THIS EXAMINATION CONSISTS OF 3 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

DECEMBER EXAMINATION 2016

LAW 231
(Property Law)

Section 2
Dennis Pavlich

MARKS: 100

TIME ALLOWED: 1 HOUR

NOTE:

1. This is an open book examination.
2. The questions are not of equal marks.
3. Answer all three questions.
4. Give full reasons for your conclusions citing applicable legal authority in all of your answers.

THIS EXAMINATION CONSISTS OF 3 QUESTIONS
1. Discuss the notion of possession of land elaborating on its role and significance in the Canadian legal system. [20 MARKS]

2. You are a new associate in a law firm that has been consulted by a contractor who has successfully tendered to excavate a building site for a new high-rise office building on Blackacre. The owner of Blackacre is also your client. Blackacre is immediately adjacent to Greenacre. On Greenacre is a four-storey brick building. This building is within 6 inches of the boundary between Greenacre and Blackacre. Prepare a memorandum discussing any liability your clients (the contractor and owner of Blackacre) might have to the owner of Greenacre from any excavation activity on Blackacre. Also, advise the owner of Blackacre on his responsibility (if any) for a massive amount of sand and debris that was blasted onto Greenacre after a 24-hour, freak, dust-storm with unprecedented high winds. [30 MARKS]

3. Sally Snooks, a widow with two adult children, owns a cabin built on a 1-acre parcel of land on Gabriola Island, British Columbia, and legally described as “BROWNACRE”. Sally wants to give the Brownacre to her niece, Belinda Bloggs, her deceased sister's child, who Sally has always treated as one of her own children. Sally had written a letter to her sister, Orscilla Bloggs, prior to the latter's death, in which she promised Orscilla that she (Sally) would gift Brownacre to Belinda. Because of this promise, Orscilla had disinherited Belinda and bequeathed her (Orscilla's) entire estate to her son Basil on the assumption that Belinda would be taken care of by Sally's promised gift of Blackacre. You should also know that five years ago, Sally had applied for and received the Duplicate Certificate of Indefeasible Title for Brownacre from the Land Title Office which she placed in the care and custody of a very good friend of Belinda and her.

In late November 2016, Sally, mindful of her promise to her deceased sister, pays a visit to Tom Tewksbury to seek his advice on the proposed transaction. Tom is a neighbour on Gabriola Island and is now a retired lawyer who had enjoyed a successful practice, but almost exclusively at the criminal bar. That said, Tom indicates he has a standard form that he feels confident will help the process of conveyance. He draws deep into his law-school history and knowledge of property law to help Sally complete the document. Tom then changes the document by deleting some words and adding - "Signed, Sealed and Delivered in the presence of . . .". Sally signs and Tom witnesses her signature. (Belinda later attaches her signature to the document as completed by Sally and Tom and which is attached to this examination as Appendix A.)

After the document is signed by Sally and Tom, Sally places it and the Duplicate Certificate of Indefeasible Title in an envelope, seals it and writes on it – "To Belinda - Merry Christmas 2016 – Your loving (and loveable!) Aunt Sally" and carefully positions it with the rest of the gifts under the Christmas tree at the cabin. A week later, while kayaking to calm down after a bitter argument on the telephone with Belinda in which she revokes her promise to give Blackacre, Sally drowns. She leaves her estate to Basil.

Prepare a legal memorandum discussing and analyzing fully all the legal issues raised by these facts, and, particularly, who is entitled to Brownacre, and why. Where you think your answer might benefit from additional facts indicate the nature of that information and why it is important to determine the outcome. [50 MARKS]
APPENDIX A

LAND TITLE ACT
FORM A
(Section 185(1))
Province of
British Columbia

FREEHOLD TRANSFER
(Please use the Land Title Office copy)

PAGE 1 of 3

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

   Barristers & Solicitors, Suite 1700, Park Place, Burrard Street, Vancouver, B.C., Canada V6C 2X8 Phone: ________

   Attention: File No.: _______________________

2. (a) PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

   (PID) Blackacre

   (LEGAL DESCRIPTION) Blackacre

3. CONSIDERATION: $1 million

4. TRANSFEROR(S):

   Sally Snoeks

5. FREEHOLD ESTATE TRANSFERRED:

   Fee Simple Absolute

6. TRANSFEREE(S): (Including occupation(s), postal address(es) and postal codes(s))

   Belinda Bloggs

7. EXECUTION(S):** The transferor(s) accept(s) the above consideration and understand(s) that this instrument operates to transfer the freehold estate in the land described above to the transferee(s)

   Signature(s) of Transferor(s):

   [Signature]

   [Signature]

   (as to both signatures)

   Date of Execution: 2014-11-29

   This instrument is signed, sealed, delivered, and accepted.

   Signed: Sally Snoeks

   Accepted: Belinda Bloggs

8. OFFICE CERTIFICATION:

   Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act R.S.B.C. 1906, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

   If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

   ** If space insufficient, continue executions on additional page(s) in Form D.