THIS EXAMINATION CONSISTS OF 5 PAGES

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2023

**LAW 231 – PROPERTY LAW**

Section 001

Professor DC Harris

**TOTAL MARKS**: 100

**TIME ALLOWED**: 3 HOURS and 15 MINUTES

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

1. This examination consists of five questions. Answer ALL questions.
2. This is an open-book examination. You are allowed to use any printed or published material. You may not use any electronic material other than your laptop or notebook computer with ExamSoft Examplify software.
3. Put your exam code on the question paper and return the question paper at the end of the exam.
4. Students writing by hand:
   1. write legibly on every second line of your exam booklet and on one side of the page;
   2. do not put your name on the exam booklets; and
   3. return all exam booklets, including blank ones, at the end of the exam.
5. Do not begin your exam until you are instructed to do so.
6. **Good luck!**

**QUESTION 1** [25 Marks]

Penny Lane is registered as the owner of the fee simple interest in a parcel of land in Vancouver. On the parcel is a large building from which it operates the Penny Lane Hotel. In addition to the guest rooms, the building also includes a restaurant, a bar, and a fitness facility. The collection of services appears to guests of the Penny Lane Hotel as part of the same operation, but different businesses are responsible for each.

Penny Lane runs and manages the guest accommodations at the hotel, but it leases the spaces for the restaurant, the bar, and the fitness facility. Mystery Tour operates the restaurant, which it holds under a five-year lease from Penny Lane, with an option to renew for a further five years. Mystery Tour also leases the bar under the same terms, but it subleases the facility to Glass Onion, which holds the space under a two-year sublease with an option to renew for a further two years. Finally, Rocky Racoon operates the fitness facility under a two-year lease from Penny Lane. All three businesses – Mystery Tour, Glass Onion, and Rocky Racoon – made substantial investments in the spaces before launching their operations. None of the leases or sub-leases are registered against Penny Lane’s fee simple interest.

The Penny Lane Hotel was once one of the finest in Vancouver, but the building is old and needing renovation. In order to finance the required work, Penny Lane borrowed $10 million from Canadian Credit, which secured the loan with a mortgage from Penny Lane. Canadian Credit registered the mortgage against Penny Lane’s fee simple interest.

In deciding whether to advance the loan, Canadian Credit conducted a review of Penny Lane’s business operations. It noted that the hotel operation produced a steady stream of income and that Penny Lane also had rental income from the property, although neither the lessees nor the terms of the leases were identified or indicated in the budget documents that it reviewed. Canadian Credit granted the loan on the basis that this mixed income stream appeared adequate to enable Penny Lane to meet the payments as set out in the mortgage agreement.

The renovations proceeded slowly and there was much more required work than anticipated. The work also disrupted the guest experience and the Penny Lane Hotel suffered a sharp downturn in business. As a result, Penny Lane stopped paying its bills, including the payments on the mortgage-loan, and then closed its doors. Canadian Credit began foreclosure proceedings in order to force the sale of the hotel building in an effort to recover the unpaid loan and the accumulating interest on the debt. There is a potential buyer, but it only wants the property as a redevelopment site. It is not interested in re-opening the hotel.

However, Mystery Tour, Glass Onion, and Rocky Racoon all insist that their leases and sub-leases must be honoured, or that they be compensated for the loss of the leases should the building be sold and the land redeveloped. In short, they are insisting that the leases, which preceded the mortgage, should have priority over the claims of Canadian Credit. There will not be sufficient funds from the sale of the building to compensate the three businesses for the loss of the leases and to pay off the debt owed to Canadian Credit.

Evaluate the priority of the different parties and explain the basis in law for your ranking. Will any of the parties who are not made whole – who are not fully compensated from the remaining assets of Penny Lane – have access to compensation through the title registration system?

**QUESTION 2** [25 Marks]

Bill held the fee simple interest in a bungalow in Nelson, British Columbia. It was his home, he had lived there for many years, and his neighbours knew him as Bungalow Bill. One of his neighbours was Loretta Martin. She owned another small house down the street from Bill and she had recently inherited a large sum of money following the death of a distant relative.

Loretta and Bill were friends, and when Bill encountered financial difficulty following an ill-advised investment in a crypto-currency fund, Loretta offered to lend him some money. Bill gratefully accepted and borrowed $100,000 from Loretta, agreeing to pay 3% interest on the sum over a five-year term. The interest rate was below what Bill would have paid if he had borrowed from an institutional lender, but Loretta’s motivation was not to make money from an investment. Instead, she was helping a friend.

Although Bill was a friend, she was also cautious about lending money. In order to secure the loan, Loretta asked Bill to grant a mortgage against the fee simple interest in the bungalow, which he did by transferring a signed Form B. Loretta registered the form with the Land Title Office against Bill’s fee simple interest.

However, Bill’s debts continued to accumulate as he attempted increasingly risky investments to recover the funds he has lost. He went back to Loretta to ask if she might provide a further loan of $300,000.

Loretta wanted to help, but she was even more cautious about advancing such a large sum. After consulting with a lawyer, Loretta offered to provide Bill with additional funds (the $300,000 he had requested), but on the condition that he transfer the fee simple interest in the bungalow to her. In effect, she would buy the bungalow and then allow him to remain in possession as a tenant. The rent would be set at the market rate for a small house in Nelson.

Although Bill was loathe to sell the bungalow, he did need the funds and he thought Loretta’s proposal was reasonable. However, he wondered if there might be an arrangement that would allow him to buy back the bungalow in the future should he be able to do so. He consulted a lawyer who advised him to seek an option to repurchase the bungalow. After further discussions and some negotiation, Loretta agreed to grant Bill an option, which he could exercise anytime over the 5 years after the purchase, that gave him the right to buy back the fee simple interest in the bungalow for $400,000 plus interest compounded annually at 5%.

When the transaction for the purchase and sale of the bungalow completed, Loretta registered the Form A in the Land Title Office. At the same time, she discharged the mortgage that she had taken when she had made the first loan of $100,000 to Bill. For his part, Bill registered the purchase option, which Loretta had given him as a signed Form C, against Loretta’s fee simple interest.

It is now more than 5 years since Loretta acquired the bungalow. During that time, Bill has remained a tenant and is up-to-date on the rent. And as the result of a successful class action lawsuit, Bill has also recovered a portion of the money he invested in the crypto-currency fund. He now wishes to buy back the bungalow, which he still thinks of as his. However, the option to purchase expired last year, Bill and Loretta are no longer friends, and Loretta is not interested in selling the bungalow at the option price of $400,000 plus interest. The house is now worth a good deal more.

Bill has come to you for advice. Set out the legal basis for a claim against Loretta and evaluate the likely outcome if Bill were to bring such a claim to court?

**QUESTION 3** [20 Marks]

The preamble to the Framework Agreement on First Nation Land Management (1996) between fourteen First Nations (including the Musqueam and the Squamish) and the Government of Canada, contains the follow clause:

The First Nations should have the option of withdrawing their lands from the land management provisions of the Indian Act in order to exercise control over their lands and resources for the use and benefit of their members.

Explain the legal framework for reserve land and property interests on reserves in British Columbia, the process for withdrawing reserve land from under the *Indian Act*, and why removing reserve lands from the oversight of the Federal Government is an important goal for many First Nations.

**QUESTION 4** [10 Marks]

Sam Stemwinder recently purchased the fee simple interest in a parcel of land on the east side the Nicola River in British Columbia. The survey of the parcel, drawn in the late 19th century and attached to the original Crown grant, shows the parcel as bordering on the river. The survey also shows Crown land on the west side of the river. Sam received a copy of the survey when he acquired the parcel and it was clear to him that the survey no longer provided an accurate depiction of the location of the Nicola River. In the intervening decades between the survey and Sam’s purchase, the river had shifted to the west such that it is now about 50 metres further west than shown on the survey. Its movement has been slow and incremental. Although the Nicola River is prone to flooding, this movement has not been the result of a flood event.

Shortly after acquiring the parcel, Sam received notification from the Nicola Regional District that it was planning to build a public recreational trail along the east bank of the Nicola River. According to the records of the Regional District, and based on the survey of Sam’s parcel in the Land Title Office, there is sufficient Crown land between the parcel and the river to build the trail without infringing on that parcel. If the Regional District decides to proceed with the trail, does Sam have a basis in law to insist on compensation? Explain why or why not.

**QUESTION 5** [20 marks]

Carol Rose wrote of crystals and of mud in the law of property, of the predictable application of bright lines rules and of the exercise of discretion in response to circumstance. Drawing from the material in this course, explain why you think the law of property should be crystalline or muddy.

**END OF EXAMINATION**