

---

**PROPERTY 1208B & 1208C FINAL EXAM**

**PROFESSOR J.F. DEBEER**

**26 APRIL 2006, 9:30 – 11:30 (2 HOURS)**

---

THIS EXAM IS WORTH *EITHER* **100%** OR **66%** OF YOUR GRADE

---

YOU MAY USE NON-ELECTRONIC REFERENCE MATERIALS

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

---

**THERE ARE 4 QUESTIONS TO CHOOSE FROM.**

**ANSWER ONLY 3 (THREE) QUESTIONS.**

**ALL 3 ANSWERS ARE WEIGHTED EQUALLY.**

---

WRITE **LEGIBLY** IN **INK** AND **DOUBLE-SPACE** YOUR ANSWERS.

---

**STUDENT NUMBER:** \_\_\_\_\_

---

Once your time begins, you might want to first read the entire exam, choose which questions you will attempt and thoughtfully plan your answers. The suggested time allocation (30 minutes for each your three answers) takes account of a 30-minute “digestion” period. Feel free to write a brief outline in your exam booklet—I’d consider it for marks only if it helps your grade.

---

**30 minutes**

**1. Advise Gail based on the facts described below.**

Last week Ahmad decided to rent a car to drive to Brampton. He went to Rent-a-Lemon, a rather haphazard operation that rents lousy cars. Gail, the manager at Rent-a-Lemon, handed Ahmad a standard-form contract to sign. A clever law student, Ahmad actually read the contract, which provided, among other things, that he would be “*absolutely liable for any theft of the car.*” For an additional \$10 per day, he could purchase theft insurance.

Ahmad was not happy with the “liability for theft” clause, as he believed that cars are frequently stolen in Brampton. He didn’t really want to pay for the additional insurance. He told Gail that he would not rent the car unless the “liability for theft” clause was substituted with the following: “*Regardless of any negligence on the part of the lessee, the lessee is hereby rendered free from any liability whatsoever for any theft of the vehicle.*”

Gail was on the verge of financial ruin and desperate for business. The car was in poor shape and she could not imagine that anyone would steal it. She agreed to Ahmad’s request. Ahmad struck out the standard-form clause and wrote in the clause above. Both parties initialed the changes. Ahmad paid his money and drove to Brampton.

In Brampton, Ahmad stayed with a friend. He had no use for the car there, so he left it with his sister, Sue, who lives in Brampton. She asked Ahmad to leave the keys in the glove compartment in case she needed to move the car, which was parked in her driveway. Of course the car was stolen, and it has never been recovered.

Gail has come to you for advice. She is devastated by the loss of this car, which was not insured for theft. If she cannot recover any money for the car, Gail is afraid she will have to close Rent-a-Lemon. Gail leases the premises where she conducts her business. Gail’s landlord, hearing of Gail’s business troubles, has warned Gail that if she breaches the lease, he will sue her for the entire amount due under the remainder of the lease—another 10 months at \$2000 per month.

*Students generally answered this question well. The key was to analyze the important issues in sufficient depth—there were many subtleties that could have been explored. The first issue(s) revolved around the law of bailment. Despite the label, Ahmed’s “lease” was clearly a mutually beneficial bailment. Some students wasted considerable time on a tangent here. The exculpatory clause was, likewise, quite clear. Students ought not have delved deeply into the law of contracts at this point (although contractual issues were relevant elsewhere). The real issues arose through the possible sub-bailment to Sue. Most students mentioned sub-bailment, but only some provided the analysis it deserved. Was there actually a sub-bailment, and if so, on what terms? Students should have discussed the parallels between these facts and cases studied during the term, including Letourneau and others. The best students discussed the effect on Sue of the exculpatory clause in the agreement between Gail and Ahmed in light of the rules of contract, tort and property. There were important factual/analytical distinctions between this case and Punch v. Savoy. Students who picked up on these nuances were rewarded. The issues involving Gail’s landlord was easy to spot, although some students overlooked it perhaps because they were rushing at the end of the question. Students should have explained to Gail the landlord’s options and obligations (or lack thereof). Some students wisely suggested possible courses of action for her, such as assigning or sub-leasing the premises if possible.*

---

**2. Provide an analysis of the following circumstances.**

*30 minutes*

In 1910 Sir Adolph Tucker was made a baronet. (A “baronet” is a hereditary title awarded by the British Crown, ranked between a baron and a knight.) He was rightly proud of this dignity. It was hereditary and on his death would pass to his successors in the male line of descent.

Being a Jew himself, he was anxious to ensure that his successors to the title should all be of Jewish blood and the Jewish faith. To do this he wanted his son to marry a wife who was Jewish, and his grandson likewise to marry a Jewish wife, and so on. So

in 1912 he made a settlement by which he sought to ensure that each baronet in succession should marry “*an approved wife.*” He put money in trust for “*the Baronet for the time being if and when and so long as he shall be of the Jewish faith and be married to an approved wife.*” In the settlement, this was the definition of “*an approved wife*”:

*“An approved wife” means a wife of Jewish blood by one or both of her parents and who has been brought up in and has never departed from and at the date of her marriage continues to worship according to the Jewish faith.*

Sir Adolph himself died in 1926, leaving two sons and three daughters. His eldest son, Sir William Tuck, succeeded him. Sir William married an approved wife and had a son and daughter. He died in 1954, and was succeeded by his son, Sir Bruce Tuck. Sir Bruce married first an approved wife and had two sons. But in 1964 there was a divorce. In 1968 he married a lady who was, allegedly, not an approved wife.

Now a question has arisen whether the settlement is valid or not. If it is valid, the fund will go to Sir Bruce Tuck and his two sons. If it is invalid, the fund will go to different heirs under Sir Adolph’s estate.

In your opinion, how would this dispute be resolved, and why? As a practical matter, how, if at all, might you have provided better quality legal service than the drafter of Sir Adolph’s settlement?

*This question was based on a real case, In re Tuck’s Settlement Trusts, [1978] Ch. 49 (CA), although the answer I expected from you was rather different what was covered in Lord Denning’s judgment. Like diving, the question was evaluated based on its degree of difficulty. Almost nobody satisfactorily analyzed all of the issues, yet some students still received “A” grades with their attempts. There was much flexibility in terms of how the answer could have been organized, but I was looking for discussion of a few key points. For one, students needed to characterize the grant and its limitations, as this had an impact upon other issues. The language was problematic in this respect (“if and when” and “so long as”), so references to other rules of construction and comparisons to particular cases were appropriate. It did not really matter what conclusion was reached on this point, as long as students understood and explained the impact of their characterization on subsequent issues. Some students adopted an*

*“if/then” approach throughout the question, but few were able to keep things straight in their heads or on paper. I was looking for explicit discussion of possible reasons for invalidating the limitations, including an analysis of uncertainty and public policy. Some students merely flagged these issues. Only those who provided a full analysis did well. Concerns over impossibility and restraints on alienation could but need not have been also addressed. Some students discussed the rule against perpetuities, although very few people knew what they were talking about. That was okay; I can sympathize. As for how you could have provided better legal services, I was looking for much more than remarks like, “I would have made the conditions more clear” or “I would have avoided the RAP.” I had hoped you would recall the practical exercise we did during class on exactly this point. Together we generated several specific options, which only a handful of students were able to recall.*

---

**3. Professor Tom Flanagan, political mentor and campaign director for Prime Minister Stephen Harper, wrote about the Supreme Court of Canada’s decision in *Delgamuukw*: “It is a lawyer’s dream but an entrepreneur’s nightmare.” In your opinion, how has the Supreme Court appropriately or inappropriately incorporated property-related values, including those underlying Professor Flanagan’s comment, into Canadian law pertaining to property and aboriginal peoples?**

*30 minutes*

*Results for this question we mixed. I found students did either very well or rather poorly. Students who did poorly seemed to discuss issues that were really tangential to the question, such as the evolution of aboriginal title in Canada, the test for establishing it, or comparisons to other jurisdictions. These considerations were perhaps relevant, but only insofar as they were related specifically to property-related values. The question required students to first articulate what are the values underlying Professor Flanagan’s comment. Then students were expected to relate those values to*

*the features of sui generis aboriginal title as defined by the SCC. That, of course, requires at least describing, or far better, critiquing, the SCC's definition of sui generis aboriginal title. Many students highlighted property-related values other than efficiency, and explained how those factored into the Delgamuukw decision. The best grades were awarded to students who argued convincingly for or against (it didn't at all matter which) the SCC's approach while recognizing and refuting arguments to the contrary.*

---

**4. In the 1971 decision of *State v. Shack*, Chief Justice Weintraub of the New Jersey Supreme Court wrote: “Property rights serve human values. They are recognized to that end, and are limited by it.” Explain specifically how and why, in your opinion, at least two cases studied this term (or, if you prefer, last term) best support or refute this proposition.**

*30 minutes*

*This question seemed to be rushed by most students who attempted it. Some students simply rattled off two or three cases, with a bland description of each, and did poorly as a result. Transcriptions of case briefs from your notes (or worse, someone else's notes) have no place in an exam. By contrast, some students did extremely well on this question by insightfully selecting and commenting on cases, some of which I did not expect to see mentioned. Commonly discussed were cases dealing with access to state/private property, cases about unjust enrichment or constructive trusts, or cases regarding information or intellectual property. Students who did well were able to explain in detail specifically how and why human values played a role in the case(s) they chose. Of course, this involved explaining exactly which human values—freedom,*

*equality, privacy, efficiency, etc.—were important, and how those values tended to support the recognition and/or limitation of a property right.*

---

## **THE END.**

*Overall, I was very pleased with students' performance on this exam. It was not easy, and I was demanding when grading. I think that the exam was fair to students who worked hard throughout the course, and I believe those students performed well. The overall GPA for sections B & C combined was 6.36. That is at the very top of the Faculty's guideline brackets (5.6 to 6.4). The median was 6.67 (half of the students were above this grade, and half were below). Section B students, in the aggregate, performed better than section C students (an average GPA of 6.46 compared to 6.36). Interestingly, section B was taught earlier in the morning, contained fewer students, with a higher average age and a substantially greater proportion of females in the class. Draw your own conclusions. The combined grade distribution is represented in the graph below.*

