

THIS EXAMINATION CONSISTS OF 4 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

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

EXAMINATION – DECEMBER 2021
LAW 231 - Property
Section 4 - Professor GJ Reynolds

TOTAL MARKS: 100
TIME ALLOWED: 1 HOUR
and 15 minutes reading time

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 in secure mode.
2. This examination consists of 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 60 minutes 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

MARKS

- 30 1. As a pandemic project, Anne Gawalko, an Associate Lawyer with the Vancouver firm of Robinson Toews Kogawa, decided to write a book. Not interested in writing a conventional text, Anne decided to instead create a book made up entirely of lists. Some of these lists focused on the small details of Anne's own life (for instance the list entitled "All of the Things that I Remember Having Tripped Over"), while others focused on Vancouver, the city in which Anne grew up and in which she currently lives (for instance the list entitled "Trees That I Have Climbed in East Vancouver"). The book, entitled *My Vancouver in Lists*, has been described as funny, light-hearted, and heart-warming.

Anne showed the text of the book to her friend Catherine Lee, who works for a publishing house in Vancouver (Crows Overhead Publications). Catherine thought that the book would be a good seller. She was right. In its first few months of circulation (the book was published in June 2021), *My Vancouver in Lists* (which is around 200 pages long) sold approximately 10,000 copies nationally. Demand within Vancouver was particularly strong.

Kelly Roy is a local Vancouver artist with a keen business sense. She is also an avid reader, and enjoyed reading *My Vancouver in Lists* shortly after it was published. The day after she finished reading this work, Kelly noticed eight or nine people reading *My Vancouver in Lists* on public transit. Kelly had an idea. She went to her local bookstore and purchased 10 copies of *My Vancouver in Lists*, at \$20 per copy. Each book contained approximately 200 lists, each of which was on its own page. Kelly took the cover off of each book, discarded the cover material, and removed the pages from the book's spine, leaving her ultimately with a large pile of loose lists. After trimming the edges of the pages to ensure that they looked presentable, she set up a booth beside the entrance to the Canada Line subway station at King Edward Avenue and Cambie Street, where she sold single pages from her purchased copies of *My Vancouver in Lists* for \$0.25 per page. Kelly accepted payment both in cash and electronically. Kelly's business idea was a huge success. In total, over the course of a week, Kelly sold nearly all of the lists that she had acquired through the purchase of 10 copies of *My Vancouver in Lists*, netting a total profit of \$285.

Anne heard about Kelly's business venture from a friend who lives in the area of the King Edward and Cambie Canada Line station. Anne was upset that someone would cut up and re-sell her book in this manner, and decided to seek legal advice in order to determine whether she might have any legal recourse. Anne popped her head into your office (you are also an Associate Lawyer with

LAW 231, Section 4

Question 1, continued)

Robinson Toews Kogawa) to ask for your views. Please answer the following sub-questions:

- (a) Is Anne Gawalko's *My Vancouver in Lists* an original literary work under s. 5(1)(a) of the *Copyright Act*? Discuss. (10 marks, 6 minutes)
- (b) Did Kelly Roy infringe any of the economic rights of the copyright owner when she sold individual pages from purchased copies of Anne's *My Vancouver in Lists*? Discuss. Do not address defences to copyright infringement in your response to this question. Also, in your response to this question, assume that Anne is the owner of copyright in *My Vancouver in Lists*, and that copyright subsists in this work. (20 marks, 12 minutes)

(30 marks, 18 minutes) [for Question 1, comprising 1(a) and 1(b)]

30 2. Jesse Smith and Rav Singh were newly married when they purchased a cottage property in the Revelstoke area of British Columbia in August 2014. Rather than rely only on the standard civic address sign that was part of the property when they purchased it, they decided to work with a wood carver, Pat Allan, to create a unique way to signal their address to passersby. Prior to starting work on the project, Pat interviewed Jesse and Rav to find out more about their relationship. On the basis of this conversation, Pat created a three-foot tall wood sculpture of a heron. On the heron's chest, Pat carved the address of the property (346 East Street). For privacy reasons, Jesse and Rav did not ask Pat to carve their full names into the heron's wings. Instead, they asked Pat to carve a J into one wing, and a R into the other. Pat did so in an elegant and understated way. One would have to look very closely to see these two letters. The wood sculpture was attached to a base the same width as the heron's legs, and which was 18 inches long. Pat did not consider the base to be part of the sculpture. To ensure that the sculpture would not fall over in heavy winds, Jesse and Rav dug a hole approximately 18 inches deep, placed the base in the hole, and poured concrete around the base. The heron's feet were positioned just above the top of the concrete.

In 2016, a work opportunity in New York City (US) led to Rav and Jesse selling their cottage property to Edward McInley. Rav and Jesse weren't able to take the heron sculpture with them in 2016 due to space reasons. However, they always intended to return to reclaim it. As part of the contract for sale between Rav/Jesse and Edward, it was indicated that "the heron sculpture shall remain the property of the vendors [Jesse and Rav] and shall not by reason of attachment to any realty be deemed a fixture."

LAW 231, Section 4

Question 2, continued)

In July 2021, Edward sold the property at 346 East Street to Samantha Ng. In the fall of 2021, having found out about the sale through social media posts, Rav and Jesse approached Samantha to ask for the return of the heron sculpture. Samantha refused to give the sculpture to them, indicating that it was part of the property that was conveyed to her by Edward. She pointed to a clause in her contract for sale with Edward that indicated that “upon purchase of 346 East Street, property rights to the heron sculpture shall pass to the purchaser [Samantha]”.

Rav and Jesse approach you for advice with respect to the following question:

(a) Who is the owner of the heron sculpture, and on what basis? Discuss.
(30 marks, 18 minutes)

40 3. In the Commentaries on the Laws of England, book II, Chap 1, p 2 (1765), Sir William Blackstone characterized the right to property in absolute terms, defining it as “that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.” Making reference to course materials from this past term of Property Law, please answer the following sub-questions:

(a) To what extent do laws relating to property in force in British Columbia today (including both legislation and common law) reflect this view of property? Discuss, giving three (3) examples from course materials from this past term of Property Law. (15 marks, 9 minutes).

(b) To what extent *should* British Columbia’s laws relating to property reflect this view of property? Discuss. (25 marks, 15 minutes)

(40 marks, 24 minutes) [for Question 3, comprising 3(a) and 3(b)]

END OF EXAMINATION