Write Your Exam Code Here: ____________________
Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

THIS EXAMINATION CONSISTS OF 6 PAGES, including this cover page
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2018

LAW 231
Property Law

Section 1
Professor Wood

TOTAL MARKS: 100
TIME ALLOWED: 3 HOURS AND 20 MINUTES

NOTE:
1. This is an open book exam. You may bring any notes and materials with you except for Ziff, Principles of Property Law. You may not use any electronic device apart from a computer loaded with Examplify software supplied by UBC.
2. There is no dedicated reading period but you are encouraged to use the first 20 minutes to read the questions carefully and plan your answers.
3. This examination has three questions worth a total of 100 marks. You must answer all three questions. Question 1 is worth 34 marks. Questions 2 and 3 are each worth 33 marks.
4. Identify yourself only by your exam number.
5. Write the number of the question you are answering at the start of each answer.
6. All events and transactions take place in British Columbia today unless otherwise specified.
7. If you believe you need more information to answer a question, indicate what additional information you need and why. If you assume additional information, state your assumptions clearly and explain why you are making them. Do not make any assumptions that avoid relevant legal issues.
8. When a question asks you to refer to course materials, this means any information conveyed in the course, including the assigned readings, lectures, class discussions, slides, handouts, and resources posted on the course website, except to the extent that I have indicated they are not examinable.
9. If you are handwriting, write your examination number on the front of every booklet, along with the number(s) of the question(s) answered in the booklet, and write your answer legibly, in ink, ON EVERY OTHER LINE.

THIS EXAMINATION CONSISTS OF 3 QUESTIONS
1. Answer the following question:

**Xact Logistics Ltd.** ("X") is a shipping company. It operated maritime container terminals in Vancouver Harbour and Tsawwassen, BC. Its Vancouver terminal was located on a large industrial lot in North Vancouver of which X was the registered fee simple owner.

At a maritime container terminal, shipping containers are transferred between ships, trains and trucks using massive motorized cranes that roll on rails. X’s Vancouver terminal, like other maritime container terminals, had two main components: a dock, where cranes lifted containers on and off ships, trains and trucks; and a container storage area, where containers that were not transferred directly for onward transportation were stored temporarily. A container storage facility is an essential component of a container terminal operation. Containers are moved by cranes and stacked for storage for periods ranging from hours to months.

Shipping containers and container ships are always getting bigger, and container terminals must grow to remain competitive. X expanded its Tsawwassen terminal to take larger ships and containers. Expansion of its Vancouver terminal was limited by the height of the deck of the Lions Gate Bridge and the depth of the channel into Vancouver Harbour. The Vancouver terminal can only accommodate small container ships that are increasingly uneconomical.

Fifteen years ago X determined that its Vancouver terminal would become economically unviable within ten to twenty years. It decided to sell part of its North Vancouver land and find a third party to operate its Vancouver terminal. It subdivided its North Vancouver land into two lots, Lot 1 and Lot 2. The dock area was located on what became Lot 1. The container storage area was located on what became Lot 2.

To enable continued access to the container storage area, X deposited an easement for registration with the Land Title Office, pursuant to which the owner of Lot 2 (the “Grantor”) granted an Easement to the owner of Lot 1 (the “Grantee”). This Easement, which was registered on title to both Lots, provided in part:

The Grantor for itself and its successors in title hereby grants to the Grantee and its successors in title along with its tenants, servants, licensees, workers, contractors or subcontractors or other persons acting for or on behalf of the Grantee or authorized by the Grantee in the exercise or purported exercise of the rights and liberties hereby granted, for a term of twenty-five (25) years from the date hereof, a free and uninterrupted Easement for shipping container storage uses, and for the purposes aforesaid, to have free and uninterrupted access through, along and over the Easement at all times with or without workers, vehicles, equipment, materials and supplies, and generally to do all acts necessary or incidental in connection with the foregoing, but subject to the terms, conditions and restrictions hereinafter set out.

The Easement prohibited the Grantor from erecting or maintaining any buildings or structures on the Easement that would obstruct the Grantee’s aforesaid uses or access, but the Grantor otherwise had the right to use and enjoy the Easement area fully except as necessary for the purposes granted to the Grantee. The Grantee was prohibited from enclosing the Easement
area and was required, upon expiration of the Easement, to restore the lands to the same
condition they were in prior to the creation of the Easement. The Easement extended over a
clearly defined area amounting to approximately 75% of the area of Lot 2. Finally, “shipping
container storage uses” were defined as any and all activities associated with the operation of a
shipping container storage facility, including without limitation the movement and temporary
storage of shipping containers, and the installation and use of structures and equipment
including cranes and rails to effect such movement and storage.

Shortly after the Easement was registered on title, X sold Lot 2 to Burrard Inlet Investments Inc.
(“B”), a real estate developer, which has owned Lot 2 ever since. B has become frustrated with
the restrictions imposed by the Easement and wants them removed.

Eleven years ago X leased a defined portion of Lot 1 to a tenant, Container Terminal Corp. (“C”),
under a ten-year commercial lease to operate the Vancouver maritime container terminal. The
Lease Agreement, which was registered on title to Lot 1, contained a covenant (“Covenant 1”) by
which X promised that C would have the exclusive right to use the Easement area for the
purpose of container storage during the term of the Lease and any renewals thereof.

X, and later C, used the Easement area for container storage, but we do not know how many
containers they stored over what portion of the Easement area for how long. It would be
possible, in theory, for the entire Easement area to be covered with containers and associated
structures and equipment at any given time. We also know that X and C would be unable to
carry on a container terminal business without a facility for temporary storage of shipping
containers.

Two years ago, when there was still one year left on C’s lease, X sold all of its BC assets to
Alibaba Investments Ltd. (“A”), a company that specialized in purchasing distressed companies
and turning them around. A had notice of C’s lease via the land title registry. After purchasing
Lot 1, A leased a different portion of Lot 1 to another tenant to operate a shipping container
repair business. Because of a lack of storage space on Lot 1, A authorized the other tenant to
use a portion of the Easement area to store its customers’ shipping containers while they were
waiting to be repaired or returned, and the other tenant did so. C objected strenuously, to no
avail. This dispute was still unresolved when C’s lease expired expired one year ago and C
vacated the premises. At that time, the Vancouver container terminal ceased operation.

A then sold Lot 1 to Delta Industries Ltd. (“D”). To protect A’s Tsawwassen terminal against
future competition, A asked for and D agreed to a covenant (“Covenant 2”) that D would never
operate a container terminal on Lot 1. The covenant provided that it was for the benefit of A’s
Tsawwassen property, located 60 km away. The covenant identified A’s Tsawwassen property as
the dominant tenement and Lot 1 as the servient tenement. It also declared that the covenant
was binding upon and enured to the benefit of the covenator (D), the covenantee (A) and their
respective heirs, successors and assigns. The covenant was registered on title to Lot 1 and the
Tsawwassen property.

D quickly sold Lot 1 to Early Bird Enterprises Ltd. (“E”), a real estate developer, who purchased
the land with notice of the Easement and Covenant 2. E now wants to reopen the Vancouver
Question 1, continued

container terminal. A objects that this would violate Covenant 2. The Tsawwassen and
Vancouver terminals both serve a geographic market that extends over the Lower Mainland of
BC. But the Tsawwassen terminal has a much more commercially advantageous location than
the Vancouver terminal due to its capacity for larger ships and its proximity to major ground
transportation routes. These factors significantly reduce the cost of shipping goods via
Tsawwassen compared to the Vancouver terminal. As a result, the Vancouver terminal, if
reopened, would divert a very small amount of business from the Tsawwassen terminal, and
only for a limited time until the industry shifts entirely to large ships that the Vancouver
terminal cannot accommodate.

In short: E is the registered owner of Lot 1, B is the registered owner of Lot 2, and A is the
registered owner of the Tsawwassen terminal land. There are three active disputes: (1) A wants
to stop E from reopening the Vancouver terminal; (2) B wants to have the Easement removed;
and (3) C wants a remedy against A for breaking its promise of exclusive use of the Easement
area. Analyze the strength of these three claims.

33 2. Answer either part (a) OR part (b):

(a) Consider the following claim: “The current state of the law on access to public
and private property for the purposes of shelter or expression strikes an
appropriate balance.” Evaluate this statement, supporting your answer with
relevant information and arguments drawn from the course materials,
including Units 1.2 The Right to Exclude, 1.3 The Case for Private Property, 1.4-
1.5 Novel Claims, 2.2 Property, Class and Poverty, 4.1 The Concept of
Possession, and 11.2 Access to Public and Private Property. You may also draw
on other Units as you see fit.

OR

(b) Gregory Alexander argues that “governance property, not exclusion property, is
the dominant mode of ownership today” and that “ownership of governance
property, as opposed to exclusion property, contributes to the development of
certain virtues that promote human flourishing.” Evaluate this argument,
supporting your answer with relevant information and arguments drawn from
the course materials, including Units 1.1 The Meaning of Property, 1.2 The Right
to Exclude, 1.3 The Case for Private Property, 2.1 The Sources of Canadian
Property Law, 9.1 Co-Ownership Basic Concepts and Categories, 9.2
Condominium, and 10 Aboriginal Title. You may also draw on other Units as you
see fit.
33  

3. Answer parts (a), (b) and (c), following the instructions for each part:

(a) (12 marks) Answer either part (i) OR part (ii):

(i) Briefly describe and evaluate John Borrows' critique of the *Tsilhqot'in* decision, without repeating anything you may have included in your answer to question 2.

OR

(ii) Briefly describe and evaluate BC's approach to the question of immediate versus deferred indefeasibility of title.

(b) (11 marks) Answer either part (i) OR part (ii):

(i) After your client dies, she wants her husband to have the family home as long as he lives, including the ability to deplete the property entirely for his personal maintenance. After her husband's death, your client wants whatever is left of the property to go to her sister. Explain briefly how would you draft this portion of your client's will.

OR

(ii) After your client dies, he wants the family farm to belong to his youngest son as long as the youngest son lives on and farms the land, but to go to his eldest son if the youngest son stops living on or farming the land. Explain briefly how you would draft this portion of your client's will.

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QUESTION 3 CONTINUES ON THE NEXT PAGE
Question 3, continued

(c) (10 marks) Identify the property interests, if any, held by the parties indicated below. DO NOT GIVE REASONS. Please enter your answers in the spaces below. Alternatively, you may enter your answers in the Examplify software, provided that you identify your answers clearly and do not exceed the length available in the spaces below. Assume that X held a good title (in fee simple, in the case of land) immediately before each instrument took effect, that the instruments took effect today, and that all parties except the VSB are natural persons.

(i) X conveys land “unto and to the use of A in trust for B for life, then in trust for C, her successors and assigns”

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(ii) X devises land “to the Vancouver School Board (VSB) for so long as it shall be used and needed for school purposes and no longer.”

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(iii) X settles an inter vivos trust of $100,000, appointing T as trustee and directing her to distribute the trust income “in three equal shares: one share to A, one share to B, and one share to the children of C.”

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END OF EXAMINATION