NOTE:

1. This is a limited open book examination. You may use the required course materials (casebook and supplementary cases), copies of statutes, any material provided by the instructor (PowerPoint slides and other handouts), your own notes and summaries, and notes or CANs prepared by other Allard students. You may also use a dictionary. The use of textbooks or other sources beyond those listed above is not permitted.

2. The exam is made up of 3 parts.

Part A consists of a hypothetical. Marks: 50; suggested time allocation: 30 minutes.

Part B consists of a short statement accompanied by four questions. Answer all four. Marks: 20; suggested time allocation: 12 minutes.

Part C gives you a choice between two essay questions. Answer one. Marks: 30; suggested time allocation: 18 minutes.

3. Use the 15 minutes of reading time to think through and outline your answers. Coherence and structure will be taken into account in evaluation.
PART A

MARKS

50 Hilja Lassilantti was the fee simple owner of Blackacre, a house in Vancouver. She had two children, Aalto and Bettina.

Bettina’s relationship with her mother was strained from her early adolescence until she left home at 18 to attend university in Ontario. While Hilja provided financial support during Bettina’s time at university, Bettina only came back to B.C. once a year, and even then spent only limited time at her mother’s home. When Bettina married at the age of 25, she did not invite her mother or brother to the wedding, and she did not communicate with them at all for two years. She got back in touch with Hilja when she became pregnant with her first child, and after that they resumed regular though infrequent contact, talking on the telephone every two months and exchanging visits every two or three years. Bettina and her spouse have two children, and are financially comfortable with generous pension plans.

Aalto always had a close relationship with Hilja. He married young and worked at a variety of jobs. He and his spouse divorced in 1997, and his mother suggested that he move in with her until he could “get back on his feet.” Two years later, Aalto mentioned that he thought it was time for him to get his own place; the cost of real estate was rising and he was worried about getting priced out of the market. Hilja noted that their living arrangement was mutually beneficial; he had substantially lower living costs and she felt more comfortable having someone close by. When Aalto reiterated his concerns about the real estate market, Hilja said that he should not worry, because he would inherit Blackacre when she died. She also pointed out that this would allow Aalto to take the funds that he set aside for a down payment on a home and instead use them to buy equipment to start his own gardening business. Since that had been a long-standing dream of Aalto’s, he proceeded to do just that. His gardening business has been his focus ever since; he has earned in the range of $19,000 to $30,000 per year. He has no RRSP, private pension or other assets besides motor vehicles used for his business.

In 2008, Hilja finally made arrangements to review her will, which she had not changed since Aalto and Bettina were children. She wanted Aalto to receive Blackacre and its contents, with the residue of her estate to be divided equally between Aalto and Bettina. Her lawyer indicated that this would be appropriate given the family circumstances and taking into account the fact that Blackacre was worth approximately one million dollars and the residue close to that amount.
Two years ago, Bettina and her spouse moved to Vancouver. Bettina began to spend a considerable amount of time with Hilja, and invited her mother to spend birthdays and holidays together. Hilja decided that she wanted Blackacre to go to Bettina instead of Aalto, so as to give her grandchildren the possibility of inheriting it. She also decided to give Aalto the entire residue of her estate. She felt this would be a roughly equal division of her assets, and feeling no need to consult a lawyer, proceeded to change her will.

Hilja has recently passed away. The value of Blackacre has risen to well over two million dollars, with the residue now valued at approximately $700,000.

Aalto has come to you for legal advice regarding whether there is anything that can be done about the terms of Hilja’s will, or whether he has another potential claim to Blackacre. Advise Aalto 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.

**PART B**

Please answer all four questions in this section, and explain your answers.

**MARKS**

20 Consider the following gift of Blackacre in a will:

To Estrella until she secures a place at a care facility of her choice, then to Segismundo if he marries a Bolivian.

Estrella is a good friend of the will-maker, and is currently on a long waiting list for a care facility where many of her other friends live. The will-maker was born in Bolivia, and maintained strong connections to her family there despite having lived in Canada for most of her life. Segismundo is the will-maker’s 28-year-old grand-nephew, and has spent a considerable amount of time in Bolivia in a professional capacity. He is currently in a relationship with someone who has no connection to Bolivia.

1. What interest does Estrella have? Is it vested or contingent? (2)
2. What interest does Segismundo have? Is it vested or contingent? (2)
3. In your view, is a court likely to regard the condition attached to Segismundo’s interest as invalid? Why or why not? (12 marks)

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

**PART C**

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

**MARKS**

30 1. Explain the state of the law relating to riparian rights in B.C. in light of the three cases that we covered on this topic as well as the current legislative framework. In your view, does the law in this area represent an appropriate balance between allowing domestic use and maintaining a broader public interest in water? Why or why not?

2. A friend who is interested in going to law school has asked to take a look at some of your class notes for Property Law. After having seen in Chapter Two that the doctrine of tenure has limited contemporary relevance, she is surprised by the range of exceptions and reservations to Crown grants. She has asked you to explain the scope and function of those exceptions and reservations, and to provide your opinion as to how they compare to the doctrine of tenure.

**END OF EXAMINATION**