



Federation of Law Societies of Canada

National Committee on Accreditation

SAMPLE

Examination for Property

Candidate No.: _____

(To ensure your anonymity, please do not print or sign your name)

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SAMPLE

Examination for Property

General conditions of ALL NCA exams:

This is a **three (3) hour, open book** exam.

Answers should be **double-spaced** and written in **blue or black ink** (no pencils).

All answers **must** be completed on the pads provided unless space is expressly provided within the examination booklet.

The examination will be graded on a pass/fail basis (50% is a pass).

WRITE LEGIBLY. Writing considered illegible by the examiner may result in your exam not being fully graded **or your exam being disqualified.**

You must **return the exam questions in the envelope provided** along with your answers. Failure to return the questions will result in the **automatic disqualification** of your exam.

The contents of the examination, including the exam questions, **must not be disclosed** or discussed with others.

Each exam may have its own special instructions; therefore it is important for you to read these carefully before starting.

Instructions specific to this exam:

Unless otherwise noted, assume throughout:

- a) that the law of the jurisdiction applies common law rules in relation to future interests and perpetuities;
- b) that a devise or transfer of land without words of limitation or reservations confers upon the recipient the entire interest held the testator or grantor, unless a contrary intention appears in the document;
- c) that in transfers of land to two or more persons, that the transferees hold as tenants in common, unless a contrary intention appears in the instrument; and
- d) that the law of adverse possession can apply, and that the requisite period is 10 years.

These sample exams are simply indications of the style/types of questions which may be asked in each exam; they do not reflect the content or actual format/structure of questions nor of their value. Actual exams vary from subject to subject and from exam session to exam session.



QUESTION 1 (30 marks)

In early 2014, John Watson, a widower, died. His will, which he prepared using a "wills kit" that he purchased online, reads, in part, as follows:

"Clause 3: I direct my trustee, Nat-Can Trust Ltd., to hold my farm near Edington on trust for all of my children who turn 30 years of age. ... **(7 of 30 marks)**

Clause 7: My house on Walker St. shall be devised first to my sister. She is to keep house in repair and pay the property taxes. Second, once she dies, the said house shall be devised to my nephews, David as to one-third, and Richard as to two-thirds, as joint tenants, on condition that any owner of the land must ensure that the stone wall on the perimeter of the property is properly maintained and the house is painted every five years. If not, the land shall revert to my estate. **(18 of 30 marks)**

Clause 8: I give my lot on Acorn Street to Jean when she turns 21; should she fail to reach that age, then the gift shall go over to my niece Sasha. ..." **(5 of 30 marks)**

In addition to the above, you are told the following: the testator died owning all of the property mentioned above. All of the people mentioned in the will by name above are alive. At his death, the testator had two children, Jean, who is 2 years old, and Robert, who is 15.

Fully describe all of the rights in relation to all of the property mentioned above. Indicate which terms violate the rule against perpetuities and which do not. Indicate if any of the clauses might potentially be challenged as invalid for any other reason, and indicate whether or not you believe such challenges would be successful. Provide full reasons to support your views. Identify uncertainty on the facts and in the law. Consider all reasonable alternative outcomes and arguments even if you are sure that the matter can be resolved by one line of reasoning.

QUESTION 2 (25 marks)

A owns "All that portion of [Whiteacre] not covered by the waters of Shallow Lake, excepting thereout all mines and minerals ...".

Over a twenty year period, Shallow Lake receded gradually until the former bed was exposed over all of Whiteacre, and some of neighbouring Blueacre. **Each spring**, A would place a stake to mark the current location of the water's edge. In **2004**, A placed a pre-fabricated hut adjacent to the shoreline as it then was, which he used mainly to store canoes and ice-fishing equipment. It now also has a cot, a hot plate, and a chemical toilet for overnight stays. (Prior to adding the cot, A had placed a tent near that spot from time to time.)



Until **mid-August, 2013**, A had been renting out the hut to a tenant, B, who was living in it on weekends. On **September 1**, A discovered that, while B had moved out of the hut, B was camping in the area that A had set up as a camping site, and which A used frequently. B refused to leave at A's request. A has threatened to sue B.

When A returned several weeks later, B was gone, leaving debris and waste on the campsite. Of greater significance, the hut had been moved, and was now disconnected from the electricity. The hut is currently sitting on 8 logs, and is now unstable and totters when entered and walked on. As A mulled over the situation, he was approached by C, the registered owner of Blueacre. C claimed that A was trespassing on his [C's] land. C acknowledged that he had moved the hut.

Two weeks ago, a survey was conducted in which it was found that the hut in its initial location was in fact on Blueacre, and that it is currently still on Blueacre. The campsite is also on Blueacre. At present, A's only access to the lake is over Blueacre, but this access has been blocked by C. Last night, C emailed A: "You have no surface rights over my land. Try getting a court to grant you an easement if you have an issue with that".

It is May, 2014. Advise A, B, and C of all of their rights, including the physical extent of those rights, as well as all other entitlements and potential remedies. As part of your answer, advise A if he can successfully sue B. Also, advise A if he should take C's advice?

Provide full reasons to support your views. Identify uncertainty on the facts and in the law. Consider all reasonable alternative outcomes and arguments even if you are sure that the matter can be resolved by one line of reasoning. **Do NOT discuss the law of prescriptive easements.**

QUESTION 3 (15 marks)

Ramsey held title to Blackacre ***including all mines and minerals, except coal***. In 2007, Ramsey agreed to sell Blackacre to Fielding. No mention was made of minerals in the transfer. In late 2013, Fielding *purported* to grant to Musky Gravel Co., "exclusive possession of [a designated portion of Blackacre]" for a period of 25 years, as well as the right to drill for and excavate "gravel, peat, sand, and granite on or under" a different but adjacent part of Blackacre. In addition, in a separate clause Musky was granted, and agreed to pay for, a right of access over the surface.

Fully describe all aspects of the state of the title to Blackacre, and the nature and extent of all of the other property interests, including the physical extent of the rights held by Musky. Using the labels and categories for property discussed in the materials, categorize and describe **as thoroughly as possible** all of the rights held, granted, or purportedly granted.



QUESTION 4 (15 marks)

What is a joint family venture? How does one determine if a joint family venture exists? And what is the relevance, if any, in resolving property disputes of a finding that a joint family venture exists?

QUESTION 5 (15 marks)

A owned Greenacre in fee simple. He leased the parcel to B for a period of 10 years. Two years later, A sold Greenacre to C. C was not aware of the lease to B.

At common law, that is, absent a statutory registration system of any kind, would C be bound by the lease in favour B?

Under a Land Titles (or Torrens title) system, would C be bound by the lease in favour of B? In answering this part of the question, you may, if you wish, refer to a specific Canadian land titles statute to support your answer. Alternatively, you may answer based on general land titles registration principles.

In answering all parts of question 5, identify uncertainty on the facts and in the law.



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