

**FACULTY OF LAW
FINAL EXAMINATION – APRIL, 2006**

LAW 440:C1 PROPERTY LAW (BROWN)

Time allotted: THREE (3) Hours

Code Number: DO NOT ENTER YOUR NAME ON ANY PART OF YOUR EXAMINATION. To ensure anonymity during marking, a list will be circulated in the course of the examination and you are to enter your name opposite a number on that sheet. That number will be your code number FOR THIS EXAMINATION ONLY. Please enter it in the space provided in your examination booklet.

Special instructions:

1. **This examination paper contains one (1) question on three (3) pages (not including this page). Please check NOW to ensure that you have received a complete examination. Raise your hand immediately if your paper is incomplete.**
2. This examination is a **RESTRICTED OPEN BOOK** examination. You may have with you and refer to the textbook (Bruce Ziff, *Principles of Property Law*), the casebook (*Property Law: Cases and Materials, 2005 ed.*), the statutory materials book, and any written annotations you have made directly into these particular books. You may not have with you or otherwise consult any other notes, summaries, texts or additional materials of any kind.
3. **THINK CAREFULLY ABOUT YOUR WORK, ORGANIZING YOUR ANSWER BEFORE YOU START WRITING. Credit will be given for quality, not quantity. You must offer concise, clear and well-organized answers that are directed to the question asked, and, where appropriate, supported by reference to and arguments derived from the relevant cases and statutes.**
4. **WRITE IN COMPLETE SENTENCES.** Credit will not be awarded for point-form answers. **WRITE LEGIBLY.** If this means you must write on every other line, then please do so.
5. Cell phones, pagers, beepers and related devices are forbidden. Please turn off and stow away such devices immediately. Computers are also not permitted in this examination.
6. Adhere strictly to the time limitation imposed on this examination. Failure to stop writing at the end of the examination may lead to a deduction of grades or failure to accept the examination paper.
7. As a courtesy to your classmates, if you finish your examination during the last 15 minutes of the examination period, please refrain from leaving the room.

PLEASE DO NOT TURN THE PAGE TO BEGIN READING THE EXAMINATION UNTIL YOU ARE DIRECTED TO DO SO.

You have been consulted by Maria Karenko. Maria was born in 1921 and has just celebrated her 85th birthday. She lives in a house on a 160 acre farm approximately 30 km north of Edmonton, bounded by other farms to the east and west. Maria enjoys generally good health. Her husband Orest, whom she married in 1940, died in 1999.

Orest and Maria had four children: one son (John, born in 1941), and three daughters (Lina, born in 1942; Oksana, born in 1949; and Theresa, born in 1953). All the children were raised on the farm. Maria views her marriage as having been a happy, “traditional” one – Orest worked on the farm while she kept the home and took principal responsibility for caring for the children. Of their children, only Lina and Oksana survive. Theresa was accidentally killed in 1963 in a farming accident. John and his only child, Anna, were killed in a motor vehicle accident in Saskatchewan in 2002. Left behind were John’s wife Doris, and Anna’s children Marvin (born in 1988) and Karen (born in 1990). Marvin and Karen now live with Doris in Calgary.

Lina was married in 1968 to David Rolfe, a carpenter from Medicine Hat who made his living by constructing furniture and selling it door-to-door throughout the prairies. The marriage was childless. When Lina discovered in 1979 that David was carrying on numerous affairs with women he met while peddling his furniture door-to-door, she divorced him. She now lives in St-Boniface, Manitoba, where she is employed as a schoolteacher.

Oksana has also never had children. After finishing high school, she enrolled at the University of Alberta. Then, in 1969, she saw a television documentary about an African relief agency, “African Coalition for Kindness” (“ACK”). Inspired, she abandoned her studies and began working for ACK in various African countries, including Ghana, Congo, and the Ivory Coast. Orest and Maria worried for Oksana’s safety and health, but they eventually became resigned to their daughter’s career choice. Oksana continued to work for ACK in Africa until 2004, when she returned to Edmonton to be closer to Maria. Having worked for mere subsistence wages all her years in Africa, Oksana has no savings and ekes out a modest living as a bookkeeper for the Alberta Law Review.

Maria has decided to sell the farm and move in with Oksana. She has found an interested purchaser – a property developer, who hopes to subdivide the farm into 320 residential lots. She does not know, however, whether (as she puts it) the farm is “legally mine to sell.” She explains that Orest purchased the farm in 1938. Then, shortly after they married, he transferred the farm into both their names as joint tenants. The state of title has not changed since then. Because Maria does not want to be a burden to Oksana, whose circumstances are so frugal, Maria proposes to deposit monthly cash payments of \$1500 into a bank account that she will open in Oksana’s name. Maria is concerned that, after she dies, Lina might demand that Oksana pay that money into Maria’s estate for distribution among all her heirs.

Maria's decision to sell the farm was made with considerable hesitation. She loves her home and its rural setting. She treasures her daily walks to a small creek approximately 500 metres from the farm. She accesses the creek by walking 50 metres along the public road which fronts her own farm and then crossing a field owned by her easterly neighbour, Alice Keefe. Six years ago, Alice agreed to allow Maria to use that field to walk to the creek. Maria hopes that, even after she sells the farm, Oksana will occasionally take her out to Alice's field so that she can still enjoy the creek. She also believes this will enhance the purchase price she can extract from the interested developer.

When Maria's parents died in the 1940s, Maria inherited a wooden bookcase that they had carried with them from Ukraine in 1919. Maria believes that her great-grandfather built it sometime in the 1860s. It stands approximately 1 metre high. Maria uses it to house her collection of vintage Ukrainian books. Afraid the bookcase would tip under the weight of the books, Orest fastened it, using 6 large screws, to the wall of their living room. He also braced it to the floor by attaching the bookcase bottom (with glue) to two boards which he had already attached to the floor by way of 12 screws.

Maria's other family heirloom is an engraved gold brooch given to her by Orest's father on her wedding day. Unfortunately, it went missing last month. After Orest died, Maria had asked a friend, Agnes Bergen, to keep the brooch "for safekeeping" at Agnes's jewelry store. Agnes agreed, and stored it in a locked drawer behind her counter. She kept the drawer key at her home, where only she and her husband had access to it. Then, last month, Maria asked Agnes to send the brooch to Parkland Jewelers ("Parkland") in Edmonton for an appraisal. After appraising the brooch at \$4000 and charging \$10 for its services, Parkland arranged for the brooch to be returned to Agnes via Dubious Transport Ltd. ("Dubious"). The brooch never arrived, and Dubious's employee who was assigned to deliver the brooch to Agnes has not returned to work. Maria is aggrieved, not just over the loss of an heirloom, but also of what turned out to be such a valuable piece of property. She feels that *someone* – whether Agnes or Parkland – should have insured the brooch. Dubious has told her that its contract with Parkland limited Dubious's liability for "lost items" to \$100.

Maria adores her two great-grandchildren, Marvin and Karen. She wants one of them to receive her vintage Ukrainian book collection, and has asked you to draft whatever document is necessary to create a gift "to my first great-grandchild who turns 22", and that it does not matter whether the gift takes effect during her life or when she dies.

Maria also loves both her surviving children, and wants to provide for them equally upon her death. Her current will divides her estate into two shares, one to be taken by Lina "on condition that she does not ever again marry a morally depraved poop-head like David Rolfe", and the other share to be taken by Oksana "so long as she never again works in dangerous countries."

Please write a memorandum to Maria addressing ALL property law issues that may arise in the facts that have been set out above and give full reasons to support your answers.

Please indicate in your memorandum if you need more information on any issue and, if your advice to her depends on what such additional information might reveal, please canvass the various possible outcomes.

Additionally, if the outcome of a particular issue is uncertain, please canvass the various possible outcomes.

END OF EXAMINATION