

THIS EXAMINATION CONSISTS OF 4 PAGES (INCLUDING THIS COVER PAGE)
PLEASE ENSURE THAT YOU HAVE A COMPLETE EXAM

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

EXAMINATION – DECEMBER 15, 2021
LAW 231.003

Professor Alexandra Flynn

TOTAL MARKS: 100

TIME ALLOWED: 1 HOUR + 15 MINUTES READING TIME

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1. This examination consists of two questions. Answer both questions and read them carefully.
2. You are allowed to bring any written material into the exam, including the textbook, your notes and course summaries.
3. Unless otherwise indicated, assume the applicable law is the law of British Columbia.
4. Students writing by hand:
 - a. Write legibly on every second line of your exam booklet and on one side of the page.
 - b. Do not put your name on the exam booklets. Use only your exam code.
 - c. At the end of the exam, please return all exam booklets, including blank ones.
5. Students using ExamSoft, please ensure that:
 - a. You enter your exam code in the appropriate place.
 - b. You do not include your name anywhere in the exam.
6. Put your exam code on the question paper and return the question paper at the end of the exam.
7. Do not begin your exam until you are instructed to do so.
8. **Good luck!**

Part I (50 marks)

Lou Lucky died in 2018. In his will, Lou directed that his estate would cover his funeral and burial costs, as well as the “reasonable care” of his beloved cat, Steve. He also left the following instructions:

1. I give, devise and bequeath my estate unto my wife, Penny, to be hers absolutely and forever, provided that she cares for Steve until his natural death.
2. If Penny refuses to care for Steve, I direct that all my remaining property, with the exception of my house at 111 Aleph Avenue as outlined below in my will, be sold and converted to cash, and that the proceeds be divided equally to my surviving adult children, Lauren, Lonny, and Leon or their survivors.
3. If Penny refuses to care for Steve, I direct that Leon may reside at 111 Aleph Avenue for his lifetime, with the understanding that he shall have full use of the lands, fixtures and premises, providing that he shall have full responsibility of keeping 111 Aleph Avenue in good repair, caring for Steve, and paying all insurance costs and property taxes. After the death of Leon, 111 Aleph Avenue shall be disposed of in accordance with Clause 2.

Lou and Penny married in 2016. Penny was not the parent of Lauren, Lonny or Leon, who were 14, 16, and 18 in 2018. Upon his death, Lou had two main assets: the house at 11 Aleph Avenue, valued at \$5,000,000, a Porsche 911 sports car, valued at \$100,000, and a medical licence. The house included a large, vintage Moroccan carpet overlaying the dining room, which has been in the house for 50 years, valued at \$50,000. The carpet was attached to the panel flooring at its four edges and had never been moved from the house.

After Lou’s death Penny lived in the house at 111 Aleph until her death in 2021. Between Lou’s death and her own, Penny had no contact with Lauren, Lonny or Leon. Upon Penny’s death, a handwritten note and will were discovered in her safe that stated the following:

I am Lou Lucky’s heir and am entitled to Lou Lucky’s entire estate. I give, devise and bequeath my entire estate, including the amounts granted to me under Lou’s will, to be held in a public trust and administered by my executor, for scholarships for the benefit of law students who devote their careers to eliminating human rights codes from the world.

Penny affixed a note to her will, which stated, “I had to get rid of Steve right after Lou’s death, due to my cat allergies. Sorry. I also sold the rug.”

What legal interests does Leon have in Lou’s estate, if any?

Part II (50 marks)

The Vancouver Parks Board (the “Board”) is authorized to pass, amend, and repeal by-laws for the control, regulation, protection, and government of the parks and of persons who may be therein. In 2020, in response to a growing number of tent encampments and the results of various court decisions, the Board introduced the following amendment to the *Parks Control By-law Regarding Temporary Shelters in Parks*:

In section 1, the Board inserts the following definitions in the correct alphabetical order:

“HOMELESSNESS” means the state of having no access to permanent or temporary housing, accommodation, or shelter.

“NATURAL AREAS” are those areas of parks that are managed to retain their natural ecosystem attributes, are relatively undisturbed in an urban context, contain native or naturalized non-native plant species, and provide wildlife habitat, stormwater retention, and other ecosystem services; these include forests, ponds, wetlands, stream riparian zones, coastal environments, meadows, treed areas without mown understory, and unmanicured sections of golf courses.

“TEMPORARY SHELTER” means a tent or other temporary structure that provides shelter to a person experiencing homelessness and that is capable of being dismantled and moved, but does not include a vehicle.

The Board adds the following two sections:

11A. A person experiencing homelessness may take up temporary abode in a park if that person:

- (a) is in a park or a specified area of a park in which a temporary shelter is not prohibited by this by-law;
- (b) erects a temporary shelter that complies with the provisions of this by-law; and
- (c) dismantles and moves the temporary shelter in accordance with the provisions of this by-law.

11B. A temporary shelter:

- (a) must not be erected:
 - i. within 25 metres of a playground or school;
 - ii. in, on or within a:
 - 1. beach, pond, lake or dock;
 - 2. trail, bridge, seawall, roadway or park entrance;
 - 3. natural area;
 - 4. flower bed or horticultural display area;
 - 5. pool or waterpark;
 - 6. sports field, sports court or golf course;

Part II (continued)

7. community centre or fieldhouse;
 8. bleacher, stage, gazebo, public monument, picnic area, picnic shelter or washroom;
 9. designated off-leash dog area; or
 10. designated special event area for which permission has been given in accordance with this by-law;
- (b) may only be erected from dusk until 7:00am the following day, unless in an area designated by the General Manager as acceptable for temporary daytime shelter;
 - (c) must be dismantled and moved by 8:00am each day, unless in an area designated by the General Manager as acceptable for temporary daytime shelter;
 - (d) must not impede public use of, or access to, a park or facility;
 - (e) must not hinder or interrupt the ability of staff or contractors to perform their work
 - (f) must not exceed a maximum footprint of 9 square metres (3m x 3m), with all belongings contained within that space;
 - (g) must not contain any campfire, lighted candles, propane lanterns or stoves, or other similar devices;
 - (h) must not be used to sell goods or conduct business without the permission of the Board, and
 - (i) must not be left unattended.

Drawing on the material that we have considered in this course, develop an argument on whether or not (choose only one):

The By-law is an appropriate balancing of what Justice Ross stated in *Victoria (City) v Adams* was “an inevitable conflict between the need of homeless individuals to perform essential, life-sustaining acts in public and the responsibility of the government to maintain orderly, aesthetically pleasing public parks and streets,” and an example that other municipalities should adopt; **or**

If a similar by-law were enacted by the Vancouver Fraser Port Authority, the by-law would change the decision in *Vancouver Fraser Port Authority v Brett*.

You may argue either side of the argument.

**Congratulations on completing your first term of Property Law!
Have a wonderful break and see you in 2022.**

END OF EXAMINATION