

THIS EXAMINATION CONSISTS OF FIVE (5) PAGES  
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

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

FINAL EXAMINATION – APRIL 2022

LAW 231 - Property Law  
Section 4 - Professor Reynolds

TOTAL MARKS: 100  
TIME ALLOWED: 3 HOURS  
and 15 minutes including reading time  
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NOTE:

1. This is an open book examination. There are no restrictions on the printed materials that you may use in writing your exam. You are not permitted to use any electronic devices other than your laptop, should you choose to write your exam using Exemplify.
2. This examination has **three (3)** questions. Answer all questions and sub-questions.
3. You have 15 minutes of reading time. The reading time is in addition to the 3 hours of writing time. During the reading time, you may only make notes on the question sheet or on the scrap paper.
4. When a question asks you to refer to course materials, this means any information conveyed in the course, including the assigned readings, lectures, class discussions, and slides.
5. 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.
6. Assume the applicable law is that of British Columbia unless indicated.
7. Students writing by hand, please write legibly on every second line of your exam booklet. Write on one side of the page only. Do not put your name on the exam booklets. Use only your exam number. At the end of the exam, please return all exam booklets. No credit will be given for anything written in a booklet that is removed from the exam room, even briefly.
8. Students writing using the Exemplify computerized exam process, please ensure that you do not write or type your name at any place in the exam.
9. Do not begin your exam until you are instructed to do so.

10. At the end of your exam, please write your exam number on the cover page of your question paper and drop it on the desk at the front as you leave. I will return the question papers to Student Services who will dispose of them.

LAW 231, Section 4

**Question 1:**

The Mount Pleasant area of Vancouver is characterized by a mix of both residential properties and light industrial properties. Uses that are considered to be “light industrial” include manufacturing, storage, office, transportation, and certain retail spaces including vehicle dealerships.

In 2014, Alan purchased a lot in the Mount Pleasant area of Vancouver (Lot A). The dimensions of Lot A are 33 by 122 feet. There is a single family home on this lot – a two story home built in approximately 1930 and renovated in 2016 to create a separate basement apartment with its own entrance, kitchen, and bathroom facilities. There is also a small building (an outbuilding) situated at the back of the lot that had previously been used by one of the early owners of the home (circa 1950) as part of their carpentry business. Since the 1970s, the outbuilding has been used as a storage shed for the personal items of the owner of Lot A (including lawn tools, sports and recreational equipment, camping gear, automotive supplies, and garden tools).

The lot that is adjacent to Alan’s lot on the west side of the property is also 33 by 122 feet (Lot B). There is a small one-story office building on this property. There is also a large outdoor advertising structure (a billboard). This billboard is supported by a single steel pole that is 20 feet high. At the top of this pole is a rectangular frame that supports both the artwork conveying the advertising message along with the lighting equipment for the billboard. The frame containing the advertising message is 40 feet wide, 20 feet high, and 3 feet deep (40’ x 20’ x 3’). The steel pole is located entirely on Lot B, but the frame containing the advertising message extends 10 feet into Lot A.

The billboard described above (the Billboard) was originally constructed in the 1970s as a way to advertise the business of the party that owned Lot B at the time (Billboards R Us). Billboards R Us’ business operations focused on the manufacture and installation of outdoor advertising structures (billboards). The original installer of the Billboard on Lot B had made an error with respect to the exact boundary line separating Lot A and Lot B, which is why there is an overhang from Lot B into Lot A.

After consulting legal counsel, the owner of Lot B reached out in 1973 to the owner of Lot A to ask them to sign an easement agreement. They agreed to do so. This easement (the Easement) provides:

The Grantor for himself and his successors in title hereby grants to the Grantee and his successors in title and his tenants, servants, licensees, workmen, contractors or sub-contractors or other persons acting for or on behalf of the Grantee or authorized by the Grantee in the exercise or purported exercise of the rights and liberties hereby granted a free and uninterrupted easement permitting the billboard defined in Appendix A (“The Billboard”) to overhang the Grantor’s property, as well as to have free and uninterrupted access through the easement at all times, and generally to do all acts necessary or incidental in connection with the foregoing, but subject to the terms, conditions and restrictions hereinafter set out.

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## Question 1, continued)

Alan finds the Billboard to be a nuisance. As noted above, there are two separate units as part of Alan's house. Alan lives with his partner Hu in the top two floors of the house, and they rent out the basement apartment to a family with two children (aged 8 and 12 years). The kids are very active, and have often hit the portion of the Billboard overhanging Lot A with baseballs, frisbees, and foam rockets. Alan's tenants have complained to him about way in which the Billboard impacts their activities on multiple occasions. The Billboard also impacts Alan and Hu's view of the mountains.

Alan also objects to the content of the advertisements that in recent years have been placed on the Billboard. The company that constructed the Billboard sold its Mount Pleasant facility in the early 1990s. Lot B is now owned by a local technology company (Virtuonics). In 2016, Virtuonics signed a licensing agreement with Frog and Toad Enterprises, an advertising company. In exchange for a monthly fee, Virtuonics gave Frog and Toad Enterprises permission to place advertisements on the Billboard. Since 2018, Frog and Toad Enterprises has featured advertisements for various oil and gas companies on the Billboard. Alan is a committed environmentalist and is upset that these ads extend over a property that he owns. He feels like the ads have negatively impacted his reputation as an environmentalist. Alan has approached Virtuonics with his concerns, but they have politely rejected his requests to either take down the Billboard or to ask Frog and Toad Enterprises to feature other companies.

Alan's problems extend beyond his concerns about the Billboard. In response to growing concerns about housing affordability, the City of Vancouver recently passed a bylaw that rezoned a large portion of the Mount Pleasant area of Vancouver. Properties in this area – which includes Lot A (Alan's lot) but not Lot B (Virtuonics' Lot) – were rezoned from a hybrid zoning that permitted both light industrial and residential uses, to a type of zoning under which only residential uses are permitted. Alan was furious to hear this news. He had been planning on selling his property to a commercial developer who had indicated to him that given the escalating value of land zoned for light industrial uses, Lot A would be worth around \$5,000,000. After the rezoning, Alan's property was assessed at \$3,000,000.

The other problem facing Alan has to do with his tenants in the basement apartment on Lot A. Several of Alan's neighbours with homes built in approximately the same era have had water pipes burst. Although he renovated the basement apartment in 2016, Alan did not replace all of the water pipes in the rental unit. Alan would like to inspect the pipes in his tenants' suite on a weekly basis to confirm that they are in good condition. He would also be fine with checking once every two weeks. However, his tenant consistently refuses to give him entry into the rental unit, despite the fact that Alan always gives 48 hours written notice. On this written notice, Alan always puts the date and time of the proposed entry (he unfortunately can't be more exact than 7am-3pm due to other commitments) and indicates the purpose of entry (to check on the water pipes).

You are an associate lawyer at a Vancouver-based law firm. Alan approaches you for assistance with a series of questions based on the above fact pattern:

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Question 1, continued)

- 1) Are there any legal mechanisms that Alan can rely on to have the Easement modified or canceled? Would any attempt by Alan to rely on this mechanism be successful? Discuss.
- 2) Can Alan receive compensation from the City of Vancouver for the decrease in his property value due to the change in zoning? Discuss.
- 3) Are Alan's tenants within their rights to deny him entry into their unit based on the circumstances described above? Discuss.

**(50 marks, 90 minutes)**

**Question 2:**

Dharini and Mateo met in 2006 at a "Night at the Aquarium" event put on by the Vancouver Aquarium. Their relationship quickly progressed. In 2007, they moved into Dharini's home in the Douglas Park area of Vancouver, which she had purchased in 2000 for \$300,000. They married in 2008. In 2010, Dharini gave birth to twin girls, Chloe and Zoe. In 2010, Mateo quit his job as an animator to take care of his and Dharini's twin daughters. This allowed Dharini to focus on her career as an accountant. She is now a partner at a major accounting firm. Since quitting his job in 2010, Mateo has not returned to his previous employment. This is not to say that he has not kept busy. In addition to his full-time job as a parent of twins, Mateo has also spent a significant amount of time renovating the Douglas Park home.

The value of the Douglas Park home has increased significantly over the years. Purchased at \$300,000 in 2000, the property value increased by approximately \$100,000 per year until 2015, when it jumped up in value by around \$500,000 per year. In 2021, the assessed value of the Douglas Park home was \$4,800,000. The assessor mentioned that a portion of the increase in its value (approximately \$300,000) was due to Mateo's renovations (which included the creation of a sun room as well as the construction of an attached garage).

In early 2022, Dharini and Mateo realized that they had drifted apart and started to discuss the possibility of getting a divorce. Prior to making any final decision to separate, they wished to understand how their property interests might be divided should they decide to do so. As of April 2022, their assets are as follows:

- \$4,800,000 – assessed value of the Douglas Park home
- \$500,000 – money in a joint savings account (from salary)
- \$800,000 – Dharini's entitlement under a retirement savings plan

Dharini is also aware that she has been named in her Uncle Purnit's will as the recipient of Purnit's interest in a commercial property on UBC campus valued at \$1,000,000, the title to which is held in joint tenancy between Purnit and his business partner Kelly.

Dharini and Mateo also have \$100,000 in debt, which was incurred over a number of years to pay for various activities, camps, and programs for the twins.

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Question 2, continued)

Lastly, Dharini and Mateo have not signed an agreement respecting the division of property and/or debt upon separation.

You are an associate at a Vancouver-based law firm. Dharini approaches you for assistance with the following question:

- 1) Assuming that Dharini and Mateo decide to separate in April 2022, please determine how their property interests (both assets and debt) would be distributed. For the purposes of this question, assume that Dharini's Uncle Purnit passes away prior to the date Dharini and Mateo separate. Discuss.

**(20 marks, 36 minutes)**

**Question 3:**

The Truth and Reconciliation Commission of Canada's Call to Action 43 states that:

43. We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples [UNDRIP] as the framework for reconciliation.

Making reference to course materials studied as part of this year's Property Law course, please discuss three (3) different areas of Property Law that might need to be reformed in order for UNDRIP to be fully adopted and implemented. Please indicate why in your view reform is required in order for each of these areas of law to be brought into harmony with UNDRIP. As well, please propose specific reforms that would help to accomplish this goal. The nature of these reforms might vary depending on the area of law in question, and could include both legislative changes and reforms relating to case law. Please focus your response on those provisions of UNDRIP discussed in class and/or assigned in the syllabus (Preamble and Articles 11, 25-28, 31, 43, and 46).

**(30 marks, 54 minutes)**

END OF EXAMINATION