

PROPERTY 1108 FINAL EXAM

PROFESSOR DE BEER

WEDNESDAY, 10 DECEMBER 2008, 9:00– 11:00 (**2 HOURS**)

I RECOMMEND THAT YOU BEGIN BY SPENDING **20 MINUTES READING** THE EXAM, TO CHOOSE WHICH QUESTIONS TO ATTEMPT AND PLAN YOUR ANSWERS. THIS READING PERIOD IS **OPTIONAL, NOT MANDATORY**.

IN **PART I**, YOU MUST **ANSWER 2 OF 3 MULTIPLE CHOICE QUESTIONS**. THESE ANSWERS ARE **EACH WORTH 10%** OF YOUR EXAM GRADE (ANSWER = 5%, REASON = 5%). I RECOMMEND THAT YOU SPEND ABOUT **20 MINUTES** TOTAL ON THIS PART OF THE EXAM.

IN **PART II** YOU MUST **ANSWER 1 OF 2 ANALYTICAL PROBLEMS**. THIS ANSWER IS **WORTH 40%** OF YOUR EXAM GRADE. I RECOMMEND THAT YOU SPEND ABOUT **40 MINUTES** ON THIS PART OF THE EXAM.

IN **PART III** YOU MUST **ANSWER 1 OF 2 ESSAY QUESTIONS**. THIS ANSWER IS **WORTH 40%** OF YOUR EXAM GRADE. I RECOMMEND THAT YOU SPEND ABOUT **40 MINUTES** ON THIS PART OF THE EXAM.

YOU MUST WRITE **LEGIBLY** AND **DOUBLE-SPACE** ANSWERS IN **INK**.

YOU MAY USE NON-ELECTRONIC REFERENCE MATERIALS

(*E.G.* BOOKS OR NOTES, BUT NOT LAPTOPS, MOBILE PHONES OR SIMILAR DEVICES).

THIS EXAM IS WORTH **50%** OF YOUR FINAL GRADE.

I. ANSWER 2 OF 3 QUESTIONS IN THIS PART. YOUR 2 ANSWERS IN THIS PART ARE EACH WORTH 10% OF YOUR GRADE. BRIEFLY (IN A FEW SENTENCES) EXPLAIN WHY YOUR CHOSEN ANSWER IS BETTER THAN THE OTHER POSSIBLE CHOICES (ANSWER = 5%, EXPLANATION = 5%). I RECOMMEND THAT YOU SPEND ABOUT 10 MINUTES PER QUESTION (20 MINUTES TOTAL) ON THIS PART.

1. Toblerone is described by its maker, Kraft Foods Switzerland, as “the legendary triangular Swiss chocolate with honey and almond nougat.” The recipe dates back to the late 19th century. Toblerone’s recipe, form and packaging have remained relatively unchanged since 1908. Which of the following statements about intellectual property protection for Toblerone products is most likely to be accurate?
 - a. Copyright law protects the original artwork and designs on the outside of the packaging only if Kraft has applied for a Canadian copyright.
 - b. Trade-mark law prevents Kraft’s competitors from confusingly advertising the use of honey and almond nougat in Swiss chocolate bars.
 - c. Copyright law prevents other companies from selling food in triangular-shaped boxes.
 - d. Patent law prohibits purchasers of Toblerone bars from using them as ingredients in other products, such as chocolate cakes.
 - e. Copyright law provides Kraft with better protection than patent law against the unauthorized copying of the process for manufacturing Toblerone bars.

The correct answer is B.

2. On the webpage for our property course, I linked to a media report about a dispute over a Tim Horton’s coffee cup found in a trashcan outside of an elementary school north of Montreal. A 10-year-old girl who took the cup out of the trash couldn’t “roll up the rim,” so she asked a 12-year-old friend for help. When the 12-year-old rolled up the rim, the cup turned out to be the winner of a Toyota RAV4 SUV worth \$28,700. Had the events occurred in Ontario, which of the following claimants would have had the best claim to the prize?
 - a. The school janitor who put the cup in the garbage.
 - b. The 12-year-old friend who rolled up the rim.
 - c. The provincial government, which owns the land on which the school is located.
 - d. The 10-year-old girl who took the cup out of the trash.
 - e. The school board that leases the school grounds on which the trashcan is located.

The correct answer is D.

3. Which of following statements about the concepts and materials studied in our property law course is most accurate?
- a. Symbolic delivery will not suffice to transfer ownership of property with a *donatio mortis causa*; actual delivery is required.
 - b. The presumption that a child's purchase of property registered in the name of her parent results in advancement can be rebutted by evidence of an intention to the contrary.
 - c. A link between one partner's value received from the other partner's non-financial contributions to the maintenance of a family household and the value of the family's property assets is necessary to successfully establish a claim for unjust enrichment.
 - d. An unjust enrichment or a breach of a fiduciary duty might result in judicial recognition of an equitable interest in property.
 - e. Among cohabitants in a common residence, an *inter vivos* gift that takes effect upon the death of the donor is valid if there has been actual delivery of the property.

The correct answer is D.

II. ANSWER 1 OF 2 OF THE FOLLOWING ANALYTICAL PROBLEMS. THIS ANSWER IS WORTH 40% OF YOUR EXAM GRADE. I RECOMMEND THAT YOU SPEND ABOUT 40 MINUTES ON THIS PART OF THE EXAM.

1. Brewster's Millions is a novel written by George Barr McCutcheon in 1902. It was adapted into a play in 1906, and has been the basis for 9 movies, of which the most famous is probably the 1985 version starring Richard Pryor and John Candy. Wikipedia describes the plot:

"The novel's story revolves around Montgomery Brewster, a young man who inherits a million dollars from his rich grandfather. Shortly after, a rich and eccentric uncle who hated his grandfather also passes away. The uncle's will leaves Brewster with seven million dollars, but only under the condition that he keeps none of the grandfather's money. To inherit the seven million dollars, Brewster is required to spend every penny of his grandfather's million within one year, and end up with no assets or goods gained by his grandfather's wealth at that time. Should he make the deadline, he will earn the full seven million; should he fail, he remains penniless."

Based on the specific information in the following passage from pages 27-28 of McCutcheon's book, and on the concepts and materials studied in our property law course, how would you characterize the qualifications that Brewster's uncle put on the bequest? Are the qualifications valid?

"... In brief, the last will of James T. Sedgwick bequeathed everything, real and personal, of which he died possessed, to his only nephew, Montgomery Brewster. Supplementing this all-important clause there was a set of conditions governing the final disposition of the estate. The

most extraordinary of these conditions was the one which required the heir to be absolutely penniless upon the twenty-sixth anniversary of his birth, September 23d.

The instrument went into detail in respect to this supreme condition. It set forth that Montgomery Brewster was to have no other worldly possession than the clothes which covered him on the September day named. He was to begin that day without a penny to his name, without a single article of jewelry, furniture or finance that he could call his own or could thereafter reclaim. At nine o'clock, New York time, on the morning of September 23d, the executor, under the provisions of the will, was to make over and transfer to Montgomery Brewster all of the moneys, lands, bonds and interests mentioned in the inventory which accompanied the will. In the event that Montgomery Brewster had not, in every particular, complied with the requirements of the will, to the full satisfaction of the said executor, the estate was to be distributed among certain institutions of charity designated in the instrument. ...

There was also a clause in which he undertook to dictate the conduct of Montgomery Brewster during the year leading up to his twenty-sixth anniversary. He required that the young man should give satisfactory evidence to the executor that he was capable of managing his affairs shrewdly and wisely—that he possessed the ability to add to the fortune through his own enterprise; that he should come to his twenty-sixth anniversary with a fair name and a record free from anything worse than mild forms of dissipation; that his habits be temperate; that he possess nothing at the end of the year which might be regarded as a “visible or invisible asset”; that he make no endowments; that he give sparingly to charity; that he neither loan nor give away money, for fear that it might be restored to him later; that he live on the principle which inspires a man to “get his money’s worth,” be the expenditure great or small. As these conditions were prescribed for but a single year in the life of the heir, it was evident that Mr. Sedgwick did not intend to import any restrictions after the property had gone into his hands. ...”

2. The Ottawa Citizen ran the following story in October of this year. Based on the information in the report, and on the concepts and materials studied in our property law course, assess the legal implications of the Algonquins’ claims.

Algonquins seek full hearing as NCC plans Ottawa bridge

Patrick Dare, The Ottawa Citizen

Wednesday, October 22, 2008

The National Capital Commission has been planning to build a bridge across the Ottawa River without having any meaningful discussions with the Algonquins, who claim much of the land involved as their own, says an Algonquin chief.

“They need to bring us to the table,” said Gilbert Whiteduck, chief of the Kitigan Zibi Anishnabeg First Nation at Maniwaki. “We refuse to be excluded.”

Chief Whiteduck says the NCC has spent four years and nearly \$5 million on a study of new bridge possibilities on land along the Ottawa River that is claimed by the Algonquin people, including Kettle Island, the route being proposed strongly by the NCC’s consultants.

Chris Printup, a band member and researcher, said the Algonquin claim to land has long been recognized.

Mr. Printup said the federal government once collected rents for the islands on behalf of the Algonquin. He said the NCC sent information packages on the proposed bridge, but that wasn't enough to live up to the government's constitutional obligation to consult with native people in such circumstances.

"The consultation has to be meaningful," said Mr. Printup. "The NCC hasn't seen fit even to talk to us."

Chief Whiteduck said the Kitigan Zibi Anishnabeg people are not necessarily opposed to a bridge, but that certain lands, such as the islands in the Ottawa River, have historical significance and may be archeological sites. He said the Algonquin are also concerned about the environmental impact of the project.

The Algonquin plan to meet with members of Parliament from the region, then with the NCC. Chief Whiteduck said the Algonquin could seek an injunction in Federal Court to halt the project due to the land claim.

Mario Tremblay, a spokesman with the NCC, said the commission has gathered some comments from the Algonquin people on the bridge project and that the commission is pleased to meet with Chief Whiteduck next week. The NCC will be represented at that meeting by the agency's planning vice-president, François Lapointe.

But that might not be good enough.

The position of the Algonquin on the Kettle Island bridge could be significant if recent history is anything to go on.

In November 2007, the Canada Lands Corporation put a massive development of the mothballed Rockliffe airbase on hold because an Algonquin land claim blocked the sale of the property indefinitely.

The 135-hectare former airbase is part of an outstanding claim for most of Eastern Ontario by Ontario's Algonquins.

There are hundreds of claims filed by native communities across the country and they are a source of discontent. Every recent native blockade from Oka to Gustafson Lake, B.C., and in Ontario at Ipperwash and Caledonia, is the result of an unresolved land claim.

Robert Potts, the aboriginal claims negotiator leading the Algonquin bargaining team on the Rockliffe site, said at the time that the group wanted a stake in the development of the base.

Canada Lands was planning an environmentally sustainable community for 10,000 to 15,000 people.

The project called for a mix of 4,500 to 6,000 houses and apartments, as well as offices, research institutions, shops and parks. It featured alternative energy sources and "green" design and construction. Construction was supposed to start in late 2008, with the first residents moving in by 2009.

Since its announcement in September, the Kettle Island proposal has been extremely controversial, with politicians, especially on the Ottawa side of the river, split on the issue. Community associations in the area most affected by a new bridge have also banded together to mount a challenge to the proposal, which still needs to be examined further in a second, more detailed study planned to begin on the new year.

III. ANSWER 1 OF 2 OF THE FOLLOWING ESSAY QUESTIONS. THIS ANSWER IS WORTH 40% OF YOUR EXAM GRADE. I RECOMMEND THAT YOU SPEND ABOUT 40 MINUTES ON THIS PART OF THE EXAM.

3. The following article was recently published online at <http://www.theregister.co.uk/>. **In your opinion, based specifically on the concepts and materials studied in our property law course, how, if at all, should virtual property rights be clarified to address problems cited in this article?**

Cybercrooks making easy money from virtual worlds: EU agency launches campaign

By John Leyden

20th November 2008

Online gamers have become a soft target for cybercrime, with three in 10 users reporting the loss of items of virtual property through fraud.

ENISA, the European Network and Information Security Agency, launched a campaign to clamp down on scams in virtual worlds, which it warns are having a measurable effect on the real economy. Over the last 12 months or so more than 30,000 malicious programs targeting accounts and property in online games and virtual worlds have been detected, a jump of 14 per cent year-on-year, according to net security firm Kaspersky Labs.

Such strains of malware are particularly prevalent in the far east and typically aim at allowing hackers to take over compromised accounts. Access to subscription-only gaming or virtual property deposited in these accounts is then sold through the digital underground.

“While annual real-money sales of virtual goods is estimated at nearly €2bn (\$2.51bn) worldwide, users can do very little if their virtual property is stolen. They are a very soft target for cybercriminals,” said Giles Hogben, editor of the report, which was put together by a group of academics and industry experts. “There are one billion registered players of online games worldwide and the malware targeting them affects everyone with a computer connected to the internet.”

ENISA is also concerned that the avatars they use in virtual world’s, much like their social networking profile, could give away personal data. It suggests people are giving away personal data such as location and names via IRC chat channels built into games. But what the use of a furry as an avatar says about someone is probably more of a concern to psychologists than those, like ENISA, concerned about data security and fraud.

The European security agency also has concerns about the use of bots in virtual worlds to spread spam or to mount denial of service attacks. “Multiplayer online games are especially vulnerable to denial of service attacks because of their centralized architecture and poorly authenticated clients,” ENISA’s report warns.

The agency has drawn up a 12-point action list designed to combat the scourge of gaming Trojans and other security threats in virtual worlds. Key recommendations include:

- An industry-wide forum for service providers to share best-practice on security vulnerabilities
- Clarification of virtual property rights for more adequate theft protection
- An education campaign aimed at users (eg on child safety and privacy risks).

4. In *The Corporation of Kingston-up-Hull v. Horner*, [1774] Lofft. 592, 98 E.R. 807 at 815 (K.B.), Lord Mansfield C.J. said, “Possession is very strong; rather more than nine points of the law.” People still often say that possession is nine tenths of the law. **In your opinion, based specifically on the concepts and materials studied in our property law course, is that adage accurate?**

THE END.