Faculty of Law
Final Examination – April, 2005

Law 440:C3 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 four (4) 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 Ziff textbook (Principles of Property Law), the Casebook (Property Law: Cases and Materials, 2004 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 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, 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.
Christine MacIsaac was born in 1917 and has just celebrated her 88th birthday. She lives on a farm near Viking, Alberta. The farm includes 360 acres of land and a farmhouse in which she lives. Her physician has advised her that she has advanced cancer. Having refused surgery, Christine expects to live for only another six to twelve months.

Christine’s childhood was unhappy, particularly after age eight when she was orphaned. She was, throughout her working life, a businesswoman, who imported and marketed birdhouses and birdhouse accessories. She retired when she turned 65 in 1982. Her husband, Maurice, had passed away a few years earlier, in 1979, at the age of 63. Since his death, she has continued to live in the farmhouse that she and Maurice built together on the farm from 1938 (the year of their marriage) to 1940. Maurice and Christine had a happy and fruitful life together. They had four children: two girls (Sophie, born in 1939 and Charlotte, born in 1948) and two boys (Henry, born in 1946 and Patrick, born in 1955). Maurice did all the “farm work”, while Christine worked on her birdhouse and birdhouse accessory business. In his later years, Maurice also grew some of Canada’s finest specimens of an apple tree known as “Blenheim” apple trees. Many of these trees still grace the farm. Ownership of the fee simple interest in the farm was (and is) registered under the Land Titles Act in Maurice’s name.

Sadly, Patrick died, unmarried and without children, in a motor vehicle accident in February, 2005. The other three children are still alive. Sophie lives in Edmonton with her husband Stan, and their two grandchildren Darryl and Hannah. (After Sophie’s only child Anne died in a boating accident, Darryl and Hannah came to live with Sophie.) Charlotte, who was married only briefly (from 1976 to 1978) to a Calgary bus driver named Joe West, lives on her own in Calgary in a small basement suite that she rents. Charlotte never had any children. Henry never married. As a young child, he was one of nearly 3,000 Albertans who were forcibly sterilized by the Provincial Government. After a difficult life with limited employment and troubles with alcohol, he moved back to the farm to live with his mother in 1989, and has lived there ever since.

When Maurice died, his will stipulated that the farm (including the farmhouse) would be left “to Christine, for as long as she needs it during her remaining years.” He added that “anything left over should be divided equally among our surviving children.” Now that Christine is facing imminent death, she wants to ensure Henry will always have a home, and so she intends to lease the farm to him for 50 years. She is concerned that Sophie, who has never had very much money, will resent this and try to prevent Henry from keeping the house.

Christine knows that Sophie is sentimentally attached to the farm (which was, after all, her childhood home). Last year, Sophie complained bitterly when Christine asked the Viking Fire Department to burn down the barn on the farm. As Christine explains,
I can’t imagine anyone wanting the barn, because after Maurice died, I just let it fall half to pieces. And why not? I had no use for a barn. Sophie kept going on and on about how the barn needed work, and one day I just got so fed up I phoned the Viking Fire Department and told them they could use it for training purposes. The next morning, they were out there doing just that and by noon the barn was ashes.

Christine is obviously extremely frustrated these days with Sophie. She tells you that in January, Sophie learned that Christine had given Henry $10,000 as a Christmas present. “She’s making a fuss about that, too”, Christine says sadly.

Christine has enjoyed Henry’s company on the farm and has come to share some of his interests. For example, on occasion in summer and early autumn, they carry lawn chairs, sunscreen and a good novel down towards the southwest corner of the farm, near the range road. There they sunbathe in the nude for hours at a time while Henry reads aloud to Christine. If Christine survives to summer, she wants to do this again this year. There is a 2 metre-high fence there, so passers-by cannot usually see them. Problems sometimes arise in early September, however, when Maurice’s Blenheim apple trees are heavy with fruit. At that time of year, horticulturalists regularly drive out to Viking, bringing with them stepladders which allow them to remain on public property while gazing over the fence to photograph the apple trees. When they see Henry and Christine using the apple trees as shade and wearing, as Christine says, “nothing but surprised looks on our faces,” they snap a few quick photographs of Henry, Christine and the apple trees before making a quick retreat. “It’s an invasion of our privacy”, complains Christine. She is also irritated because she has an arrangement with a magazine, *The Arboriculturalist*, which pays her $1000 every September for exclusive photographic rights to those trees.

While Christine finds Sophie’s “fuss-making” about Henry a distraction, she is particularly annoyed at Sophie for having recently lost a family heirloom. Christine’s mother had bequeathed to Christine a late 19th Century French crystal clock which an uncle had purchased in France during the First World War. For the past twenty years, Christine preferred to keep the clock at Sophie’s home. This suited Sophie – she had long admired it, and Christine was worried that it might be stolen from the farmhouse, which she rarely kept locked while away. Sophie, on the other hand, has since 1961 lived in a house which she keeps locked when nobody’s home. The only other people with keys are Stan, Darryl and Hannah. The clock rests in a prominent place in Sophie’s living room where visitors can admire it. Recently, after having had the clock appraised at $14,000, Sophie sent it to Edmonton Clock Works Ltd. (“Edmonton Clock”) for cleaning. The employee at Edmonton Clock mentioned to Sophie that he knew of a commercial clock dealer in Calgary, Tony Crocker, who would be interested in examining it. She agreed, and Edmonton Clock contacted Tony and arranged to ship the
clock to him via Sticky Fingers Courier Service Ltd. (“Sticky Fingers”). The clock never arrived at Tony’s. When Sophie made inquiries, she discovered that the Sticky Fingers employee assigned to deliver the clock to Tony had not reported to work the next day and appears to have left the country. Sticky Fingers offered Sophie $50 as compensation, drawing her attention to a clause in agreement between Edmonton Clock and Sticky Fingers which limited Sticky Fingers’ liability to $50. Christine is furious with “every idiot involved in this fiasco” for not obtaining insurance.

Sophie’s grandchildren are teenagers. Darryl is now 16 years old, in Grade 10 (for the second year in a row) and is talking about dropping out of school to work at a bowling alley. Both Christine and Sophie believe he is an intelligent boy who lacks self-discipline but could excel in school if he chooses. Hannah, who is 18, is a different story. Although she has been a paraplegic since a childhood accident, she has excelled in academics, graduating from high school in 2004 at the top of her class. She then received a full four-year entrance scholarship to the University of Alberta where she excels in all her classes. She wants eventually to do graduate work in medical research in the United States and she aspires to cure cancer.

Christine is particularly fond of Hannah, and believes Hannah “deserves just a little extra” because of the profound disability which she has had to overcome. Since the farmhouse was built 65 years ago, Christine has made a habit of putting aside change over the years in several containers in the basement. She recently counted it and was astonished to discover that it totaled over $8,000. “And that’s just face value”, she added, pointing out that Canadian quarters minted before 1968 are more valuable because they have higher concentrations of silver. She had initially thought about instructing you to draft a deed giving these coins to Hannah immediately. She has however since read an article discussing how people suffering from paraplegia generally have reduced life expectancies. Because Hannah’s studies and costs of living are covered by her entrance scholarship, Christine thinks that perhaps she should leave the coins with you to allow a few years to pass to see if Hannah actually lives to complete her studies, at which point she might actually need the money. “After all”, Christine tells you sadly, “if Hannah doesn’t live long enough to need it, then Darryl might as well have it.” She wants you to draft whatever document is needed to create a gift “to my first great-grandchild to turn 25.” She also tells you that it no longer matters to her whether the gift occurs by deed or if it is instead included as a gift in her will.

In 1978, after Christine’s daughter Charlotte was divorced from her husband Joe, she joined something that Christine describes to you as a “bunch of kooks” called the “Movementarians.” Christine tells you that Charlotte needs help, having left the Movementarians shortly before Christmas 2004. Christine feels much sympathy for Charlotte. She wants to help Charlotte by leaving her a “little something” in her will, and has in mind a portfolio of investments worth approximately $40,000. “Just so long”, Christine adds, “as she doesn’t go back to those kooks or go and join any other kooky religion.”
Christine tells you that Charlotte has just re-established contact with her former husband, Joe. Joe has recently retired from driving buses. Sadly, like Christine, Joe suffers from a terminal illness that will likely claim his life within the next two to three years. Joe remarried, in 1992, to Matilda West. They have no children. Charlotte has also become friends with Matilda. Joe comes from a large family in Calgary, and he has spoken to all his siblings about Charlotte’s precarious financial circumstances to see if anyone could offer her some assistance. One of Joe’s brothers, William, lives in a house in Calgary which is held in fee simple in the name of his company, Willy West Riverboats Ltd., in trust for William absolutely. William has decided to retire to the west coast and let others run his business, so he will no longer need to retain his Calgary house. He has proposed to Joe, Matilda and Charlotte that he give his interest in the house to Joe for life, then to Charlotte, providing Charlotte houses Matilda after Joe’s death. Christine is obviously delighted with any plan that helps Charlotte, but she also tells you that Matilda is thinking of moving back to her home town of Jasper when Joe dies.

Charlotte is excited at the prospect of living in William’s house. William for many years has had used his neighbour’s back yard as a shortcut to access the beautiful walking trails at Fish Creek Provincial Park in Calgary. Charlotte enjoys the park as well. According to William, the neighbour, Jacob Goertzen, agreed about ten years ago to this arrangement. “I just asked him one day if I could use his back yard to get down to the park, and he said that was fine with him.” William has just told Charlotte, however, that a “for sale” sign has appeared in front of Jacob’s house, and Charlotte is concerned that any buyer should be told about the use of the back yard as a shortcut.

Please write a memorandum to Christine 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