

**PROPERTY 1108(D) MIDTERM EXAM**

**PROFESSOR DE BEER**

MONDAY, 9 NOVEMBER 2015, 16:05 – 17:35 (**90 MINUTES**)

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IN **PART I**, YOU MUST **ANSWER 1 OF 2** QUESTIONS.

THE ANSWER IN PART I IS **WORTH 30%** OF YOUR SCORE.

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IN **PART II** YOU MUST **ANSWER 2 OF 3** QUESTIONS.

THE TWO ANSWERS IN PART II ARE **WORTH 60%** OF YOUR SCORE.

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OVERALL IMPRESSION OF BOTH PARTS IS **WORTH 10%** OF YOUR SCORE.

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YOU MAY COMPLETE THIS EXAM AS A COMPUTERIZED EXAM,  
FOLLOWING THE FACULTY OF LAW'S RULES.

IF YOU HANDWRITE THE EXAM, YOU MUST WRITE **LEGIBLY** AND  
**DOUBLE-SPACE** ANSWERS IN **INK**.

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YOU MAY USE NON-ELECTRONIC REFERENCE MATERIALS  
(*E.G.* BOOKS OR NOTES, BUT NOT LAPTOPS, TABLETS, MOBILE PHONES OR SIMILAR DEVICES).

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THIS EXAM DOES NOT COUNT TOWARD YOUR FINAL GRADE.

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STUDENT # \_\_\_\_\_

<p><b>SCORE ____ /100</b></p> <p>(INSTRUCTOR USE ONLY)</p>
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Letter Grade	Percentage	Grade Point Value	Definition
A+	90-100	10	Exceptional
A	85-89	9	Excellent
A-	80-84	8	Excellent
B+	75-79	7	Very Good
B	70-74	6	Very Good
C+	65-69	5	Good
C	60-64	4	Good
D+	55-59	3	Passable
D	50-54	2	Passable
F	0-49	0	Failure

**Part I**

<b>Option 1</b>														
Correctness, clarity, concision, and persuasiveness of answers														
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10		
<b>Option 2</b>														
Correctness, clarity, concision, and persuasiveness of answers														
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10		
<b>Option 3</b>														
Correctness, clarity, concision, and persuasiveness of answers														
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10		
<b>Total Score Part I (x 3)</b>													<b>/30</b>	

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**Part II**

<b>Option 1</b>												
Thorough & responsive (i.e. analyzed all key issues, focused on relevant discussion)												
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
Accurate & insightful (i.e. correctly applied law/policy, deep evaluation of issues)												
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
Clear & organized (i.e. logically well structured, articulate, persuasive arguments)												
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
Overall impression (i.e. demonstrated understanding of subject, possible creativity)												
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
<b>Option 2</b>												
Thorough & responsive (i.e. analyzed all key issues, focused on relevant discussion)												
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
Accurate & insightful (i.e. correctly applied law/policy, deep evaluation of issues)												
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
Clear & organized (i.e. logically well structured, articulate, persuasive arguments)												
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
Overall impression (i.e. demonstrated understanding of subject, possible creativity)												
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
<b>Option 3</b>												
Thorough & responsive (i.e. analyzed all key issues, focused on relevant discussion)												
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
Accurate & insightful (i.e. correctly applied law/policy, deep evaluation of issues)												
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
Clear & organized (i.e. logically well structured, articulate, persuasive arguments)												
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
Overall impression (i.e. demonstrated understanding of subject, possible creativity)												
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
<b>Total Score Part II (x 0.75)</b>												<b>/60</b>

<b>Overall Exam Impression</b>												
0	3	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
												<b>/10</b>

**I. ANSWER 1 OF 2 QUESTIONS IN THIS PART, WHICH IS WORTH 30% OF THIS EXAM. YOU MUST INDICATE THE CORRECT RESPONSE AND BRIEFLY (~ 250 WORDS) EXPLAIN WHY YOU DID OR DID NOT CHOOSE EACH POSSIBLE RESPONSE.**

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**\*\*\* BOTH QUESTIONS 1 AND 2 ARE BASED ON THE FOLLOWING INFORMATION \*\*\***

**Last week I travelled to the Caribbean, where I was performing duties as an expert consultant for the World Intellectual Property Organization (WIPO), a specialized agency of the United Nations. During my time there, I took the photograph below of a “chattel house” in a Barbadian village.**



*A chattel house in Barbados. Photo: Jeremy de Beer*

**Wikipedia describes a chattel house as follows:**

“Chattel house is a Barbadian word for a small moveable wooden house that working class people would occupy. The term goes back to the plantation days when the home owners would buy houses designed to move from one property to another. ... Chattel houses are set on blocks or a groundsill rather than being anchored into the ground. In addition, they are built entirely out of wood and assembled without nails. This allowed them to be disassembled (along with the blocks) and moved from place to place. This system was necessary historically because home “owners” typically did not own the land that their house was set on. ... In case of a landlord/tenant (or employer/employee) dispute, the house could be quickly moved to a new property. Modern chattel houses tend to have a greater degree of permanence, as they are often connected to the electricity mains, and may either have a permanent septic tank or be connected to a public sewer system.”

**1. Which of the following statements best describes the legal status of a chattel house?  
(Barbados is a common law jurisdiction, whose legal system is based upon British laws imposed during the colonial era.)**

- a. A modern chattel house is presumptively a chattel, based on the facts described on Wikipedia.
- b. An historic chattel house is presumptively a fixture, based on the facts described on Wikipedia.
- c. An historic chattel house is not legally remarkable, as houses would ordinarily be considered chattels based on applicable legal principles.
- d. An historic chattel house would, by default, be excluded from the purchase and sale of property pursuant to Ontario Real Estate Association's standard form agreement.
- e. The *Diamond Neon* case would support a tenant's claim to ownership of a modern chattel house even after the land was sold to a third party.

**or**

**2. Which of the following statements is most legally accurate?**

- a. My photography and use of a Barbadian chattel house may infringe Barbados' famous association with such distinctive architectural designs.
  - b. The inventor of the first chattel house has the exclusive right to make, use and sell chattel houses for her lifetime plus 50 years.
  - c. I have rights in my photograph of a Barbadian chattel house for my lifetime plus 50 years.
  - d. Based on the *Théberge* case, my rights in the photograph would prevent the owner of the chattel house from dismantling, moving and reassembling the house elsewhere.
  - e. Based on *INS v AP*, I am prohibited from republishing Wikipedia's report about Barbadian chattel houses.
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**II. ANSWER 2 OF 3 QUESTIONS IN THIS PART, WHICH IS WORTH 60% OF THIS EXAM. PROVIDE YOUR ANSWERS (~750 WORDS PER QUESTION) IN THE FORMAT APPROPRIATE FOR EACH QUESTION.**

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- 3. On November 2, 2015, lawyers from the Australasian law firm AJ Park reported on a recent New Zealand court decision. The case and its reporting generated interesting commentary from lawyers in Ontario and elsewhere on an email listserv to which a great many IP practitioners subscribe. A slightly edited abridgment of the firm’s report follows.**

**You are a summer student in a Canadian law firm. A senior partner, who skimmed the listserv discussion but lacked time to read it thoroughly, has asked you for a memorandum explaining whether and how this changes the law covered in your property law course. Write the memorandum.**

**The Supreme Court of New Zealand decides digital files constitute ‘property’**

*Written by Ken Moon and Laura Carter*

The bouncer who released footage from a Queenstown, New Zealand bar featuring English rugby player Mike Tindall, has had his conviction under the *Crimes Act* upheld by the Supreme Court. The court’s decision is based on its finding that the digital file Mr Dixon removed from the bar constitutes property under the *Crimes Act*.

**Background**

During the Rugby World Cup 2011, the English rugby team had a night out in Queenstown. In the course of that night, the vice captain of the English rugby team Mike Tindall (who also happens to be married to Queen Elizabeth II’s granddaughter) had an encounter with a woman. The bar in question had CCTV. A bouncer at that bar, Jonathan Dixon, took a copy of the CCTV footage of

Mr Tindall from the bar and tried to sell this footage. When he was unable to do so, he uploaded it to YouTube.

Mr Dixon was convicted of accessing a computer system for a dishonest purpose, under section 249 of the *Crimes Act*. Section 249 makes it a crime to:

“directly or indirectly, [access] any computer system and thereby ... [obtain] any property, privilege, service, pecuniary advantage, benefit, or valuable consideration”.

In Mr Dixon’s case, he was originally convicted on the basis that he obtained “property”.

Mr Dixon appealed to the Court of Appeal, and his conviction was substituted for one that he had obtained a “benefit” under section 249. The Court of Appeal reached this position

based on its view that the digital file Mr Dixon took could not be considered “property”.

However, the Supreme Court reviewed the relevant law from New Zealand, the US and the UK and found that the digital file was “property”, so the original conviction was reinstated.

### **Reasoning of the Supreme Court**

The primary issue for the Supreme Court was whether digital footage stored on a computer system was “property”, as defined in the *Crimes Act*.

The Court of Appeal in this case had decided that it was not. It pointed to the English criminal case of *Oxford v Moss* which had held that information, even confidential information, was not “property” and the Court of Appeal noted this was consistent with the general approach taken in civil cases. The Court of Appeal, in analysing whether digital footage might be distinguished from confidential information, concluded it could not—“bytes cannot meaningfully be distinguished from pure information”.

The Supreme Court disagreed, taking the view that digital files were more than pure

information and thus felt able to put aside the criminal and civil authorities which had held information was not “property”.

The Supreme Court considered it was a fundamental characteristic of property that it was something capable of being owned and transferred. The digital files taken by Mr Dixon were capable of being sold and this was another indicator they constituted “property”.

The Supreme Court preferred to equate digital files with software rather than information, and thus felt the way was clear to adopt those US authorities which had held software to constitute property. It decided that there was no reason not to accord digital files the same status in New Zealand for the purposes of the section 249 of the *Crimes Act*.

### **So what does it all mean?**

While the case is about section 249, which covers the narrow crime of accessing a computer for a dishonest purpose, it can be expected that the definition of “property” used by the Supreme Court will be applied in other situations.

and/or

4. This past summer, *The Globe and Mail* published the following sarcastic editorial. You are a summer student in a national law firm that represents CP Rail. The client has asked your firm to help it craft an objective response to this public relations issue. CP would like to release an open letter explaining the legal background to this matter, its legal position and the strategic significance of CP actions. CP feels its reputation and credibility would be enhanced if city residents, its shareholders and the general public better understood the property laws that necessitated its actions. Your task is to write the first draft of the letter.

### Arbutus Corridor: CP Rail feels your pain, a little bit



*Workers clear debris and gardens from a stretch of abandoned CP Rail line near East Blvd. and West 68th Ave. in Vancouver, B.C..*

Dear Arbutus Corridor Resident:

By now, you may have noticed that we've been doing some work on the CP Rail line that runs through your neighbourhood. It's been fairly well publicized, especially after we tore out your community gardens, some of which have been in place long enough for fruit-bearing trees to actually bear fruit. We feel kind of bad about that part. We haven't said or done anything to indicate that we feel bad, but trust us – we do. A little bit.

You may have also noticed the signs that have gone up recently that read: CPR Railway Operations Recommencing. Active Railway

Traffic – Do Not Stop on Tracks – Obey Flag Persons. For More Information Call 3-1-1.

Yes, we know. 3-1-1 is the number for the City of Vancouver contact centre. We don't want to hear your complaints. And channelling all of your discontent to the city is exactly our plan.

As we resume railway operations, you may notice some changes in your neighbourhood from King Edward, south to Marine Drive.

First, we'll start rolling trains through the neighbourhood very slowly, just so you know we're there. A diesel engine with a couple of harmless-looking cars attached to it. This may affect east-west traffic as well as transit routes on King Edward, 33rd Avenue, 41st Avenue, 49th Avenue, 57th Avenue and Marine Drive as well as all side streets where we have the right of way. We'll do our best to do this in off-peak hours, but we're not saying a train might not stop for no reason at 41st and West Boulevard at like, 8:15 in the morning or 5 in the afternoon. Plan accordingly.

A reminder that there are no railway crossing arms or signals at any of these locations.

Please obey the flag persons. If you've become used to using the rail corridor as a walking or biking trail, well, those days are over. Don't forget to tell your kids, too.

Moving rolling stock during off-peak hours means that we may use the line to assemble trains between the hours of midnight and 4 a.m. This will be done for training purposes. This activity may cause a considerable amount of noise due to shunting and impact, particularly with trainees since they tend to be especially zealous when it comes to coupling rail cars. Also, they really like the sound of the whistle, which you will learn is not the train whistle you remember from childhood but rather an earth-shattering horn blast.

As well, since the tracks haven't been used in 15 years, we expect a lot of screeching. The metal-on-metal kind of screeching you feel in your teeth. Also, there is the noise of the diesel engines, not to mention the exhaust. If noise is a problem, please call 3-1-1. If air quality is your concern, please contact Metro Vancouver or Vancouver Coastal Health.

We're not ruling out livestock. From time to time it may be necessary to utilize the corridor for short-term storage of livestock destined for processing, or material bound for the rendering

plant. We apologize in advance for any odour issues. We are sincerely sorry.

Also, you may wake up one morning to find a long line of DOT-111 tanker cars sitting in front of your house. They look exactly like the ones you've seen in the news – coal-black and menacing. But the likelihood that these will explode is virtually zero, statistically speaking. They may be fully loaded or they may not. We're not saying for security reasons. You're the ones who moved in across the street from a rail line. Deal with it.

At present, there is no plan to transport nuclear waste, mine tailings, nor any other form of toxic waste through the Arbutus corridor. It would be a shame though if that changed, don't you think? I mean, if something were to go wrong?

We're not saying any of this is going to happen. It doesn't have to happen. There's a way to make this all go away – if you get our drift.

Sincerely,

CP management

“Committed to our shareholders.”

*Stephen Quinn is the host of On the Coast on CBC Radio One, 88.1 FM and 690 AM in Vancouver.*

and/or

5. This past summer, the following report [edited for brevity] appeared in the *LA Times*. What arguments would justify having property rights in water, such that it could allegedly be stolen by Tom Selleck? Write a short essay defending property rights in water.

### Tom Selleck, water district reach tentative settlement in dispute



*Someone has been taking huge amounts of water from a public hydrant and delivering it to actor Tom Selleck's 60-acre ranch in Westlake Village.*

It had all the makings of a latter-day water war, pitting a Ventura County water district against actor Tom Selleck.

The Calleguas Municipal Water District accused Selleck of illegally moving water from Thousand Oaks to his 60-acre Hidden Valley estate, and it spent about \$22,000 on a private investigator to track the deliveries, according to a complaint filed in Ventura County Superior Court.

As California's drought ravaged water supplies and the district sent cease-and-desist letters to Selleck's addresses, the unlawful deliveries continued, the complaint said.

But the skirmish came to a halt Thursday when the water district announced that it

had reached a tentative settlement with Selleck. Details are confidential pending approval by the water district's board, said Eric Bergh, Calleguas' resources manager.

The board is scheduled to consider the settlement at its meeting Wednesday.

"We're happy about it," Bergh said. "It's good news."

The tentative resolution caps an episode that, fueled by celebrity and the novelty of the purported misconduct, prompted fascination and still more questions: Was Selleck himself, the mustachioed "Magnum, P.I." and "Blue Bloods" star, pulling up to a fire hydrant and plundering the city's water system? Did it not constitute a crime, such as grand theft?

According to the complaint, a water tender truck was spotted multiple times filling up at the same Thousand Oaks fire hydrant on Irving Drive, then delivering the water to Selleck's property in Hidden Valley.

*Staff writers Sarah Parvini and Amanda Covarrubias contributed to this report.*

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**THE END.**