

UNIVERSITY OF WINDSOR
FACULTY OF LAW

PROPERTY LAW MID-YEAR (FALL) EXAMINATION

(PROFESSOR PAUL D. OCHEJE)

FRIDAY, DECEMBER 17, 2004 AT 9.00 A.M.

DURATION: 3 HOURS (180 MINUTES)

INSTRUCTIONS:

1. This is an **open-book** examination. You may bring into the examination room your class notes, supplementary materials, texts or copies of articles, all of which may be annotated with your marginal notes. Out of considerations of fairness to your colleagues, however, **you may not bring** into the examination computers or materials obtained from any library, except photocopies as aforesaid.
2. Be sure to write your answers in the examination answer booklets provided, and to include the following information on each booklet: candidate's examination number, name of professor, and the number of the booklet (e.g., 2 of 3).
3. This examination consists of four questions, in two parts: **ANSWER TWO (2) QUESTIONS ONLY – ONE FROM EACH PART**. Please follow the instructions for each question meticulously.
4. All questions carry equal marks. Be sure to allocate your time judiciously.
5. Unless otherwise indicated, assume that the **law of Ontario** applies. All hypothetical facts have been carefully compiled to provide complete scenarios for the questions that follow. However, if you need to assume additional facts, please do so expressly.
6. Write **legibly in ink** and in **full sentences**. "Point-form" answers are not permitted in this examination.
7. **All question papers must be returned with the completed examination.**

PART 1

QUESTION ONE

“Recognizing property rights in human tissue. . . can be a two-edged sword. Doing so would represent a clear, strong acknowledgement of a continuing right of control over one’s “self”, at least the corporeal aspect. . .[A]t the same time, it can be a short step from being property of and for oneself to being property of and for someone else. . .[T]he tensions and risks need to be understood and addressed“ – Joan Gilmour, “‘Our’ Bodies: Property Rights in Human Tissue”, *Canadian Journal of Law and Society*, 8(2) (1993) excerpted in Mossman and Flanagan, **Property Law: Cases and Commentary** (Toronto: Emond Montgomery Publications, 2004), 66-73, at p.70.

Using the case of **Moore v. Regents of the University of California** (Mossman and Flanagan, 65), evaluate the debate about the ‘proPERTIZATION’ of human body parts, emphasizing the “risks and tensions” alluded to above and how they might be addressed.

QUESTION TWO

“Dependence is the flip side of the property coin”, writes P. Symes in his article “Property, Power and Dependence: Critical Family Law”, 14 *Journal of Law and Society* 199, at p.200 (1987)(excerpted in Mossman and Flanagan, 86).

With the aid of cases considered in class this Semester, attempt to describe how the property law analysis can generate wealth and power for some and poverty and dependence for others in our society. What are your thoughts towards mitigating the ensuing inequality?

PART 2

QUESTION THREE

The **Ontario Real Property Limitations Act** contains the following provisions (partly in paraphrase):

4. The paper title holder shall bring an action to recover land within 10 years after the right to bring such an action accrued to the person bringing it.

5(1). Where the person claiming an interest in land was formerly in possession and was dispossessed or has discontinued possession, the right to bring an action to recover the land shall be deemed to have accrued at the time of the dispossession or discontinuance of possession.

15. At the determination of the period limited by this Act to any person for making an entry or distress or bringing any action, the right and title of such person to the land or

rent, for the recovery whereof such entry, distress or action, respectively, might have been made or brought within such period, is extinguished.

On the question of “dispossession” (leading to extinguishment of the paper title holder’s title), Ontario courts have exhibited two different approaches to the application of the above provisions of the law, as exemplified by the following cases in the Mossman and Flanagan Casebook: **Re St. Clair Beach Estates v. MacDonald** (p.163) and **Keefer v. Arillotta** (p.182), on the one hand, and **Wood v. Gateway of Uxbridge Properties Inc.**(p.201) and **Teis v. Corporation of the Town of Ancaster** (p.211), on the other.

Discuss these approaches with reference to the underlying purposes of the above provisions or the common law principle of (adverse) possession.

QUESTION FOUR

In 1960, William Ouellette executed a deed transferring 1,000 acres of land in Leamington to the Essex Separate School Board subject to the following condition:

The land shall be used for school purposes only. Should the said parcel or tract of land at any time hereafter cease to be used for the purposes for which it is hereby granted, the said lands shall revert to the grantor, William Ouellette, his heirs, executors, administrators or assigns forthwith.

The Essex Separate School Board located the St. Anne French School and the Holy Rosary Secondary School on the land. In 2003, there was significant Province-wide reorganization of the school system, which resulted in the closure of the two schools. The Essex Separate School Board has been considering alternative uses for the land. Recently, a decision was reached to construct an amusement park and a golf course on the land, but the members of the board are unsure of the legal implications of their decision.

- (a) How would you characterize the above grant? Explain your characterization fully with relevant cases and legal principles.
- (b) Given your characterization, what is the effect of the above condition on the grant with regard to the new uses being contemplated? Explain your answer fully, using statutory and case law.

END OF EXAMINATION.

MERRY CHRISTMAS ALL, AND A WONDERFUL 2005!

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