

Attachment: Syllabus and Course Outline (8 pages)

THIS EXAMINATION CONSISTS OF 4 PAGES PLUS ATTACHMENT  
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

Section 2  
Bruce Woolley

**TOTAL MARKS: 100**

**TIME ALLOWED: 3 HOURS**  
plus 15 minutes of reading time

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 in an exam booklet that is not to be marked.

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- NOTE:**
1. This is an open book examination.
  2. Answer ALL questions
  3. The questions are NOT of equal marks
  4. If, in answering a question, alternative conclusions are reasonably possible, state and discuss them. If you need additional facts to answer a question, state what they are and why they are necessary

THIS EXAMINATION CONSISTS OF 4 QUESTIONS

MARKS

35 1. Ina is the registered owner of Property P. Property P is isolated, at the end of a long dirt road, and there are no neighbouring homes. Because of recent news reports about title fraud, Ina has taken out from the Land Title Office (LTO) the duplicate certificate of title (DCT) for Property P. She planned to give the DCT to the Equity Bank for safekeeping. When she told them she was giving it to them for safekeeping, and she would need a safety deposit box, Equity Bank asked that she deliver the DCT to them as security for a previous loan from them to her in the amount of \$200,000. Ina agreed and gave the DCT to the Equity Bank. At the time of taking the DCT from the LTO the registrar mistakenly failed to make a note on the certificate of title for Property P that the DCT was out.

Fran is a forger and a business associate of Ina. Fran knows that there is no mortgage registered as a charge against Property P as Ina has been open with Fran about her financial situation. However Fran does not know that the DCT has been removed from the LTO.

Ina tells Fran that she is going to Spain for 6 months for a long-needed rest. Ina knows that Fran lives in a small trailer and kindly offers to Fran the opportunity to take care of Property P while she is in Spain. Fran seizes the opportunity and on Ina's departure she takes up residence.

Fran obtains forged photo identification showing her to be Ina. She then contacts a local real estate agent, Alan, and tells Alan she would like to sell Property P, but does not want it publicly advertised as she is a very private person. Alan says that will not be a problem as the market is very hot and there are lots of potential buyers.

Two days later, on March 1, 2023, Alan brings Raj to Property P. Raj falls in love with it. Raj and Fran (pretending to be Ina) sign a Contract of Purchase and Sale for Property P with a completion date of April 3, 2023. Meanwhile, Ina had forgotten to pay one of her creditors, Dee Co. Being in Spain, Dee Co's correspondence was not answered by Ina. Dee Co. was upset, sued Ina and on March 20, 2023 obtained a judgement (Judgement) against her for \$5,000 which was registered at the LTO against Property P on April 1, 2023.

On April 3, the completion date, the lawyer for Raj applied to register the Form A Transfer from Ina to Raj, followed by a new mortgage granted by Raj in favour of Big Bank. The lawyer thought that Raj was entitled to ignore the Judgement.

On April 4, while the Form A Transfer and new mortgage were pending registrations, Ina found out about the "sale" of Property P from a friend of Fran's and a co-worker of both Fran and Ina. Ina immediately instructed a lawyer to file a caveat against the title to Property P. The caveat was filed that same day. It set out Ina's allegations of fraud against Fran.

QUESTION 1 CONTINUED)

Please discuss, giving reasons:

- (a) Whether Ina or Raj is entitled to be the registered owner of Property P (15 marks)
- (b) Whether Equity Bank will have any claim against Raj or Property P if Raj is entitled to be the the registered owner (12 marks)
- (c) Whether Big Bank will have any claim against Ina or the Assurance Fund if Ina is entitled to be the registered owner (8 marks)

MARKS

- 20     2.     Comment on the following statement, giving examples for your comments:

Whether an estate or interest in land is legal or equitable is irrelevant in B.C. The Land Title Act and the sanctity of the Torrens system govern all real property rights, not historical common law or equitable rights. The only relevant fact is whether the estate or interest in land is registered or not registered in order to determine the estate or interest holder's rights.

MARKS

- 25     3.     You are a lawyer. Your client, Ruth, is interested in buying a large commercial property (Property C) in a very old area of Vancouver. You conduct a search of Property C at the Land Title Office (LTO).

The registered owners are Allan Chang and Ravinder Singh, as joint tenants. On the Certificate of Title (CT) is a notation "In Trust – see trust instrument B6841".

Property C is completely surrounded by a very old wooden fence. Ruth tells you that is a great advantage, as the fenced in area of Property C at the very south edge includes the only access driveway that services the rear portion of Property C.

Ruth is also very happy because the building on Property C has been very recently subject to some major renovations, completed just a couple of days ago. She estimates that Allan and Ravinder have spent over \$500,000 on the renovations, making it now very attractive.

Ruth has heard from neighbours on either side of Property C that Hi-Tech Company (HTC) just signed a 10 year lease of Property C, but that as the lawyer, you can ignore that. The lease is not registered on the CT and since she has never seen anyone from HTC on Property C, she intends to ignore any possible lease to HTC. She has also heard a rumor that the City of Vancouver intends to expropriate part of Property C for a bike lane. She tells you to ignore the rumor, as there is nothing on the CT relating to an expropriation.

QUESTION 3 CONTINUED)

Ruth is most anxious to proceed with the purchase. If she does proceed, after reviewing a title report from you, she would like to “close the deal” no more than 10 days after receipt of the title report.

- a) Prepare a title report for Ruth, keeping in mind relevant sections of the Land Title Act. Your title report should include what the title looks like now and will look like once Ruth becomes the registered owner. Part of your title report should deal with existing charges. It should also include any possible concerns you may have about the title now or in the near future. (15 marks)
- b) Ruth is interested in the fact that Allan and Ravinder own Property C as joint tenants. She tells you that based on her knowledge, joint tenancy would be perfect for her purchase. She does not want to use a company as the purchaser. Instead the purchasers will be Ruth, Olga and Terry. Ruth will contribute one half of the purchase price and Olga and Terry will each contribute one quarter. She also likes the fact that Olga and Terry cannot break up the joint tenancy, and if they do try to break it up, she will be notified in advance. Please give Ruth the benefit of your advice, taking into account her comments. (10 marks)

MARKS

- 20     4.     Comment on the following dispositions, giving reasons for your comments:
- a)     A, the owner of an estate in fee simple in Property One, executes a Form A Transfer of Property One “to B and C.” (3 marks)
  - b)     A, the owner of an estate in fee simple in Property Two, executes a Form A Transfer in which A gives Property Two “to B, one year after my death.” (3 marks)
  - c)     A, the owner of an estate in fee simple in Property Three, executes a will in which A gives Property Three “to B for life, remainder to C if C is, at the date of my death, a graduate of a college.” (4 marks)
  - d)     A, the owner of an estate in fee simple in Property Four, executes a will in which A gives Property Four “to B to use and enjoy as she wishes, and on B’s death to C, provided that if C attempts to sell Property Four, to D absolutely.” (5 marks)
  - e)     A, the owner of an estate in fee simple in Property Five, executes a will in which A gives property Five “to B upon B attaining the age of thirty years, with B receiving all income from Property Five until attaining the age of thirty, but if B fails to attain the age of thirty, to C.” (5 marks)

**END OF EXAMINATION**

**Attachment: Syllabus and Course Outline**

# PROPERTY LAW

Law 231 – Section 2 (PROFESSOR: Bruce Woolley)

## COURSE OUTLINE AND SYLLABUS

2022 – 2023

### LAW OF PROPERTY

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Section 2

(Professor: Bruce Woolley)

### Syllabus and Course Outline – 2022/23 (Spring Term)

#### ACKNOWLEDGEMENT

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UBC's Point Grey Campus is located on the traditional, ancestral, and unceded territory of the xwməθkwəyəm (Musqueam) people. The land it is situated on has always been a place of learning for the Musqueam people, who for millennia have passed on in their culture, history and traditions from one generation to the next on this site.

#### COURSE INFORMATION

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Course Title	Course Code Number	Credit Value
Property Law	231.002	5 credits

#### CONTACTS

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Course Instructor(s)	Contact Details	Office Location	Office Hours
Bruce Woolley	Please text me at 604-417-1733 if you wish to discuss a matter.		Contact by text (604-417-1733) or email at b.wool@telus.net.

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#### IMPORTANT INFORMATION ABOUT THIS OUTLINE

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THIS OUTLINE IS THE CORE, CENTRAL DOCUMENT FOR THE SPRING TERM OF THIS COURSE. YOU HAVE PREVIOUSLY BEEN PROVIDED WAS THE COURSE OUTLINE AND SYLLABUS FOR THE FALL TERM. IT DIRECTS YOU TO THE TYPE OF LEARNING REPOSITORY AND THE SEQUENCING OF THEIR ENGAGEMENT TO MEET THE DATES SCHEDULED.

#### COURSE STRUCTURE AND LEARNING ACTIVITIES

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The method of instruction in this course is in-person, in-classroom instruction. That said, lectures will be video-captured and available in CANVASS for two reasons: first, to provide an easily accessible make-up for a class you are unable to attend and, secondly, to assist you pedagogically. In the classroom, a form of “case”-method instruction will be the primary mode of doctrinal learning. This means, briefly, that we will examine property-law principles and rule development through the SELECTED, decided cases (“judge-made” law) and those statutes (mainly attributable mainly the output of the provincial legislature) set out in the “Casebook” or

course materials available at no charge in Canvass. Look for the emergence of legal doctrine and rule development through language (e.g. fee simple estate, freehold, leasehold, corporeal, incorporeal, remainder, reversion, "nemo dat", real and personal rights etc.), and their connections to each other to advance cultural expectations as understood by authorities evident in these sources through rule application to a factual background found to be significant. Please practice offering and examining the reasons behind your conclusions.

As noted above, the primary reading book is "[Cases and Text on the Law of Real Property](#)" (McLean & Farquhar) the (hereinafter the "[CASEBOOK](#)" (see below)). You should use this Course Outline as your guide to the material in this Casebook that will be considered and discussed in each class on the designated date - more or less!. You should prepare for each class by reading and being fully familiar with the assigned material identified in this Outline for that class.

As part of your preparation,, you should contextualize the formal sources of property law (case precedent and statute) in order to learn "doctrine" that guides the overall private and indigenous property law and determine as much as you can the meaning and significance of property institutions from perspectives of historical evolution, social relevance as well as economic and cultural consequence. To do this effectively, you should, I repeat, read ahead of the assigned topics (following the approximate time table indicated in this Courser Outline) before class.

**GETTING IN TOUCH: YOU CAN EMAIL ME AT [b.wool@telus.net](mailto:b.wool@telus.net) or text me at 604-417-1733.**

## **GENERAL DESCRIPTION OF COURSE**

The course examines generally the nature of property and surveys in particular the various types and roles of common-law property interests in *land*. It details the type, acquisition, transfer and protection of interests in land and describes the regulation of its use – both public and private. The course explores the sources of law and the rules that structure property doctrines and institutions correlating them generally with cultural (i.e. political, social and economic) ideas. The context of this examination into property law will be oriented around "realty" (land law) concepts with comparisons to selected types of "personalty".

Specific topics include: the legal concept of land from the perspective of space and time, the doctrines of tenure and of estates in land, the concept of exclusive possession, aboriginal title, shared ownership, equitable interests and the general deployment of future interests as a vehicle for the control of land ownership and usage. It also introduces students to the rules governing the limits on perpetuities affecting non-vested interests to things (especially land), non-possessory interests (e.g. mortgages, easements and "profits") and a title-based (so-called 'Torrens') system of land registration.

The course provides a foundation for a broad array of upper-year courses in the areas of commercial law including the law of trusts ("equity's law of property"), real estate transactions, landlord and tenant law, environmental and natural resource law, family law, indigenous peoples and the law, and intellectual property, as well as advanced courses in property law and the law of obligations.

## **LEARNING OUTCOMES**

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These are set out in the topics listed below.

## LEARNING MATERIALS

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Required "**CASEBOOK**" - *Cases and Text on the Law of Real Property* (McLean & Farquhar). **A copy is posted in CANVASS and available for you to download.** Almost all the cases and legislation we shall cover is contained in the Casebook. The Course Outline indicates the approximate date on which the identified pages will be covered in class. Those cases not included may be read as providing context and/or further analysis and explanation of the issue(s) being discussed in the law source selected and identified in the Course Outline. They are there to enhance or further your understanding of the subject area under discussion. However, those cases are not central to the discussion that will take place in class unless specified in that class.

Optional: Ziff - *Property Law In Canada* (a textbook that sets out in a straight-forward way the rules of property and their collaboration and synthesis in formulating the doctrine of property as an important structure in common law).

Optional: Megarry & Wade - *Law of Real Property* (useful for historical evolution of English land law - ignore all references to English law post 1925).

## ASSESSMENT OF LEARNING/EVALUATION

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Evaluation is based on a final, three-hour exam in April 2023. There will also be a December exam intended mainly to be a "practice" exam. However, it could account for up to 25% of your final exam if your mark is higher in December than in April. All exams are open book.

## UNIVERSITY POLICIES

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UBC provides resources to support student learning and to maintain healthy lifestyles but recognizes that sometimes crises arise and so there are additional resources to access including those for survivors of sexual violence. UBC values respect for the person and ideas of all members of the academic community. Harassment and discrimination are not tolerated nor is suppression of academic freedom. UBC provides appropriate accommodation for students with disabilities and for religious observances. UBC values academic honesty and students are expected to acknowledge the ideas generated by others and to uphold the highest academic standards in all of their actions.

Details of the policies and how to access support are available on [the UBC Senate website](#).

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## COPYRIGHT

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## SCHEDULE OF TOPICS – SPRING SEMESTER 2023 – APPROXIMATE DATE OUTLINE

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Classes 1 & 2 (January 11 & 13):

**January 11 - Registration of Title – An Overview**

**Casebook Readings:** Chapter V. Historical Background (5.1 – 5.3); General Pattern of registration (5.4 – 5.14), *R v Kessler* (5.5), Aboriginal title – *Skeetchestn* (5.7)

Learning Outcomes:

1. Reason for registration of land transfer
2. Reason for registration of title to land
3. What may be registered
4. Restrictions on registering aboriginal land and aboriginal interests in land

**January 13**

**Casebook Readings:** Basic Scheme of Registration (5.14 - 5.26); The role of the registrar (5. 27 - 38)

Learning Outcomes:

1. Conditions required to enable initial and continuing registration of title to land: concept of “good safeholding and marketable title”;
2. The meaning and role of “good, safe-holding and marketable title” in land
3. Organization of land title registration: Fee simple and charges/caveats/pending litigation
4. Significance of interests in land and the registration of title compared with registration of non interests in land

**Class 3 (January 18): The Assurance Fund**

**Casebook Readings:** *McCaig v Reys* (5.42 – 5.49)

Learning Outcomes:

1. *Minimizing the nemo dat principle in land title systems*
2. *Role of compensation for loss of land consequent upon that minimization*
3. *Conditions necessary to succeed in a quest for compensation from Fund*

Classes 4 - 8 (January 20, 25, 27, February 1 & 3):

**A. Consequences of Registration (and non registration) of Titles to Interests in Land – Chapter VI.**

**Casebook Readings:** *Registration of the Fee Simple* (6.1 - 6.28.1); *Gill v Bucholtz and First West Credit Union v Giesbrecht/Burton* (6.28.1 - 28.12)

Learning Outcomes:

1. *Organization of land registration and the indefeasible title: the fee simple and other interests in land (e.g. mortgages, easements, restrictive covenants);*
2. *Significance of the duplicate indefeasible title;*
3. *Conditions for registering first and subsequent estate in fee simple in a parcel of land;*
4. *The role and scope of indefeasibility in the BC Torrens system of Land Registration;*
5. *The concepts and comparison of voidable and void/null instruments of transfer (“deed”);*
6. *What is a void/null transfer/ what is a voidable transfer*
7. *The effect of the void/null deed compared with a voidable title*
8. *The meaning and role of fraud in defining void and voidable deeds*
9. *The effect of fraud and forgery on the holder of a registered estate in fee simple – void and voidable: scope indefeasibility and of nemo dat principle with regard to the estate in fee simple and other interests in land.*



10. Deemed knowledge of the register

**B. Notice of Unregistered Interests**

**Casebook Readings:** (6.28-6.38); *Vancouver City Savings v Serving for Success Consulting* (6.30) (Omit pages 6.39 – 6.44)

Learning Outcomes:

1. The concept of notice of an unregistered interest in land
2. The effect of that notice on a registering/registered owner
3. What constitutes notice
4. Forms of notice
5. Conditions that must be shown for notice of an unregistered interest to be effective on registered titleholder

**C. Registration of Charges**

**Casebook Readings** (6.44 – 6.61); *Dukart v Surrey* (6.46); *Indefeasibility* (6.53), *Credit Foncier v Bennett* (6.54), *Canadian Commercial Bank v Island Realty* (6.57); *Priorities* (6.61)

Learning Outcomes:

1. The manner of registration
2. The conditions for registration
3. The effect of registration – the measure of indefeasibility
4. The effect of fraudulent registration of an interest in land less than an estate in fee simple

**Class 9 (February 8): Failure to Register – Chapter VII.**

**Casebook Readings:** The General Principle (7.1-7.4) and "Except against the Person Making it" (7.4 - 7.23 Including Sorenson): *Yeullett v Matthews* (7.4), Enforceability of "long" leases Land Title Act (7.23)

Learning Outcomes:

1. Understanding the full import of section 20
2. Knowing the limits, and reasons for those limits, on the scope of section 20

**Class 10 (February 10): Applications to Register - Chapter VIII.**

**Casebook Readings:** *Rudland v Romilly* (8.13); *Breskvar v Wall* (8.17 - 8.22);

Learning Outcomes:

1. The scope of the timing of applications to register
2. Effect of an application to register compared with actual registration of title
3. Equity considerations where two competing applications are made for registration

**Classes 11 & 12 (February 15 and 17): The Fee Simple (and Fee Tail) Chapter IX. Identifying the estate in fee simple as an interest in documents of transfer (deeds, transfer forms) and transmission (wills)**

**Casebook Readings:** Creation of the Fee Simple (*Tottrup, Walker, Shamas* (9.1 - 9.17); words of purchase and limitation; Effect of words formerly creating a Fee Tail (pages 9.20 – Rule in *Wilde's Case*);

Learning Outcomes:

1. The distinction between “words of purchase” and “words of limitation”: rules dealing with words that conflate the two;
2. How to diagnose a disposition into words of purchase and limitation: in grants and wills.
3. Case law and statutory rules (Property Law Act - section 19): note especially statutory conversion of fee tails into fee simples (or greatest interest held by grantor/testator) – PLA section 10.  
(Statutory conversion of fee tails into fee simples (or greatest interest held by grantor/testator) – PLA section 10)
4. Rule in *Wilde's case*.

**READING WEEK: FEBRUARY 21 - 24.**

**Class 13 (March 1): The Life Estate – Chapter X**

**Casebook Readings:** Words importing a Life Estate; Rights of a Life Tenant; Obligations of a Life Tenant; Statutory Powers (pages 10.1 - 10.13)

Learning Outcomes:

1. Words of limitation for the Creation of life estates
2. Recapitulating reversions/remainders
3. Obligations of the life tenant to the remainder for:
  - Forms of “waste” and extent of life tenant’s obligation to repair
  - Insurance
  - Property taxes

Fiduciary obligation of the life tenant to the remainder

**Classes 14 & 15 (March 3 & 8): Co-ownership - Concurrent Estates – Chapter XI.**

**Casebook Readings:** Types of Co-ownership and their creation (11.1 - 11.14). Registration of Title and Relations between Co-owners (11.15 - 11.21); Termination of Co-ownership - *Stonehouse v B.C.* (11.29 - 11.33); *Sorenson Estate v Sorenson* (11.38 - 11.52); Partition (11.69 - 78)

Learning Outcomes:

1. Differences between joint tenancies and tenancies in common
2. Consequences of the *ius accrescendi*: Conditions for establishing a joint tenancy
3. Settling among co-owners the allocation of income entitlements and costs of repair and disbursements expenditure
4. Undoing a joint tenancy and conversion to a tenancy in common
5. Undoing a joint tenancy and conversion to a tenancy in common
6. Terminating co-ownership unilaterally through partition under the Partition Act
7. Meaning and extent of partition; criterion for partition.

**Classes 16 & 17 (March 10 & 15): Introduction to Future Interests - Chapters XII and XIII.**

**Casebook Readings:** Nature of Future Interests; Vested and Contingent Interests in land - vested in possession and vested in interest compared (pages 12.1 – 12.30, including cases); description and creation of reversions, rights of entry and possibilities of reverter

*Description:* Distinction between several corporeal interests and their complementing future interests: e.g. fee simple with a condition and life estates give rise to reversions/remainers; corporeal interests (e.g. fee simple, life estate, leasehold interests) that can be vested as in interests defeasible upon a condition subsequent giving rise to rights of entry; or corporeal interests expressed as determinable fees with the corresponding possibility of reverter as the complementary future interest .

Learning Outcomes:

1. Role of Future interests in the holder of rights to impose conditions on title and use with title to property as a component of freedom of property
2. Limitations on the freedom of property
3. Meaning and role of "vesting" - "in interest" and "in possession" p- distinction between two and their significance - distinction between present and future interests
4. Futurity of possession of land separated from present interest in the land
5. Distinction between vested and unvested interests
6. Role of conditions and contingency
7. Distinguishing vested from non-vested interests. Role of
  - Language
  - Intention
  - "gift-overs"

*Classes 18 & 19 (March 17 & 22):* **Remainders defined and the rules for their creation and legitimation**

**Casebook Readings:** destructibility of contingent remainders (pages 12.25 – 12.30 and 12.37 – 12.42); equitable future interests and *Re Robson*; (Brief introduction to "executory" interests)

Learning Outcomes:

1. The concept of vesting – distinguishing “vesting in interest” from “vesting in possession”
2. Rules regarding contingent interests and vesting of interest
3. Consequence of rules on reversions
4. The common-law remainder rules and their consequences in determining validity
5. The effect of statutory amendments of the common-law, remainder rules
6. Destructibility of common-law remainders: natural destruction
7. How equitable remainders are created
8. The avoidance of the common-law remainder rules through the use of equitable remainders in a trust
9. Significance of the distinction between common-law remainders and equitable remainders and the need to control vesting through the rule against perpetuities;
10. Brief consideration of executory interests and the Statute of Uses (1536) - a means of avoiding the remainder rules

*Classes 20 & 21 (March 24 & 29):*

Types of conditions and their relevance for determining validity based on the content of the condition or limitation

Concepts of voidness: (1) for uncertainty, (2) contrary to public policy, (3) restraints on alienation and (4) remoteness of vesting (pages 13.1 – 13.21; 13.35 – 13.56);

Learning Outcomes:

Illegality in the structure and content of conditions and determinable interests through

- uncertainty: tests for uncertainty
- public policy: how to ascertain and likely sources

- restraints on alienation: meaning of, extent of rules prohibiting restraints
- introduction to remoteness of vesting or “perpetuities”
- The rules affecting illegal conditions and determinable interests
- The consequences of voiding illegal conditions and determinable interests
- Difference between: rendering grant void and striking out offending condition or limitation: the “Jarmen” Rules concerning the effect of a disposition of property that contains an invalid future interest.

*Classes 22 (April 5): Reserve for previous materials*

*Class 23 (April 12): Review Class*

**FINAL EXAMINATION - APRIL 24, 2023.**