1. This examination consists of two parts. Answer one of the questions in Part 1 and the question in Part 2. Each part is worth 50 marks.

2. This is a limited open-book exam. You are allowed to bring written material into the exam, including your notes and course summaries. You are also allowed to use A Property Law Reader and any statutory material or case law. You are also allowed to bring the assigned pages from Bruce Ziff’s Principles of Property Law, 6th Ed., pp. 10-49. No other property law texts or other published material is permitted.

3. Unless otherwise indicated, assume the applicable law is the law of British Columbia.

4. Students writing by hand:
   a. write legibly on every second line of your exam booklet and on one side of the page;
   b. do not put your name on the exam booklets; and
   c. return all exam booklets, including blank ones, at the end of the exam.

5. Students using ExamSoft, please ensure that:
   a. you enter your exam code in the appropriate place; and
   b. you do not include your name anywhere in the exam.

6. Put your exam code on the question paper and return the question paper at the end of the exam.

7. Do not begin your exam until you are instructed to do so.

8. Good luck!
PART I  

(50 marks)

Answer either question A or B.

A. Counsel for the City of Nelson in Corporation of the City of Nelson v Mary Geraldine Mowatt, et al [cited as Mowatt v British Columbia (AG) in the BC Court of Appeal] argued before the Supreme Court of Canada that the test for adverse possession should include the element of inconsistent use. More specifically, counsel argued that in addition to the other necessary elements for a successful claim for adverse possession (actual possession that is open and notorious, exclusive, peaceful, etc.), the law should also require an adverse possessor’s use of the land in question to be inconsistent with the use or the intended use of the land by the owner on title in order to defeat the owner’s interest.

In calling for the element of inconsistent use and, thus, for a high threshold in order to establish adverse possession, counsel presented arguments based on “principle” and “policy”. The principled argument was that the doctrine of adverse possession was fundamentally inconsistent with the idea of ownership. The policy argument was that adverse possession caused significant and problematic uncertainty about ownership.

Elaborate or expand upon, and then evaluate these arguments in principle and policy. Do you think that adverse possession is inconsistent with the principle of ownership and that, if adverse possession is to exist at all, the threshold for successful claims should be high on policy grounds?

OR

B. Earlier this month the City of Vancouver sent a letter to homeowners. It began as follows:

Dear Homeowner,

Vancouver City Council has approved a new one percent (1%) tax on empty and under-utilized homes. The goal of the Empty Homes Tax is to provide an incentive for property owners to rent out their homes, which will increase our housing supply and help families and young people to stay in our community at a time when the rental vacancy rate is near-zero.

The majority of homeowners, including snowbirds, will not have to pay the Empty Homes Tax. The Empty Homes Tax will not apply to properties used as the principal residence of either the homeowner or his/her permitted occupant. Additionally, the Empty Homes Tax will not apply to properties that are rented out for a minimum of six months of the year (in periods of at least 30 consecutive days). ...
This tax, whether or not it has the desired effect on vacancy rates, is part of a continuous attempt to adjust the social purposes of property in land. Using this example, and one or two other examples from the course if you wish, discuss the ways in which the different purposes for recognizing property interests are revealed in the rules that construct those interests.

PART II (50 marks)

Molly Jones arrived in your law office the other day. She says that in 2012 she found a metal box, and then, in 2014, she discovered that the box contained $200,000. However, there are a number of others who are claiming the money. Based on what she told you in your preliminary interview and your subsequent investigations, this is what you have discovered.

Rocky Raccoon holds the fee simple interest in a two-story house with a basement at 222 Penny Lane in the City of Vancouver. Before Rocky, his uncle Maxwell Edison had owned the property since 1972. When Maxwell died in 2002, he left a life estate in 222 Penny Lane to his niece Martha Mydear, and the remainder in fee simple to his nephew Rocky. He left his personal belongings to another niece, Loretta Martin.

The house was full of stuff, most if it junk, or at least so Loretta thought. She took some of the furniture and paintings, as well as Maxwell’s coin collection, but declared that she was uninterested in rest, because it was all worthless, and that Martha and Rocky could have what was left.

Martha lived at 222 Penny Lane until 2012 when she became too elderly and frail to navigate the stairs and to look after herself. She moved into a care home for seniors and, to help pay for the cost of care, she leased 222 Penny Lane to Sergeant Pepper on a month-to-month lease.

Pepper took possession of 222 Penny Lane under the lease in 2012 and he used it initially as a residence. However, he had dreams of opening a restaurant. City zoning allowed commercial use, and in 2013, Pepper set out to convert the house into a restaurant. His funds were limited, and the cost of outfitting a commercial kitchen took most of what he had, so he enlisted a number of his friends with promises of pizza and beer to help do the manual work. Molly Jones was one of them. She was a friend, but she also happened to be a cook, and it did occur to her that by helping out, she might improve her chances of landing a job when the restaurant opened.

Molly set to work cleaning out the basement. She had been at it for several days when she found a rusty metal box, about the size of shoebox, lying in the debris in one poorly lit corner. It was locked with a padlock. She showed the box to Pepper, who said that he’d never seen it before and had no idea what was inside it. The two
of them couldn’t open it, and Pepper suggested that Molly just throw in the dumpster. However, Molly left the box on a shelf in the basement where it sat untouched and largely forgotten until 2014.

Pepper opened the restaurant—*Pepper’s on Penny Lane*—in 2013, and he hired Molly on as a cook. One day in 2014, Molly went down to the basement to consider options for expanding the cooking area and she caught sight of the metal box on the shelf. On her way home that night she purchased a small hacksaw, and the next day, after her shift, she cut off the padlock. The box was full of $100 bills. She showed them to Pepper and the two of them decided that they needed to turn the box and the money over to the police.

It turns out that $200,000 was stashed in the box. The most recent date on the bills is 1996. The money has been with the police since 2014, but the only claimants are Rocky, Martha, Loretta, Pepper, and your client Molly.

Molly is uncertain about how to proceed, but thinks the box belongs to her and wonders whether she is right about that. Provide her with a legal opinion that ranks the claimants, including Molly, and that explains the basis for this ranking.

END OF EXAMINATION