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

FALL EXAMINATION – december 2022

LAW 231

Property Law

Section 4

Professor Mickelson

**total marks:** 100

**time allowed:** 1 hour (plus 15 minutes reading time, during which you are allowed to write)

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**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), 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 a hypothetical. Marks: 55; suggested time allocation: 33 minutes.

Part B consists of a short statement accompanied by three questions. Answer all three. Marks: 10; suggested time allocation: 6 minutes.

Part C gives you a choice between two essay questions. Answer one. Marks: 35; suggested time allocation: 21 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.**

**PART A**

MARKS

55 Alcira Arguedas is the fee simple owner of a house located in a predominantly residential area of Vancouver. Alcira and a group of her neighbours often get together to discuss current events and common interests. Over the last couple of years, extreme weather events in British Columbia have featured prominently in their conversations. While concerned about many aspects and impacts of climate change, Alcira and her neighbours have worried in particular about the effects on birds. At a neighbourhood gathering this past summer, they decided to make a collective effort to respond in some concrete way. They have each committed to landscaping that will provide ample shade and to setting up cooling water systems. Since the gardens involved will cover a significant proportion of two blocks, the residents hope that this will end up creating a kind of informal bird sanctuary. As the plans have advanced everyone involved has become more enthusiastic about taking this further. They have decided to use only native plants, for example, as well as to restrict the use of noisy garden equipment in order to try to make the area quieter and possibly more attractive for birds. They are hopeful that others in the neighbourhood (and possibly beyond) will join them.

This past month, the Berling family, who live in the neighbourhood but have not been involved in this community initiative, purchased a toy drone for their child Björn’s birthday. Flying the drone has proven to be Björn’s favourite pastime; it takes place most days after school as well as on the weekend. During that time the drone has been flown over the property of various residents, sometimes quite high (around 300 feet) but other times only 30 or 40 feet overhead. The residents who are involved in the community initiative are not happy about this, but they are even more concerned about the effect that this would have on the bird sanctuary plans that are set to be put in place next summer, especially because other children in the neighbourhood are said to be asking for their own drones.

Alcira comes to you wanting to know whether she and her neighbours have property rights that could be used to ask the Berlings to stop flying Björn’s drone over their homes and gardens. Advise Alcira based on the information provided above. If you feel that further information would have assisted you in formulating your advice, please indicate what that information is and why it would have been useful. (In your analysis, you should not deal with the question of whether the Berlings’ drone flights might constitute a nuisance, or the potential impact of municipal, provincial or federal law on the use of drones. Other members of the community are seeking advice on those issues.)

**PART B**

This section consists of three questions. Answer all three, and explain your answers.

MARKS

10 Consider the following gift of Blackacre in a will:

To Clotaldo until he turns 80, then to Rosaura if she becomes a full-time public school teacher.

The will maker was a public school teacher. She was the sister of Clotaldo, who is currently 75. Rosaura is Clotaldo’s daughter (and the will maker’s niece); she is currently in an undergraduate Arts program.

1. What interest does Clotaldo have? Is it vested or contingent? (3 marks)

2. What interest does Rosaura have? Is it vested or contingent? (3 marks)

3. What would be the effect (if any) if this were an *inter vivos* transfer rather than a gift in a will? (4 marks)

**PART C**

This section gives you a choice between two essay questions. Answer one.

# MARKS

35 1. Suppose for the purposes of this question that the B.C. government has been presented with a proposal to amend the *Wills, Estates and Succession Act* to give spouses and children of a deceased person an automatic entitlement to a significant portion of the deceased’s estate in all cases (in other words, a person’s ability to dispose of their property through a will would be limited if they have a spouse and/or children). One of the justifications for this proposal is that “B.C. law relating to acquisition of property interests on death already prioritizes the interests of spouses and children of the deceased; it is not a huge stretch to take this additional step.” You have been asked to provide an analysis of whether this statement represents an accurate assessment of the current state of the law. Based on this analysis, would you support the proposal? Why or why not?

2. A number of areas we have studied reflect the ways in which the common law of real property attempts to strike a balance between providing certainty

**PART C, continued**

and predictability, on the one hand, and fairness and flexibility, on the other. In your view, does the law generally strike an appropriate balance between these potentially competing interests? Discuss with reference to one or two specific examples from the material we have covered this term.

**END OF EXAMINATION**