1. This examination consists of 5 questions. Answer all the questions.

2. This is a partial open-book examination. You are allowed to use your notes, course summaries, statutes, reported cases, *A Property Law Reader*, assigned secondary reading, and dictionaries (except legal dictionaries). No other property law texts are 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. use your exam code, not your name; and
   c. if you use more than one booklet, indicate the number of each booklet and the total number of booklets, i.e., 1 of 3, 2 of 3, etc.

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

6. Put your exam code on the question paper and return the question paper at the end of the exam. Please also return all exam booklets, including blank or unused booklets.

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

8. Good luck!
1. 20 marks (36 minutes)

What role do presumptions play in the law of property? Using several examples from the course, describe how presumptions work and their effects. Include an example where a statute or court decision has shifted an established presumption and describe the consequences of this shift.

2. 20 marks (36 minutes)

Eleanor Rigby phoned your law office last week. Since then, she has sent you a copy of a “Lease Agreement” and she seeks your advice about it. From your conservation with her, your review of the document, and several title searches, this is what you have learned.

Rigby owns two adjacent lots in the City of Vancouver. The first—366 Penny Lane—is an empty lot, covered with asphalt and used primarily for parking. The second—Unit 101 at 368 Penny Lane—is a ground-floor strata property lot in a 3-story strata property building. The strata lot is a retail outlet and the occupant is Hammer Furniture. Rigby purchased the vacant lot and the strata property lot from Bungalow Bill in 2017 and she is registered on the title of each as the holder of the fee simple interest.

In 2015, Bungalow granted a 7-year lease to Maxwell Edison, the proprietor of Hammer Furniture, for strata lot 101-368 Penny Lane. Maxwell has operated his business from that location since 2015. It stocks a broad range of furniture, with a particular focus on kitchen cabinets.

Your title search reveals that the lease is registered as a charge against what is now Rigby's fee simple interest in 101-368 Penny Lane. Rigby told you that when she was negotiating with Bungalow to purchase the lots, Bungalow gave her a copy of the Lease Agreement. She has since passed it on to you. However, she has also told you that she and Bungalow never discussed the lease, and furthermore, that she never made representations to either Bungalow or Maxwell that she would honour the lease. Nonetheless, the lease was then, and remains still, a charge against the title of 101-368 Penny Lane. Rigby has been collecting rent from Bungalow since she acquired the property last year.

The Lease Agreement contains a number of terms. After identifying the parties and the property, it provides that Bungalow conveys to Maxwell the exclusive possession of unit 101-368 Penny Lane and that Maxwell will pay rent of $5000/month. The lease also contains the following provisions:

• The lessor will reserve 10 parking spots on the neighbouring 366 Penny Lane for the customers of Hammer Furniture, Monday-Saturday, 10:00AM-6:00PM;
• The lessor agrees not to open a competing furniture business on the adjacent lot 366.
Penny Lane;
- The lessor agrees that it will purchase $10,000/year in furniture from the lessee for the duration of the lease; and
- At the conclusion of the lease, the lessee has an option to renew the lease on the same terms, subject to the reasonable renegotiation of rent.

Rigby has told you that she wants Maxwell out. If she can’t get him out before the term of the lease expires, then she certainly does not want him to exercise the option to renew the lease. Rigby is also in the furniture business. She purchased the lots on Penny Lane because of the residential construction that surrounds them and the prospect of a strong local market for furniture. She does not want to purchase furniture from him.

Rigby plans to build a large furniture showroom on 366 Penny Lane to display and sell a broad range of furniture, but not kitchen appliances or cabinetry. The showroom building would eliminate the parking stalls dedicated under the Lease Agreement to the customers of Hammer Furniture.

Rigby wants to know whether she is bound by the Lease Agreement between Bungalow and Maxwell, and by all of its terms.

3. 25 marks (45 minutes)

Sergeant Pepper worked in the high-tech industry. Over the past decade, he built a small computer software design company with seven employees. Earlier this year, he sold it to Amazon and then used some of the sale proceeds to purchase a 2-bedroom townhouse in a strata property complex just off Main Street in Vancouver for $1.2 million. He was able to purchase the townhouse without borrowing funds, and after the transaction completed, he was listed on title as the holder of the fee simple interest unencumbered by any charges.

Pepper also purchased a second strata property unit in Vancouver—a 1-bedroom apartment near the Commercial Skytrain Station—as an investment. He made a down payment of $100,000 and granted a mortgage to Penny Lane Credit to secure a $650,000 loan to cover the rest of the purchase price. Once the second transaction completed, Pepper held the fee simple interest in the apartment and Penny Lane Credit was registered against title as the holder of a mortgage.

Although successful in his professional life, Pepper’s personal life was less stable. He and Rita Metermaid had an on-again, off-again relationship. This past summer, after having purchased the properties and moving into the Main Street townhouse, Pepper thought the relationship with Rita was “on-again”. They did not live together, but Rita had keys to the townhouse and the apartment. While Pepper was out of town exploring new business opportunities, Rita, a calligraphy artist, forged Pepper’s signature on a Form A that purported to transfer the fee
simple interest in the Main Street townhouse to her. She then registered the Form A transfer instrument.

Once the fee simple interest was in her name, Rita listed the townhouse for sale on Craigslist, and shortly thereafter sold it to Rocky Racoon for $1.1 million. Rocky was pleased to have acquired the property for slightly less than its recent selling price, but had no particular reason to suspect the transaction. Rita told a compelling story that she was leaving Vancouver because her employer had reassigned her to its office in Dubai. Rocky financed the purchase with an $800,000 loan from Prudence Investments, and Prudence secured that loan by taking a mortgage against the townhouse. When all the transactions were completed, a title search revealed that Rocky held the fee simple interest in the townhouse and Prudence Investments held a mortgage against that interest.

Emboldened by her success, and working quickly in an effort to avoid detection, Rita then forged a discharge of the mortgage held by Penny Lane Credit against Pepper's Commercial Street apartment. Once the registrar discharged the mortgage, Rita then forged the transfer of the fee simple interest in the condominium to herself. Now on title, she granted another mortgage to Apple Credit to secure a $500,000 loan. As is its practice, Apple Credit performed careful identity and credit-rating checks on Rita. She provided a driver's licence, passport and birth certificate, all of which appeared valid, and her credit rating was good, so Apple Credit proceeded with the loan. It registered the mortgage against the fee simple interest in the apartment, but as a precaution it also purchased title insurance.

Rita then disappeared. There is no trace of her or of the $1.1 million she received for the sale of the Cambie Street townhouse to Rocky and the $500,000 she received from Apple Credit when she granted the mortgage on the Commercial Street apartment.

Some months later Pepper arrived home from a successful business trip to this tangled mess of claims to his properties and he seeks your help. Can he recover his fee simple interests in the two properties? If not, what remedies does he have, if any? Please also describe the status of the various interests of the other parties involved. Will Rocky keep the fee simple interest? Does Prudence hold a valid mortgage? Will Rita remain on title to the Commercial Street condominium apartment? And what about the mortgages to Penny Lane Credit and Apple Credit?

4. 20 marks (36 minutes)

In Delgamuukw v British Columbia the Supreme Court of Canada indicated that once a First Nation has established Aboriginal title, then the Crown has an opportunity to justify an infringement of that Aboriginal title. What standard did the Court set for justifying infringements, and how did it modify the justifiable infringement test in Tsilhqot'in Nation v British Columbia? What do you think are the implications of the modifications?
Molly Jones and Desmond Jones were sister and brother. They held the fee simple interest in Octopus Gardens as joint tenants. In her will, Molly indicated that on her death, her interest in Octopus Gardens was to go to her friend Nancy. She also signed a Form A transfer instrument to transfer her interest to Nancy and she gave the Form A to Nancy, but she asked that Nancy not register the instrument until after her death. Molly has now died. Desmond and Nancy claim Molly’s interest in Octopus Gardens. A title search reveals that Desmond and Molly hold the fee simple interest in Octopus Gardens as joint tenants. Does Desmond or Nancy have the better claim?