – required [Suggested time 37.5 minutes]

Explain and defend how you would draft Amy's will to ensure that her wishes are respected? Please reference all interests created under the will.

Question 6 (10 points) [Suggested time 15 minutes]

Mackenna Mushroom, who is studying at the University of Victoria, has been living at Sooke Manor for six weeks as she waits for space to open in the university residences. Mackenna has repeatedly complained to Lucy about the poor water pressure and bad wifi connection, both of which were included as landlord responsibilities in the online Airbnb rental agreement that the parties agreed to. Lucy has avoided all of her calls and texts for a week. What are Lucy and Amy's obligations to Mackenna, if any?

PART II (25%) [Suggested time 45 minutes]

Please answer one of the following two questions.

1. In *Tsilhqot'in Nation*, the Supreme Court of Canada held that the Tsilhqot'in Nation possesses constitutionally protected rights to certain lands in British Columbia, including ownership rights similar to those associated with fee simple, as well as limitations to their title. Explain how the SCC's decision in *Tsilhqot'in Nation*, as well as at least three other cases of your choice from the course, relate

to the following themes. For clarification, you must apply *Tsilhqot'in Nation* and at least one other case to each of the themes below. In all, you must have considered *Tsilhqot'in Nation* and three other cases in your answer as a whole.

- a) the doctrine of discovery;
 - b) beneficial and legal ownership; and
 - c) possession.
2. Explain in plain language the holding in *Chippewas of Sarnia Band v Canada*. In your answer:
- a) compare the process for extinguishment explained in the case with the requirements under the *Indian Act*;
 - b) explain the role that equity played in the decision;
 - c) identify the relevant parties in the action and the way in which the Court of Appeal prioritized their interests; and
 - d) analyze if and how the SCC's *Tsilhqot'in Nation* decision would change the Court of Appeal's holding in *Chippewas of Sarnia Band v Canada*.

END OF EXAMINATION – APPENDIX STARTS ON NEXT PAGE

Appendix 1: Applicable legislation

Land Title Inquiry Act, RSBC 1996 c 251

1. On petition to the Supreme Court, a person claiming to be the owner of an estate in fee simple in land or a trustee for the sale of the fee simple is entitled, whether the person has the legal estate or not, and whether the person's title is subject or not to any charges or encumbrances to have the title judicially investigated and its validity declared by the court.

Limitation Act, SBC 2012, c 13

28 (1) Except as specifically provided by this or any other Act, no right or title in or to land may be acquired by adverse possession.

(2) Nothing in this Act interferes with any right or title to land acquired by adverse possession before July 1, 1975.

Land Title Act, RSBC 1996, c 250

23 (3) After an indefeasible title is registered, a title adverse to or in derogation of the title of the registered owner is not acquired by length of possession.

(4) Despite subsection (3), in the case only of the first indefeasible title registered, it is void against the title of a person adversely in actual possession of and rightly entitled to the land included in the indefeasible title at the time registration was applied for and who continues in possession.

Property Law Act, RSBC 1996, c. 377

18 (5) An owner in fee simple ... may grant to himself or herself an easement, a restrictive covenant ... over land that he or she owns for the benefit of other land that he or she owns in fee simple ..., but a grant under this subsection must be consistent with the interests held by him or her as grantor and grantee at the time of the grant.

(7) Common ownership and possession of the dominant and servient tenements does not extinguish an easement.

Residential Tenancy Act, SBC 2002, c. 78

2 (1) Despite any other enactment but subject to section 4, this Act applies to tenancy agreements, rental units and other residential property.

4 This Act does not apply to

- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation, ...
- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years, ...

Indian Act, RSC 1985, c. I-5

38 A band may absolutely surrender to Her Majesty, conditionally or unconditionally, all of the rights and interests of the band and its members in all or part of a reserve.

(2) A band may, conditionally or unconditionally, designate, by way of a surrender to Her Majesty that is not absolute, any right or interest of the band and its members in all or part of a reserve, for the purpose of its being leased or a right or interest therein being granted.

39 (1) An absolute surrender is void unless

- (a) it is made to Her Majesty;
- (b) it is assented to by a majority of the electors of the band
 - (i) at a general meeting of the band called by the council of the band,
 - (ii) at a special meeting of the band called by the Minister for the purpose of considering a proposed absolute surrender, or
 - (iii) by a referendum as provided in the regulations; and

it is accepted by the Governor in Council.

...

(5) Every meeting under this section shall be held in the presence of the superintendent or some other officer of the Department designated by the Minister.

40 A proposed absolute surrender that is assented to by the band in accordance with section 39 shall be certified on oath by the superintendent or other officer who attended the meeting and by the chief or a member of the council of the band and then submitted to the Governor in Council for acceptance or refusal.