FACULTY OF LAW
FINAL EXAMINATION — APRIL 2003

LAW 440:C2 PROPERTY LAW (BELL)

TIME ALLOTTED: Two hours (2) and forty-five minutes (45).

CODE NUMBER: DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS OR BOOKLETS. A list will be circulated and your name is to be entered opposite a number on that sheet. That number will be your code number FOR THIS EXAMINATION ONLY and should be entered on the examination booklets in the space provided for your surname. This will provide for anonymity during marking.

SPECIAL INSTRUCTIONS: 1. This assignment contains 8 questions on 11 pages. Check to ensure that you have all pages before starting.

2. This is an OPEN BOOK examination.

3. The examination will be worth a minimum of 60% and a maximum of 100%. The value of the exam depends on other assignments which you have completed in Property Law during the 2002/2003 academic year.

4. **Please write legibly in ink.** Do not utilize a pencil in your answer booklets. You may double space your answers if this would increase the legibility of your response.

5. Apportion your time intelligently. Suggested time allotments have been given for each question.

6. If you have two or more answer booklets, prior to handing them in, insert them into one booklet and hand them in as a single package. Place your code number on each booklet. Number the booklets consecutively in the order they are written.

7. Adhere to the time limitation **strictly.** Failure to stop writing at the end of the assignment may lead to a deduction of grades or failure to accept the examination paper.

8. The answers to the questions in Parts A and B of the exam are to be written in the examination booklets provided. The value of each question and **suggested** time (in minutes) is noted in the margin beside each question.
9. In Part A give full reasons for your answers. Where appropriate, identify reasonable alternatives and identify uncertainty in the law or on the facts. If it is necessary to make an assumption of fact, identify your assumption and make sure your assumption is reasonable.

10. Part B consists of three essay questions. Answer only ONE of these questions.

11. The questions in Part B of the exam are to be answered in the exam paper itself by circling the letter corresponding to your chosen answer. It is to your benefit to answer all questions, since this portion of the exam will not be marked on a right minus wrong basis.

12. If you consider it necessary to explain your answer in Part C (multiple choice), do so in the examination answer booklet. No marks will be given for any explanation. However, an explanation may result, where appropriate, in the disqualification of a question or more than one answer being accepted as correct. The opportunity to provide an explanation is being afforded to you as an abundance of caution. Such an opportunity is intended to operate as a check and balance against instructor error. It is appropriate to engage in such explanations extremely sparingly, if at all. Remember, a concerted effort has been made by the instructor of this course to ensure there is only one correct answer or one clearly better answer of the various alternatives provided.
PART A: HYPOTHETICAL

Part A consists of two hypothetical questions. Please give your answers in the examination booklet provided.

Value Question 28 Marks Total 1. (45 Minutes)

John Brown is a wealthy resident of Alberta. He owns several properties including a farm located near Calgary (Blackacre) and a residential property in Edmonton. His granddaughter Jennifer married a local rancher Bill Smith on February 14, 2003. John was transferred to a job outside the country and was unable to attend the wedding. Consequently, he executed an inter vivos transfer on January 1, 2003 in the following terms:

“I transfer Blackacre to my son Richard for the use of my granddaughter Jennifer when she is married, but if she should divorce Bill Smith or cease to reside in the province of Alberta, for the use of my grandson William.”

In March 2003 John Brown died of a heart attack. His will contained the following clause:

“My property in Edmonton to my sister Samantha without impeachment for waste, then to her youngest sons, my nephews, William and Steve as joint tenants. Steve’s interest is given to him on condition that he agree to get counselling for his gambling addiction and that he not sell, mortgage, or otherwise dispose of, or take security against, the Edmonton property. If Steve breaks these conditions his interest shall first be given to my daughter Susan for life and then the Edmonton property shall go to my first grandchild to graduate from the Faculty of Law at the University of Alberta.”

At the time of the testator’s death Samantha is 60 years old and the twins, William and Steve, are 20 years old. Susan is 25 and has one daughter who is 5 years old.

10 Marks (a) Comment on the nature and validity of all of the interests created by the inter vivos transfer from John to Richard. Describe fully all of the circumstances under which these
gifts or limitations might be rendered invalid and the effects of invalidity. Discuss all reasonable alternatives.

15 Marks

(b) Comment on the nature and validity of all of the interests created by the clause in John’s will. Describe all of the circumstances under which these gifts or limitations might be rendered invalid and the effects of invalidity. Discuss all reasonable alternatives.

3 Marks

(c) Samantha is having financial problems. Will she be liable if she fails to repair damage to the roof caused over time by exposure to weather or if she permanently converts part of the house into a tailor shop with a separate entrance?

Bart owns a two storey historic brick house in Old Strathcona. On the main there is 800 square feet of retail space and on the top floor there is a residential suite. The residential suite can be accessed by a main staircase located in the foyer of the first floor and an outdoor wooden staircase that leads to a balcony and sliding door off the kitchen of the apartment. In January 2000 Bart rented the upstairs suite to his friend Jackie. The agreement between Bart and Jackie provides that she will pay $600 rent each month.

In February 2000 Bart also rented the space on the main floor to Richard. He entered a five year lease with Richard that complied with all legal formalities and was registered against Bart’s fee simple title. The lease indicated that it was “for the purpose of running a cooperative art gallery.” It also indicated that “the lessee shall not sub-let without the Landlord’s written consent, such consent not to be unreasonably withheld.” They also agreed verbally that Richard could erect a sign post on the front lawn and that the post, and any sign hanging from it, would remain Richard’s property. The post was the shape of an inverted letter L and was attached by metal bolts to a cement pad poured into the ground. It was designed so that signs could hang from two chains attached to the post and be changed easily. Richard’s plan was to have a different design on the sign hanging from the post each season of the year. However, on all of his designs the words “Artist’s Cooperative Gallery” appeared in large bold letters.
In October 2002 Bart sold the building to Cathy. Cathy agreed to take title subject to Richard’s lease and to continue to let Jackie live on the second floor. In December 2002 Richard decided he wanted to move. Consequently, he asked Cathy if he could sublet the main floor to Roberta for her antique clock shop. Cathy decided to refuse Richard’s request because she discovered that Robert’s business was in financial trouble and Roberta was being sued. Further, Cathy was concerned that noise from all the clocks in the clock shop would disturb Jackie as the house was old and not insulated that well for sound.

Apparently, Mary Mcleod brought a clock to Roberta to sell for the best price she could get, but not for less than ten thousand dollars. If Roberta sold the clock it was agreed she would get 30%. If not, the clock was to be returned at the end six months. Mary signed a contract with Roberta indicating that “Roberta’s Antiques is not responsible for any loss or damage, however caused, respecting any article left for sale on consignment.” After being kept in Roberta’s shop for two weeks the clock stopped working. Roberta telephoned Mary to see if she could take the clock to a friend to have it repaired. Mary was away on vacation. As Roberta did not want to keep a broken clock in the shop, she made arrangements to have it picked up by Michael’s repair shop. The clock was safely loaded into Michael’s van. On the way to the repair shop Michael stopped for coffee at a friend’s house and locked up the van before going inside. When he returned he was distressed to discover that the windows were smashed and the clock had been stolen. When Mary discovered what happened she was very angry. Mary was very well connected in the antique sales community and as result of this Roberta’s business dropped drastically.

In January 2003 Cathy went to Costa Rica for two months. In March 2003 she went by the house because Richard had not paid rent for the month of February. When she got there she was surprised to see that Roberta’s clock shop was now on the main floor instead of the Artist’s Cooperative Gallery. Apparently Richard had transferred the remaining term he had in the lease to Roberta despite Cathy’s earlier refusal to give consent. Cathy was further surprised to find that the sign post had been removed, and only the cement pad and the bolts embedded in it remained. As the clock shop was closed she went upstairs to see Jackie and find out what happened. Jackie explained that Richard moved the gallery. She complained to Cathy about the increased noise from all of the clocks running day and night. The loud
gongs and ticking made it impossible to sleep at night. She also complained that the stairway in the foyer was often blocked with “junk” and she had to enter the apartment using the wooden staircase at the back of the house which was slippery and dangerous in the winter.

Cathy seeks a legal opinion on the following questions. **Be complete in your answer and give full reasons to support your views.** Consider all reasonable alternatives and where appropriate identify any uncertainties on the facts or in law.

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<tr>
<th>Marks</th>
<th>Question</th>
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<tr>
<td>8</td>
<td>(a) Did Cathy have the right in law to refuse Roberta as a tenant? Why or why not? Is Richard in breach of the terms of the lease?</td>
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<td>2</td>
<td>(b) Who is liable for the arrears of rent for February? If Roberta convinces her that she will be able to improve business and Cathy accepts her as a tenant, who is liable for rent for the remainder of the lease?</td>
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<td>6</td>
<td>(c) Who owns the sign? Cathy or Richard?</td>
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<td>3</td>
<td>(d) Does Jackie have an easement to use the stairway in the foyer?</td>
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<td>3</td>
<td>(e) If Roberta convinces Cathy that her business will improve is there any basis upon which Cathy may be liable to Jackie who clearly is not happy with the change in use of the main floor.</td>
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<td>10</td>
<td>(f) As a matter of curiosity, Cathy also wants to know what claims Mary can bring against Roberta and Michael. As a matter of strategy who would you advise Mary to sue and why.</td>
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PARTS B AND C REMOVED