THIS EXAMINATION CONSISTS OF 8 PAGES (INCLUDING THE APPENDIX).

PLEASE ENSURE THAT YOU HAVE A COMPLETE EXAM.

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2023

**Law 231.003 – Spring 2023**

Property Law

Professor Alexandra Flynn

**TOTAL MARKS**: 100

**WRITING TIME ALLOWED**: 3 HOURS + 45 MINUTES Reading Time

NOTE: Students may write during the Reading Time

This is an open book examination, meaning that you can refer to class notes, casebooks and any other readings or documents.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question.

This exam includes:

- Part I - includes a fact pattern with three questions (you must answer all)

- Part II - includes a fact pattern with two questions (you must answer all)

- Part II – includes two questions (you choose one)

- Appendix with relevant statutes

GOOD LUCK AND HAVE A WONDERFUL SUMMER!

**PROPERTY LAW FINAL EXAM**

Relevant statutory provisions and administrative materials are located in the Appendix. Rely only on the fact patterns in this exam question, including the Appendix, and the materials listed in the course syllabus to answer the following questions. You may assume that I have provided you with all relevant materials. Please use a clear short-form citation when referencing sources (e.g. *Re Cole*).

You are a recent graduate of Allard School of Law. You are now articling at a boutique law firm which specializes in property law in Vancouver.

**PART 1 (40%)**

**Background Facts**

Ten years ago, Dan Daniels inherited a large heritage home in the Point Grey area of Vancouver from his now-deceased parents. The will stated that the home was to go to “our only child Dan Daniels on condition that he maintains a good relationship with our dear neighbours.” Dan is a passionate birder and operates an internationally-renowned online birding community called “Spot the Owl,” which is Dan’s main source of (albeit small) income and his life’s purpose.

The property has a bountiful gala apple orchard, which produces hundreds of bushels of apples every year. Twenty years ago, and before they died, Dan’s parents entered into an agreement with Magical Apples, a farm in Abbotsford. The contract provides that Magical Apples has rights to the apples on the Point Grey property, to be continued in perpetuity. In return, the contract provides that Dan’s parents receive an annual grooming of the orchard, ongoing maintenance of the trees, and any apples that they want for their personal use. The agreement provides that Dan’s parents will enable Magical Apples to access the Point Grey property to get the apples.

During the pandemic, Magical Apples stopped collecting apples from Dan’s property and selling them and, now, is on the verge of bankruptcy. In 2020, 2021 and 2022, Dan was overwhelmed with the thousands of gala apples growing on the trees. He paid $20,000 in labour costs to have the apples turned into applesauce, canned and stored in his basement. Dan worries that Magical Apples or a trustee in bankruptcy will assert a claim over the apples. His position is that the agreement is no longer valid and all of the apples – fresh and stored – belong to him.

Dan’s neighbour to the south is Edith Edwards, who bought the entire adjacent property last year from Mary and Marty Martins. The Martins had been dear friends of Dan’s parents and Dan had known them his entire life. Dan entered into an agreement with Mary and Marty five years ago, which stated that the Martins must maintain their fifteen golden oak trees, which are near the south end of Dan’s property line. The trees are home to the rare Blue-Spotted Goose Owl. Dan entered into the agreement because he operates a 24/7 camera on his property which records the unique nesting practices of the Blue-Spotted Goose Owls, which are then broadcasted on the Spot the Owl site. In addition, for a week each year, Dan invites (for a considerable fee) a small group of ten birders from around the world to camp in temporary yurts on his property in order to spot the rarely-seen night-time hatching of the acclaimed Owls. Under the agreement between Dan and the Martins, Dan was granted a right to access the Martins’ property in order to remove debris from the area surrounding the trees. Dan and the Martins also agreed to Dan’s use of a five-foot pathway on the Daniels’ property.

Edith has just advised Dan that she wants to remove all of the golden oak trees in order to build townhouses on the property.

**Dan is looking for legal advice related to the following questions:**

1. What property interests, if any does Magical Apples have? [10 marks]
2. Is there a bailment relationship between Magical Apples and Dan? [5 marks]
3. Can Dan stop Edith from cutting down the fifteen golden oak trees? [25 marks]

**PART II (30%)**

**Background Facts**

Until last week, Joe Joseph, a photographer, was registered as having an indefeasible fee simple interest in a converted loft (the “loft”) located along New Westminster’s waterfront. The Loft has three rooms, a washroom, and a kitchen. Last year, Joe rented part of the loft to his cousin’s daughter, Amy Amos, who is using it both as a residence and to operate a sole practitioner law firm. The “Shared Space Agreement” between Joe and Amy states the following:

1. The licensee may peaceably possess and enjoy two rooms in the Loft for the term without interruption.
2. The two rooms will be used for an office and a bedroom during the term of 2 years. The licensor may inspect the premises by providing at least 24 hours of written notice.
3. The licensee is required to pay rent in the amount of $2,000 monthly.
4. The licensee is required to conduct their business to the satisfaction of the landlord.
5. The licensee is required to operate their business in the premises during those hours necessary to adequately serve the public as determined by the licensor.
6. The licensor and licensee can both use the kitchen, although the parties understand that it is mostly for the licensee to use.
7. The licensee has sole access to the washroom.
8. The loft is subject to the licensee’s exclusive control and the licensee can do such things in the loft as the licensee determines to be advisable in good business judgment, including anything in the two rooms.
9. The licensor can cancel the agreement if necessary.
10. The licensor promises the licensee that if the licensor decided to sell the property, the licensor would sell it to the licensee for an agreed-upon price of $750,000.

Amy lives in the loft full-time and operates her legal practice on a part-time basis. There is a small sign at the entrance of the loft which states, “Amy Amos, JD: here to serve!”, as well as a chair and a coffee machine. One room has a desk and chair, as well as several bookcases with large legal texts. Another room, which Amy uses as a bedroom, is cozy, with colourful walls, a cushioned sofa, many oil paintings, and three closets full of clothing. The third bedroom, used only very occasionally by Joe, is sparsely furnished, painted white, and decorated with one large photograph that Joe had taken on a recent trip to Iceland. Joe has a few items of clothing in the otherwise empty closet. Amy is an avid birder and is often out for hikes based on the advice provided by Spot the Owl.

Last week, Joe sold the loft to Sam Samuels, who is now registered as the owner of the property in BC’s Land Title Registry. Sam had viewed the entire loft several times before purchasing it.

Yesterday, the sink in Amy’s washroom broke. When Amy contacted Joe, she was told that Sam had purchased the property last week. She was shocked. The location of the property is important to Amy, given its proximity to several wooded areas that are home to various unusual species of birds.

Sam was alarmed when he found out about Amy’s claim that she was promised the loft. Amy did not register the Shared Space Agreement with the Land Registry. Sam’s position is that he was not aware of the Shared Space Agreement and that Joe expressly told him that only he lived in the loft.

**Amy is looking for legal advice related to the following two questions:**

1. Does she have any claim to the loft? [15 marks]
2. Assuming Sam is entitled to the loft, can Amy demand that Sam repair the sink? [15 marks]

EXAM CONTINUES ON NEXT PAGE

**PART III (30%)**

Please answer **one** of the following two questions.

1. In *Tsilhqot’in Nation*, the Supreme Court of Canada held that the Tsilhqot’in Nation possesses constitutionally protected rights to certain lands in British Columbia, including ownership rights similar to those associated with fee simple, as well as limitations to their title. Explain how the SCC’s decision in *Tsilhqot’in Nation*, as well as at least three other cases of your choice from the course AND the guest lecture by Sarah Morales and Estair Van Wagner, relate to the following themes.
2. the meaning of fee simple title;
3. beneficial and legal ownership; and
4. how Indigenous laws are used to understand Canadian property law interests.

For clarification, you must apply *Tsilhqot’in Nation* and at least one other case to each of the themes below. The Morales/Van Wagner lecture must be discussed in relation to the themes.

1. Explain in plain language the following:
2. the definition of “band” and “reserve” under the relevant provisions of the *Indian Act* below;
3. the meanings of “bona fide purchaser for value without notice” and the *nemo dat* principle;
4. compare the process for extinguishment explained in the *Chippewas of Sarnia Band v Canada* case with the relevant requirements under the *Indian Act*; and
5. identify how the Court of Appeal in *Chippewas of Sarnia Band v Canada* prioritized the interest of the band council, Canada, and fee simple title holders.

END OF EXAMINATION – APPENDIX STARTS ON NEXT PAGE

**Appendix 1: Applicable legislation**

### *Residential Tenancy Act*, SBC 2002, c. 78

**1** A “residential unit” means

(c) the rental unit and common areas

**4**   This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

(d) living accommodation included with premises that

(i) are primarily occupied for business purposes, and

## *Land Title Act*, RSBC 1996, c 250

# 20 (1) Except as against the person making it, an instrument purporting to transfer, charge, deal with or affect land or an estate or interest in and does not operate to pass an estate or interest, either at law or in equity, in the land unless the instrument is registered in compliance with this Act.

# 23 (2) An indefeasible title, as long as it remains in force and uncancelled, is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title, subject to the following…

# (i) the right of a person deprived of land to show fraud, including forgery, in which the registered owner has participated in any degree

# 25.1   (1) Subject to this section, a person who purports to acquire land or an estate or interest in land by registration of a void instrument does not acquire any estate or interest in the land on registration of the instrument.

# (2) Even though an instrument purporting to transfer a fee simple estate is void, a transferee who

# (a) is named in the instrument, and

# (b) in good faith and for valuable consideration, purports to acquire the estate,

# is deemed to have acquired that estate on registration of that instrument.

# 296 (2) A person, in this Part referred to as the "claimant",

# (a) who is deprived of any estate or interest in land

#  (i) because of the conclusiveness of the register, in circumstances where, if this Act had not been passed, the claimant would have been entitled to recover the land from the present owner, and

#  (ii) in consequence of fraud or a wrongful act in respect of the registration of a person other than the claimant as owner of the land …

# *Indian Act*, RSC 1985, c. I-5

**2 (1)** In this Act,

Band

means a body of Indians

(a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after September 4, 1951,

(b) for whose use and benefit in common, moneys are held by Her Majesty, or

(c) declared by the Governor in Council to be a band for the purposes of this Act;

Reserve

(a) means a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band;

**18 (1)** Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.

**38** A band may absolutely surrender to Her Majesty, conditionally or unconditionally, all of the rights and interests of the band and its members in all or part of a reserve.

(2) A band may, conditionally or unconditionally, designate, by way of a surrender to Her Majesty that is not absolute, any right or interest of the band and its members in all or part of a reserve, for the purpose of its being leased or a right or interest therein being granted.

**39 (1)** An absolute surrender is void unless

(a) it is made to Her Majesty;

(b) it is assented to by a majority of the electors of the band

(i) at a general meeting of the band called by the council of the band,

(ii) at a special meeting of the band called by the Minister for the purpose of considering a proposed absolute surrender, or

(iii) by a referendum as provided in the regulations; and

it is accepted by the Governor in Council.

…

(5) Every meeting under this section shall be held in the presence of the superintendent or some other officer of the Department designated by the Minister.

**40** A proposed absolute surrender that is assented to by the band in accordance with section 39 shall be certified on oath by the superintendent or other officer who attended the meeting and by the chief or a member of the council of the band and then submitted to the Governor in Council for acceptance or refusal.