NOTE: 1. This is an open book examination. You may bring into the examination room and refer during the examination to the required materials for the course, handouts and your notes and summaries, but use of library or textbooks is prohibited.

2. You may answer question 5(a) 5(b) or 5(c), do not answer more than one. If you need additional facts to answer a question, state what the facts are, and why they are necessary. If you feel that an answer requires discussion of the same issue that you dealt with in an earlier answer, you may refer to your previous answer and limit your subsequent answer to additional matters. Give reasons for each answer.

3. Suggested times are given for each question based on the allocation of marks. The times have been allocated based on the duration of three hours or 180 minutes, less 12 minutes for reading or review or 168 minutes in total.

THIS EXAMINATION CONSISTS OF 5 QUESTIONS
1. (Suggested time: 25 minutes) Eleanor Abernathy, who was better known as the "Crazy Cat Lady", was the registered fee simple owner of a house with grounds in Springfield, British Columbia. Eleanor was a hoarder and a cat-lover, who lived with dozens of pet cats. Respected physician Dr. Hibbert examined Eleanor and found her to be sane and intelligent, but harmlessly eccentric.

Because of the presence of so many cats, Eleanor’s living conditions became intolerable to her. She decided to share her house with a room-mate, Consuela, to live with her, assisting with the household chores and with keeping the house tidy. Consuela was an unemployed, homeless widow, who was very happy to have a roof over her head. Eleanor told Consuela “you can stay as long as you want, I won’t put you out or charge you rent.”

Consuela moved into the house with Eleanor and the cats, and kept the house tidy. She also made considerable repairs to the house at her own expense. From time to time, Eleanor gave Consuela cash while they lived together, but their understanding never amounted to a contractual relationship. Eleanor repeatedly assured Consuela that she would own the house one day. Eleanor died in 2018 intestate, and her next-of-kin, a distant cousin named Dustin Abernathy, claims to be entitled to the property by inheritance and asks Consuela to vacate the house so he can sell it, with vacant possession. Dustin has begun to advertise the property for sale, but Consuela refuses to leave, claiming the house for herself. Advise Consuela what she should do quickly to prevent the sale and about whether Dustin or she is entitled to the house. Advise Consuela about her rights and remedies, if any.

2. (Suggested time: 42 minutes) At the beginning of this fact situation, Moe Syszlak is the sole proprietor of Moe’s Tavern and the registered owner of the fee simple to the land under the business premises, which is located on Walnut Street, in Springfield, British Columbia. Moe’s title is clear.

The Springfield health inspector, after repeatedly failing Moe’s Tavern as unsanitary, required Moe to take an extended course on the safety of food and drink, as a condition of renewing Moe’s annual business license. The course was offered only in Capital City, over 200 miles from Springfield, and attending the course required Moe to spend 8 months away from Springfield. To keep his tavern running while he was away, Moe turned it over temporarily to his “best” customer, Barney Gumble. Moe told Barney that he could stay in the back of the tavern rent-free while Moe was away. Moe left the duplicate Certificate of Title to the tavern, a mortgage signed by Moe in blank (no mortgagee’s name was inserted), and other important personal documents in a desk drawer in the tavern office, to which Gumble would have access, in Moe’s absence. Moe knew that Barney was currently unemployed, drank heavily and was possibly unreliable, but he did not know that Barney was being hounded by creditors and needed money desperately.
MARKS

A few weeks after Moe left Springfield, Barney impersonated Moe, and without telling Moe, borrowed money from the First Bank of Springfield with Moe's tavern as security, using the mortgage proceeds to pay Barney's own debts. Barney filled in the blank mortgage for the principal face amount of $100,000, creating a charge over Moe's Tavern to the First Bank securing the loan by a first mortgage, making over the funds to himself. Before advancing any funds, the Bank clerk searched the title to Moe's property, and confirmed Moe's identity as the registered owner with a clear title. However, the Bank clerk did not ask Barney for picture identification, an omission that was contrary to the standing instructions of the First Bank to its employees. The Bank clerk did not know Moe and was genuinely fooled by Barney's impersonation of Moe. Barney signed the registration forms as Moe, forging Moe's signature. The First Bank registered the mortgage as a charge on Moe's title, but not a cent was ever repaid to the First Bank on the mortgage loan.

While Moe remained in Capital City, unaware of Barney's skullduggery, Barney needing more money, impersonated the First Bank clerk and forged a discharge of the mortgage so that he could implement a scheme to sell the tavern business "by owner." After the successful discharge of the First Bank mortgage and removal of the charge from the title, clear title was restored to Moe. Barney, impersonating Moe once again, sold the fee simple to the tavern to Lurleen Lumpkin, a travelling country-and-western singer, who searched the title and bought the fee simple to Moe's. Lurleen did not employ a lawyer, feeling that she could handle the transfer on her own and did not ask Barney, who was posing as Moe, for proof of identity. Lurleen paid Barney (posing as Moe) in full. Lurleen applied to the Springfield land titles office for registration of the transfer of the fee simple into her name yesterday. Barney, having committed forgery twice, disappeared with the mortgage monies from the First Bank, and with Lurleen's purchase monies. Moe arrives back in Springfield today, to discover Lurleen standing behind the bar at the renamed "Lurleen's (formerly Moe's) Tavern," as the result of Barney's wrongdoings. Although Lurleen applied yesterday to register her purchase, actual registration has not taken place yet, and Moe remains on title as the registered owner.

Is Moe's title secure, or is Lurleen entitled to ownership of the tavern? Is there anything Moe should do immediately to protect himself? Is the mortgage enforceable by foreclosure against Moe's/Lurleen's property by the First Bank? Is Moe obliged to pay off the first mortgage? If Moe is liable can he seek compensation from the BC LTSA Assurance Fund, if he has to pay off the mortgage or if he loses title to Lurleen? Will Lurleen be entitled to compensation from the Assurance Fund, if Moe is successful in recovering his title from Lurleen? Discuss and analyze the legal issues.

3. (Suggested time: 42 minutes) In 1991, Cletus and Brandine Spuckler bought a 5-hectare marginal farm on Cypress Creek outside of Springfield, British Columbia. The edge of the creek bed formed a boundary of their farm. Their next-door neighbor, upstream and to the north was the wealthy Charles Montgomery Burns
(known to all as Mr. Burns). Mr. Burns’ property was a vacant lot, but a few years ago, he decided to build a Library to hold his papers and surrounding public Park, in his name to honour his memory.

The construction of the Library and landscaping of the Park took four years to complete. To publicize the impending public opening of the Library and Park, Mr. Burns hired a huge blimp with flashing neon lights, which was tethered on his property but drifted over the neighbouring properties, including the Spucklers’ farm, keeping the Spucklers awake at night and terrorizing their livestock, when it was suspended overhead by the winds.

The Spucklers noticed cracks developing in the foundations of their farmhouse and outbuildings, which an engineer attributes to excavation for the Library on Mr. Burns’ property. Furthermore, a torrential rainstorm raged over Springfield, which suddenly, overnight washed away a substantial part of the bed of Cypress Creek from the properties of Mr. Burns and the Spucklers. Loss of the creek-bed widened the body of water and endangered Mr. Burns’ Library. To protect the Library from flooding by the raging creek, Mr. Burns backfilled his land up to the original property line with toxic radioactive waste from his Springfield Nuclear Power Plant. This backfilling with toxic waste made the water unsuitable for use by downstream owners including the Spucklers and changed the course of Cypress Creek further washing away the Spucklers’ farmland. Mr. Burns did not have official permission for any of these remedial activities following the storm.

The Spucklers consult you for legal advice regarding what they can do to improve their diminishing quality of life. They want to know if there is any legal basis whereby they can sue Mr. Burns and their remedies, if any. Advise the Spucklers.

4. (Suggested time: 34 minutes) Ned Flanders’ grandfather, who had lived in the Springfield Retirement Castle (a nursing home), just died on March 31, 2018. Last week, the executor of the grandfather’s will informed Ned that he is mentioned in the grandfather’s will. In the will, which was executed in 2002, a specific devise states as follows: “My house in Shelbyville, British Columbia to be a home for my relatives, Ned, Rod and Todd Flanders: To Ned Flanders my dear grandson, of whom I am extremely fond, in fee simple and after his death to his sons, Rod and Todd, also in fee simple” Today, Rod is eleven years of age and Todd is seven years old. The executor says a lawyer will have to advise on the correct interpretation of these provisions.

When Ned found out about his good fortune, he drove over from Springfield with Rod and Todd to see the house. They found a gentleman named “Gentle” Ben residing in the house. Ben explained that he had lived as a boarder in the house for years, and cared for the grandfather as his health declined. Shortly before the grandfather went into the nursing home in 2017, the grandfather had given Ben the house out of gratitude for his care, and Ben had continued to occupy it ever since.
After rummaging around in the grandfather’s legal papers in the house, Ben located and showed Ned a completed transfer form capable of passing ownership from the grandfather to Ben, but Ben explained to Ned that the grandfather had never given him the papers to register the transfer and had not gotten around to registering the transfer himself, although the grandfather had repeatedly reminded himself to do so, until he became too infirm to attend to it personally. Ben said regretfully, “I should have insisted that the old man register the transfer to me and now maybe it’s too late.”

Advise Ned of his and the boys’ rights to the house, if any, as against Ben’s claim, and what, if anything, Ned should do to protect them.

**ANSWER 5(a), 5(b) or 5(c). EACH IS WORTH THE SAME MARKS. DO NOT ANSWER MORE THAN ONE.**

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5(a). (Suggested time: 25 minutes) Clancy Bouvier is the deceased father of Patty and Selma Bouvier, and Marge, who is married to Homer Simpson. In his will, Clancy left Homer a life estate in a vacant lot on the outskirts of Springfield, British Columbia. The lot contained standing timber. Homer, short on cash, began to cut down and sell the woods, to make money out of the otherwise unproductive land. Krusty (“the Klown”) Krustofsky suggests to Homer that they should clear the land and open a Krusty Theme Park on it. The idea excites the kids, Bart and Lisa, who are loyal fans of Krusty. Homer agrees with Krusty and enthusiastically borrows $2 million from the Springfield Savings and Loan to invest in the venture. Marge, Patty and Selma, who were granted fee simple remainder interests in the land under their father, Clancy’s will utterly oppose Homer’s logging operations and proposed theme park. Advise Marge, Patty and Selma on their rights and remedies, if any, to stop or recover from Homer.

OR

5(b) The *Land Title Act*, subsection 23(2) contains provisions that are known colloquially as “cracks in the mirror.” What is their effect and why are they known by the quoted phrase? Do you think the phrase aptly describes their effect? Discuss.

OR

5(c) “In the Tsilhqot’in decision, the Supreme Court of Canada resolved all outstanding significant legal uncertainties surrounding Aboriginal Title.” Do you agree or disagree? Discuss.

**END OF EXAMINATION**