

**FACULTY OF LAW
MIDTERM EXAMINATION – DECEMBER, 2005**

LAW 440:C1 PROPERTY LAW (BROWN)

Time allotted: **ONE (1) hour**

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 at the top of the front page of your examination paper.

Special instructions:

1. This examination paper contains one (1) question on 2 pages (*not* including this page). Please check now to ensure that you have received a complete examination. Raise your hand immediately if you do not have a complete examination.
2. This examination is a **RESTRICTED OPEN BOOK** examination. You may have with you and refer to the Ziff textbook (*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 enumerated 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 argument derived from the relevant cases and statutes.
4. **WRITE IN COMPLETE SENTENCES.** Credit will not be awarded for point-form answers. And **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 strictly 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 Mae Jannack, aged 85 years. She never married or had children. She is now retired, and lives in Lacombe, Alberta. Until now, she has always felt capable of managing her own affairs without the help of a lawyer. Recently, however, a series of problems have begun to accumulate, and she has decided to retain your services.

Mae has been a great fan of the band *Motörhead* and has collected *Motörhead* memorabilia since the band's inception in the 1970s. Over the years, she has accumulated *Motörhead* 8-track tapes, posters, an autographed photo of lead vocalist Lemmy Kilmister, and some treasured strands of drummer Phil "Philthy Animal" Taylor's chesthair. Last week, Mae received a letter from the Province of Alberta. The letter stated that, pursuant to the newly enacted *Alberta Motörhead Preservation Act*, she is required to surrender all her *Motörhead* memorabilia to the Royal Alberta Museum. Mae becomes indignant when speaking of having to relinquish her collection to the Museum, and has told you how surprised she is that "this sort of thing" can happen in "a country like Canada."

Meanwhile, other problems are piling up. She has just had to pay Lacombe City Hall over \$2000 for business license fees in order to set up a commercial rabbit farm in the backyard of her home. She calls her rabbit farming business "Bunnies-R-Us", and she restricts her sales to people looking for a nice pet. Just last month, Air Canada began operating a new jumbo jet flight service from Barrhead to Red Deer. The landing approach to Red Deer's airport takes the jets directly over Lacombe and, more specifically, over Mae's backyard, at elevations ranging from 500 to 700 feet. The resulting jet engine noise appears to have caused her rabbits to cease breeding. This is costing Mae at least \$1200 in lost income every month. She wants a stop put to this or, as she puts it, "I'll sue them back to Barrhead."

Two days ago, while she was contemplating contacting a lawyer over her mounting difficulties, Mae took a stroll in her backyard garden. As she glanced over to the west perimeter of her lot, she noticed a freshly-dug 1.5 metre-deep pit just inside the neighbouring property, owned by her neighbour, Cecil Bennett. When she asked Cecil about it, he said that he was building a swimming pool. Then yesterday Mae noticed that the ground on her side of the property line was sagging towards Cecil's pit. She immediately moved three of her rabbit cages to the other (east) side of her lot, but not before an (empty) fourth cage fell over into the pit and was destroyed. "None of my dirt has fallen into the pit yet", says Mae, "but I'm sure not putting any more of my rabbit cages over near that property line. They don't come cheap, those things."

Mae's closest friend has been, until recently, her cousin Filbert Snoos. Both Mae and Filbert share an aunt, 101-year-old Matilda Dan, who is the younger sister of both Mae's and Filbert's late mothers. Like Mae, Matilda never married and has no children. Mae and Filbert occasionally get together to make homemade wine in Matilda's basement. In fact, just last month both Filbert and Mae each made 2 bottles of wine. Filbert made white wine, and Mae made red. Mae decided to store her 2 bottles in Matilda's nice, cool basement. Filbert decided to do the same thing. As they worked together, they chatted about the time, several years ago, when Matilda asked Filbert and Mae over for a quiet cup of tea, and gave them each a copy of her will. "You are all I have left from the old days", she said, looking up from her cup of tea only occasionally to glance briefly at them both. "Mae, I want you to have the house. Your mother was born in the upstairs bedroom, and she lived out her last days here with me, too. It's just natural to me that you would come to live here when I'm gone." Then, looking to Filbert, she said "And you, Filbert, should have what's left in the bank account. It was built up by your father when he set up his first sawmill, and you should take what's left."

Last Labour Day weekend, Matilda, realizing she could no longer live alone, sold the house. Because packing would be an awful chore for her, she asked that the transfer not take effect until January 12, 2006. "That way, I can enjoy Christmas before I have to start lugging out the boxes", she explained. Then, on November 27, while watching the Grey Cup, Matilda suddenly passed away. Mae is sad for the loss of a much loved aunt, but has taken some comfort in knowing that Matilda was able to live out her last days in her own house. She asks you to contact the purchaser's lawyer and have them complete the sale by directing payment to her in January. Mae also wants your opinion on something she witnessed yesterday. She had gone over to Matilda's house to water the plants, only to discover Filbert in the basement pouring Mae's two bottles of wine into a large bucket that also contained his two bottles. He claims to have suddenly acquired a taste for rosée blush wine, and so decided to make a bucketful for himself by mixing white with red. He plans to save it up for a New Year's Eve party he plans to host. Mae doesn't mind a nice rosée either, and plans to sneak into Matilda's before New Year's and take the bucketful for herself.

Please write a memorandum to Mae addressing ALL property law issues that may arise in the facts that have been set out above.

Please indicate in the memorandum if you need more information on any issue.

If your advice to her depends on what such additional information might reveal, please canvass the various possible outcomes.

END OF EXAMINATION