NOTE:

1. This is an OPEN-BOOK examination.
2. If, in answering a question, alternative conclusions are reasonably possible, state and discuss them. If you need additional facts to answer a question, state what they are and why they are necessary.
3. If you think other facts are needed to answer the questions, indicate the nature of the facts and why you think they are relevant.
4. Analyze all questions fully providing full reasons for your conclusions backed by legal argument and authority.
5. Please answer ALL questions.

THIS EXAMINATION CONSISTS OF 3 QUESTIONS – THEY ARE NOT OF EQUAL MARKS
MARKS:

1. Basil Bloggs is the registered owner in fee simple of Blackacre, a large 1-acre parcel situated in an area within the City of Surrey zoned for light industrial use. Bloggs had decided to subdivide Blackacre into two parcels of land and took steps to do so, but did not follow through to a formal, legally enabled subdivision. He had taken the initial step of employing a professional land surveyor to draft a subdivision plan of Blackacre the effect of which would have been to create two new parcels - Greenacre and Brownacre - out of Blackacre. With the plan of subdivision completed by the surveyor, Bloggs concluded a lease with Sid Snooks for a term of 10 years in respect of the intended sub-parcel of Blackacre identified in the draft survey plan as "Greenacre". He attached the draft survey plan to the signed lease with an undertaking to complete the subdivision (at his cost) of Blackacre into Greenacre and Brownacre. A notation on the draft survey plan also discloses that he (Bloggs) is to occupy (which he now does) and use that area of Blackacre that the survey plan designates as "Brownacre".

Pursuant to the lease, Snooks, with his signature on the document as lessee took immediate occupation of that area of Blackacre labelled "Greenacre" in the draft survey plan and commenced payment of rent to Bloggs on a timely basis. Under the provisions of the lease, Snooks is able to sublet informally designated spaces of "Greenacre" to other tenants. Within the year following the signing of the lease, Greenacre has been informally subdivided into five, equally sized spaces demarcated by fencing supplied and installed by a contractor employed by Bloggs (as required by the lease agreement). Snooks sublets each of these 5 fenced yards as storage space to 5 sub-tenants some of whom have expended funds to erect infrastructure on their respective yards and affix small service buildings. The respective terms of the sub-leases is 5 years.

Although obliged to do so under the lease with Snooks, Bloggs continued not to follow through to City Hall and the LTO for subdivision approval of Blackacre into Greenacre and Brownacre. As a result, Greenacre subsists informally as a designation on the land surveyor's plan and factually as a subdivided portion of Blackacre. The reason for the omission by Bloggs to follow through to a formal subdivision of Blackacre acceptable to the LTO, is that Bloggs has fallen onto very difficult, financial circumstances and is being hounded by his many creditors. Therefore, he lacks the financial resources to perform the undertakings he has made to Snooks under their lease arrangement. One of his creditors is a contractor, Joe Smith, who has supplied and installed the fences on "Greenacre" and has been in the process registering a builder's lien
Question 1 continued,

on the title of Blackacre for unpaid services and contract work performed by him for Bloggs on “Greenacre”.

In desperation of his financial plight and inability to meet his contractual obligations, Bloggs sold his registered estate in fee simple in Blackacre to Orscilla Orchid for $2 million. Orscilla has inspected the physical site of Blackacre and is fully aware of the survey plan as “a work in progress” and she knows of Bloggs’ commitment to Snooks under the lease arrangements described above. However, before Orscilla is able to secure registration as the new owner in fee simple, Mathilda Minnow, a creditor of Bloggs, obtained a judgment of $25,000 against Bloggs and filed for and is now registered appropriately on the certificate of title as a chargeholder on Blackacre. Orscilla’s notary delayed unduly before submitting her application to the LTO for registration pursuant to the signed transfer form executed by Bloggs which conveys to Orscilla ownership of an estate in fee simple of Blackacre.

Then, after Bloggs had signed Orscilla’s transfer form, Snooks ascertained that Bloggs had not followed through with his performance obligations under the lease agreement relating to the subdivision of Blackacre into Greenacre and Brownacre. On learning of the reasons for this and Bloggs’ ensuing financial difficulties leading to the sale and transfer of Blackacre to Orscilla Orchid, and fearing losses of his investment because of court action from his tenants, Snooks, whose financial situation is also precarious, decided to take matters into his own hands.

Despite the transfer form of Blackacre that Bloggs has executed in favour of Orscilla (and in the custody of her notary), and known to Snooks, Snooks manages to entice a very desperate Bloggs with false promises of a financial resolution. He successfully encourages Bloggs to sign a second transfer form conveying Blackacre to Sidney Snooks in fee simple absolute. Snooks pays Bloggs $1 million cash. Bloggs executes a second transfer of Blackacre to Sid Snooks who forthwith submits the transfer form to the LTO, secures registration. Immediately after transfer Snooks’ lender, Tom Tewksbury, secures a mortgage charge on title to reflect a loan of $250,000 to Sid Snooks. Snooks pays Minnow $25,000. At this point Orscilla’s notary applies for registration and submits the transfer form signed by Basil Bloggs. (At all times the duplicate indefeasible title is in the custody of the LTO.)

Once registered, Snooks stops paying rent to Bloggs as he now owns Blackacre. Alleging the leases are unenforceable as illegal Snooks issues
Question 1 continued,

termination notices to all his sub-tenants that occupy storage units on the area of Blackacre marked on the surveyor's sketch plan as "Greenacre". Bloggs, on the failure of Snooks to pay rent which he alleges Snooks led him to believe would continue after the sale of Blackacre to Snooks, files a caveat and, later, a certificate pending litigation after a writ has been issued by Bloggs and served on Snooks in which Bloggs seeks a retransfer of Blackacre. Joe Smith secures registration of a builders lien in the LTO after the sale of Blackacre to Orscilla and Snooks, and is registered as an encumbrance of Blackacre now registered in the name of Sid Snooks. Orscilla has instructed her lawyers to sue Snooks and Bloggs to obtain a free and clear registered title in fee simple in her name. The LTO is a defendant in all the proceedings that have been initiated.

You are an article clerk for the lawyer acting for the Director of Land Titles who is faced with these multiple applications for registration. The LTO seeks advice of the likely outcome of likely court actions by the parties mentioned above and your reasoned explanation. The LTO needs this information so that it can prepare for a likely state of title of Blackacre (if any) once this complicated matter is settled. So, your principal has instructed you to prepare a memorandum in which you indicate all the issues arising from this fact pattern requiring you to analyze, giving full reasons, how a court is likely to resolve those issues and what the state of title of Blackacre, (given Brownacre and Greenacre) should look like. She also seeks from you an indication of any additional facts that may be needed to determine the outcomes for all persons who may be parties to the disputes. In your analysis consider the exposure, if any, of the Assurance Fund.

MARKS

20. 2. Write an essay on aboriginal title in British Columbia explaining fully the extent to which Anglo-common-law perspectives of property law are integrated, influential and/or not reflected or in opposition to land rights of the indigenous people of British Columbia, Canada. Your answer should briefly consider the impact of Canadian indigenous land law on Anglo-based, common-law, if any, in British Columbia.
40. 3. Giving full explanations (using legal reasoning from the common law, equity, supporting statutory (including the Perpetuity Act) and case authorities for your answer), you are required to indicate who gets what valid, proprietary interests in each of the following testamentary dispositions of Redacre by X, the deceased registered owner in fee simple:

a. To Jacob and his children if they are celibate. [Jacob is on the death of X (but not when the will was made) the father of a girl and a boy age 18 and 16 years respectively. The will further provides that if the children are under the age of majority income from Redacre is to be used to help finance their education. If the children are not celibate Redacre is gifted to X's spouse alive at his death.]

b. To Miriam, but if Miriam attempts to sell or in any manner dispose of Redacre, to my children alive at my death. [Miriam wishes to sell Redacre to Joseph and X has 3 children. X is 90 years of age.]

c. To Ismael and his heirs until he disowns Islam by keeping company with non-Muslim friends as determined by Sharia law. [Ismael's considers most of his friends to be Muslim - some devout others nominal - but he has recently become engaged to marry Christopher, an atheist.]

d. To Rebecca and her heirs, but if she dies without descendants, then to Isaac and Joseph in equal shares if they turn 25 years of age. [Rebecca is alive at the date of the disposition, but dies a year later without any children or (obviously) grandchildren. Isaac is 4 years of age and Joseph, though named is actually a foetus when Rebecca dies.]

In the above situations (a) to (d) briefly explain how and why your answers may differ, if at all, if each disposition was made under an inter vivos grant?

*****END OF EXAMINATION*****