**THIS EXAMINATION CONSISTS OF 6 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 4**

**Professor Mickelson**

**total marks: 100**

**time allowed: 3 hours plus 15 minutes reading time (Students can type or write their exam answers during the reading time)**

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

**note:**

1. This is a limited open book examination. You may use the required course materials (printed versions of the casebook and any supplementary cases and materials), copies of statutes, any material provided by the instructor (PowerPoint slides and other handouts), and your own notes and summaries. The use of textbooks is not permitted.

2. The examination is made up of 3 parts.

Part A consists of two fact patterns; the first has three accompanying questions. You must address both fact patterns, and answer all three accompanying questions for the first. Marks: 40 (20 for each fact pattern); suggested time allocation: 72 minutes (36 minutes for each fact pattern)

Part B gives you a choice between six (short answer) questions. Answer four. Marks: 30 (7.5 per question); suggested time allocation: 54 minutes (13.5 minutes per question).

Part C gives you a choice between two essay questions. Answer one. Marks: 30; suggested time allocation: 54 minutes.

3. Please take the time to think through and outline your answers, and try to review and correct mistakes before the end of the exam. **Coherence and structure will be taken into account in evaluation.**

**THIS EXAM CONSISTS OF THREE PARTS**

**PART A**

Answer both Questions 1 and 2, and all accompanying questions for Question 1.

MARKS: 40 for both questions; 20 marks for each

20 1. Amalia, Bernardo and Clemencia are siblings who live in the house on the Sunshine Coast where they grew up, which they inherited from their mother Zenobia in 2005. They own this family home as joint tenants, this having been the intention of their mother as set out in her will. The siblings also own the remainder in fee simple of the house next door. This also came from their mother, but she had decided to give a life estate to their cousin Dionisio.

Clemencia goes on an opera tour of Italy, and develops a relationship with Edgardo, the retired opera singer in charge of the tour. She returns to B.C. with Edgardo, and he stays with her in her part of the family home. Amalia and Bernardo strongly disapprove. Clemencia wants to show her siblings that she is serious about her new relationship, and she considers transferring her own share of the family home to herself and Edgardo. However, she is a prudent individual who does not want to do anything rash. Remembering what her mother did for her cousin, Clemencia decides instead to grant a life estate in her interest in the family home to herself and Edgardo. This is never registered, because Edgardo grows homesick for Italy and returns there after a few months. Clemencia had informed her siblings about the life estate, but they all decided that they would pretend that nothing had happened and go on with their lives as before.

Meanwhile, Dionisio has been running a bed and breakfast on the property that he holds as a life tenant, and has found it to be extremely profitable. However, he frequently has to turn away potential guests because he only has four bedrooms available. He decides to undertake extensive renovations that would substantially increase the size of the house, and double the number of guest rooms. The siblings object, but Dionisio says does not understand what the problem is—after all, he is going to pay for the renovations, and his cousins will ultimately benefit from the increase in value of the property.

The siblings are extremely unhappy about this. In an attempt to cheer themselves up, Amalia and Bernardo decide to go on an eco-adventure tour in the Amazon. Unfortunately, they have a boating accident and are consumed by piranhas.

Clemencia comes to you for legal advice on three questions. **Please answer all of the following questions based on the information provided above.**

**PART A, continued**

**If you feel that further information would have assisted you, please indicate what that information is and why it would have been useful.**

1(a) First, Clemencia wants to know whether she now owns the family home and the adjoining house by virtue of the right of survivorship. (9 marks; suggested time allocation: 16 minutes)

1(b) Second, Clemencia wonders what would happen if Edgardo were to return to B.C. and claim an interest in the family home. Given that the life estate that he and she held was never registered, does she need to worry about it? (4 marks; suggested time allocation: 7 minutes)

1(c) Finally, Clemencia would like to know whether there is anything that she can do about the renovations that Dionisio wants to undertake. (7 marks; suggested time allocation, 13 minutes)

20 2. Xiomara owns a small bungalow in Vancouver. She has been approached on several occasions by individuals interested in purchasing her home. She has always refused, saying that she plans to live in her home as long as she possibly can.

Xiomara suddenly learns that she has won an all-expenses-paid tour of northern Sweden. Although she is overjoyed, she finds herself wondering about what would happen if she were to die during the trip. Her niece, Yanira, with whom she has always been close, is the sole beneficiary in Xiomara’s will. Xiomara would prefer to have Yamira take the house while she is alive in order to minimize probate fees—she is just not planning to give it to her anytime soon. She decides that the best way to proceed would be to prepare a document transferring the property to Yamira, and give it to Yamira in a sealed envelope without telling her what the envelope contains, and with instructions to open it only in the event of Xiomara’s death. If Xiomara were to die while travelling, Yamira would open the envelope and discover that she is the owner of the house; if Xiomara comes back alive, as she has every intention of doing, she will ask for the envelope back and will arrange to give the house to Yamira at some future date.

Xiomara goes to her lawyer and explains her plans. The lawyer is concerned about this, saying that Xiomara will essentially be giving Yamira her home. Xiomara is unconcerned, and insists that she knows what she is doing; she assures the lawyer that Yamira would never open the envelope except in accordance with Xiomara’s instructions. The lawyer prepares a Form A transfer document, which is duly executed.

**PART A, continued**

Yamira drives Xiomara to the airport, and Xiomara gives her the sealed envelope in accordance with her plan. Once back at Xiomara’s house, where she is staying during Xiomara’s absence, Yamira is overcome with curiosity and opens the envelope. When she finds the Form A, she is confused and upset. She puts it away with no intention of doing anything about it. The next day, she is approached by a developer who wants to buy the house, which is on a 50-foot lot next to another 50-foot lot. The developer plans to combine the two lots and build a number of townhomes, which recent changes to zoning would now allow. The developer is willing to pay a price that Yamira considers astronomical.

Xiomara returns from Sweden ten days later. Yamira informs her about the “amazing offer” for the house. Xiomara just laughs and says that she is not interested. Yamira informs Xiomara that she (Yamira) has the Form A, and plans to register it and then proceed to sell the house herself. She will invest the money she receives, and ensure that Xiomara gets the interest during her lifetime. But as far as she is concerned, it would be ridiculous not to take advantage of this opportunity.

Xiomara comes to you for legal advice as to who is entitled to the house. **You should base your advice on the information provided above. If you feel that further information would have assisted you, please indicate what that information is and why it would have been useful.** (20 marks; suggested time allocation, 36 minutes)

**PART B**

This section gives you a choice between six short-answer questions, each of which is worth 7.5 marks. Answer four. Marks: total of 30; suggested time allocation: 54 minutes (13.5 minutes per question)

MARKS

30 1. Assess and explain the accuracy of the following statement: “Caveats and certificates of pending litigation serve largely the same function within the B.C. land title system.”

2. Explain the current understanding of the *sui generis* nature of Aboriginal title in light of the Supreme Court of Canada’s decision in *Tsilhqot’in Nation v. British Columbia*.

3. Assess and explain the accuracy of the following statement: “The Supreme Court of Canada’s decision in *Dukart v. Surrey* turns the B.C. land title system into a recording system.”

4. It has been said that equitable interests can only be fully understood by reference to their development in a separate court structure. Explain what is meant by this, and whether in your view it offers some meaningful insight into the nature of equitable interests.

5. Assess and explain the accuracy of the following statement: “*VanCity v. Serving for Success* makes it clear that fraud will never be found on the basis of mere notice of an unregistered interest.”

6. Consider the following gift of Blackacre in a will as well as the information that follows. Explain whether, in your view, a court is likely to regard the condition attached to Eugenia’s interest as invalid:

To Pedro for life, then to Eugenia if she marries someone with a strong connection to Bolivia.

The will maker was born and raised in Bolivia. Pedro is her brother, and Eugenia is her niece. Eugenia is currently 32 years old and in a long-term relationship with a person whose family background is Scottish and has never set foot in Bolivia.

**PART C**

This section gives you a choice between two essay questions. Answer one. Marks: 30; suggested time allocation: 54 minutes.

# MARKS

30 1. Consider the following statement:

Any system of property law requires rules for the resolution of competing claims between innocent parties. There are two main ways of resolving such conflicts. One approach is to protect the holder of an interest by preventing a transferor from passing a title which he or she lacks. This is reflected in the common law *nemo dat quod non habet* principle. The alternative approach, typified by systems of registration of title, is to protect innocent purchasers of interests, regardless of whether or not the transferor has a good title.

Such systems facilitate dealings with property by making it unnecessary for a purchaser to undertake an investigation of title which goes beyond inspection of the titles register. This was Robert Torrens’ goal.

Explain the approach that the B.C. land title system takes to resolve “competing claims between innocent parties” as compared to the two approaches described in the statement above. In your view, does the approach taken in B.C. strike a fair and appropriate balance between the competing interests involved? Explain your answer with reference to specific examples from the material we covered in this course (at least two and no more than four).

2. The common law of property is often characterized as abstract in the extreme, reflected for example in the way the name “Blackacre” is used to refer to any property whatsoever. Yet it is also undeniable that particular places and spaces can have a meaning and value that cannot be fully captured by their financial or market value. In your view, does the law of property that we have studied this year reflect these broader and deeper values, and if so, to what extent? Discuss with reference to specific examples from the material we covered in this course (at least two and no more than four).

**END OF EXAMINATION**