

**PROPERTY LAW 231**  
**Professor Douglas C. Harris**

**SYLLABUS—2024/25**

**1. THE NATURE OF PROPERTY (5 classes)**

- 1.1 What is Property?
- 1.2 Why Private Property?
- 1.3 What should be Property?

This unit introduces the idea of property, asks why rights to private property exist, situates the emergence of property doctrine in histories of racism and colonialism, and investigates how various justifications for property are deployed in novel claims to private property. In doing so, it introduces ideas about the nature and function of the institution of property, in common law and Indigenous legal orders, that recur throughout the course. At times, these ideas appear explicitly in the written reasons of a judgment, the oral histories of a community, the argument in a lawyer's brief, the considerations of a policy paper, or the reflections of a legal scholar, but other times they form part of a background set of assumptions about what property is and what it should do. Whether explicitly engaged or implicitly present, the contested notions of property and its justifications form the backbone of this course and, more importantly, of the institution of property itself.

At the end of this unit, students should be able to:

- Begin to locate the emergence of property in histories of liberalism, racism, and colonialism;
- Identify the different categories of property and explain their principal characteristics;
- Describe and classify the different understandings of the idea of property;
- Explain common property as well as the ideas of the “tragedy of the commons” and “tragedy of the anti-commons”;
- Describe the idea of *stare decisis* and the role of precedent in the common law;
- Recognize different elements in a judgment, including the decision of the majority, concurring decisions, and dissenting decisions;
- Describe and evaluate justificatory traditions for private property;
- Recognize when decision-makers are using one or more of the justifications for private property in their determinations about property rights;
- Evaluate claims for rights to private property based on the various justifications for private property;
- Build connections between particular property rules and their social context; and
- Describe the doctrine *numerus clausus*.

In addition, students will have an opportunity to:

- Look at property law in the spaces of the university;
- Consider what it means to be an owner;

- Engage with material from multiple jurisdictions;
- Explore multiple sources of law;
- Analyze and evaluate majority and dissenting opinions; and
- Reflect on the institutional roles of courts and legislatures in a common law system.

### 1.1 What Is Property? (Part 1)

*Property Law Reader* 5<sup>th</sup>, 1-7; 16-29

MacPherson, "The Meaning of Property"

Merrill, "Property and the Right to Exclude"

*Yanner v Eaton*

### 1.1 What Is Property? (Part 2)

*Property Law Reader* 5<sup>th</sup>, 43-48; 9-15; 30-39

Morales & Thom, "The Principle of Sharing"

Harris, "Whiteness as Property"

*Harrison v Carswell*

[Labour Relations Code](#), RSBC c 244, s 66

### 1.2 Why Private Property?

*Property Law Reader* 5<sup>th</sup>, 49-59; 466-78

Lewis, "The Right to Private Property"

[Nisga'a Final Agreement](#), Chapter 3, ss 1-8

Graben, "Lessons for Indigenous Property Reform"

### 1.3 What Should Be Property?

*Property Law Reader* 5<sup>th</sup>, 73-92

*Moore v Regents of the University of California*

Ziff, "The Irreversibility of Commodification"

[Lam v University of British Columbia](#), 2015 BCCA 2, para 1

## 2. PROPERTY IN PERSPECTIVE (6 classes)

This unit considers the sources of property law in Canada, turning first to Indigenous legal traditions and then to the common law. The unit also investigates the different ways in which those with and those without or with little private property use public space by focusing on the litigation that has arisen in reaction to the efforts of various Canadian municipalities to regulate homeless encampments in city parks. Finally, it considers the various constitutional and non-constitutional protections for private property in Canada.

- 2.1 Sources of Property Law
- 2.2 Property, Class, and Poverty
- 2.3 Protections for Property

At the end of this unit, students should be able to:

- Explain the multiple sources of Canadian property law in the common law jurisdictions;
- Identify some of the principles within certain Indigenous legal orders that govern relationships between humans and the non-human world;
- Explain the doctrine of tenure and its continuing relevance in Canadian property law;
- Specify when the English common law was received in British Columbia and explain what this means;
- Assess the different ways in which those with, and those who are largely without private property use public land;
- Specify various constitutional and non-constitutional protections for private property in Canada; and
- Explain the differences between expropriation and constructive takings.

In addition, students will have an opportunity to:

- Share examples of the issues that arise from conflicting uses of public spaces;
- Analyze the intersection of various domestic and international sources of law; and
- Consider different constitutional provisions that protect private property and different approaches to the public regulation of private property.

## 2.1 Sources of Property Law

### A. Indigenous Legal Orders

*Property Law Reader* 5<sup>th</sup>, 93-103

Napoleon, "Thinking about Indigenous Legal Orders"

Borrows, *Recovering Canada*

[Te Urewere Act 2014](#) (NZ) 2014 No 51, ss 3-5, 11-13, 16-17

[Te Awa Tupua \(Whanganui River Claims Settlement\) Act 2017](#) (NZ) 2017 No 7, ss 3, 10, 13-15, 18-19

Jacinta Ruru, "[In New Zealand, this river and park are legal persons](#)" TEDxChristchurch 16 November 2017 [14:32 video]

Elizabeth Benner, "[This Pristine Canadian river has legal personhood, a new approach to conserving nature](#)" CBC, 1 February 2024.

### B. English Common Law & the Doctrine of Reception

*Property Law Reader* 5<sup>th</sup>, 104-17

Butt, *Land Law*

Ziff, "Warm Reception in a Cold Climate"

[Law and Equity Act](#), RSBC 1996, c 253, s 2

[Wills, Estates and Succession Act](#), SBC 2009, c 13, ss 20-23

[Escheat Act](#), RSBC 1996, c 120, s 1

*Property Law Reader* 5<sup>th</sup>, 466

[Nisga'a Final Agreement](#), Chapter 3, s 7

## 2.2 Property, Class, and Poverty

*Property Law Reader* 5<sup>th</sup>, 123-45

Waldron, "Homelessness and the Issue of Freedom"

Ellickson, "Controlling Chronic Misconduct in City Spaces"

*Victoria (City) v Adams*

[International Covenant on Economic, Social and Cultural Rights](#), Article 11.1

Chavez et al, "[Life in the 'Hum': Belongings and Everyday Dispossession](#)," pp 1-2, 4-6

## 2.3 Protections for Property

### A. Constitutional, Statutory, and Common Law Protections

*Property Law Reader* 5<sup>th</sup>, 149-55

Ziff, "Taking Liberties"

*Constitution of the Republic of South Africa, 1996*, s 25

[Canadian Bill of Rights](#), SC 1960, c 44, s 1

[Vancouver Charter](#), SBC 1953, c 55, s 532

[Expropriation Act](#), RSBC 1996, c 125, ss 1, 4(2), 6(1), 10(2), 14, 18, 30(1), 31(1), 32

### B. Constructive Expropriation

[Annapolis Group Inc v Halifax Regional Municipality](#), 2022 SCC 36 (excerpts)

*Property Law Reader* 5<sup>th</sup>, 178-80

[Canada-United States-Mexico Agreement](#), Article 14.8 and Annex 14-B

## 3. BOUNDARIES (4 classes)

This unit introduces the spatial dimensions of interests in land, including the height and depth to which an interest in land extends, as well as some of the issues that arise at the boundaries between adjoining owners. It then turns to the law of fixtures, which marks the boundary between land and chattel.

- 3.1 Airspace
- 3.2 Subsurface
- 3.3 Lateral Boundaries – Water
- 3.4 Fixtures

At the end of this unit, students should be able to:

- Specify the extent to which ownership of an interest in land extends above and below the surface;
- Identify the statutory mechanisms for subdividing airspace and multi-unit developments;
- Describe the history, nature, and limits of Crown grants in British Columbia;

- Specify the different spheres and levels of state sovereignty over ocean spaces;
- Understand the nature of riparian rights at common law and explain how they have been modified by statute;
- Explain and apply the test that distinguishes fixtures from chattels; and
- Outline the different requirements to establish the torts of trespass and nuisance.

In addition, students will have an opportunity to:

- Analyze a case using the “IRAC” method;
- Identify the ratio of a case, formulate a rule based on the ratio from one or more cases, and apply the rule to a new fact scenario; and
- Apply the doctrine of reception.

### 3.1 Airspace

*Property Law Reader* 5<sup>th</sup>, 181-90

*Didow v Alberta Power Ltd*

[Trespass Act](#), RSBC 2018, c 4, s 8

[Land Title Act](#), RSBC 1996, c 245, ss 138, 139, 141, 145

[Strata Property Act](#), SBC 1998, c 43, s 239

[United Nations Convention on the Law of the Sea](#), Article 2(2) 1 & 2

### 3.2 Subsurface

*Property Law Reader* 5<sup>th</sup>, 190-94; 196-200; 201-4 (comments 5 & 6)

*Edwards v Sims*

Ziff, “The Great Onyx Cave Cases”

[Land Act](#), RSBC 1996, c 245, ss 11, 50

[Sample Crown Grant](#) (British Columbia)

[Mineral Tenure Act](#), RSBC 1996, c 292, ss 19(1-2), 20 (repealed)

### 3.3 Lateral Boundaries - Water

*Property Law Reader* 5<sup>th</sup>, 222-37

*Robertson v Wallace*

*R v Nikal*

[United Nations Convention on the Law of the Sea](#), Articles 1-5, 8, 33, 55-57

[Oceans Act](#), SC 1996, c 31, ss 4-6, 10, 11, 13, 14

[Law and Equity Act](#), RSBC 1996, c 253, s 2

[Water Sustainability Act](#), SBC 2014, c 15, ss 5-7

[Land Act](#), RSBC 1996, c 245, s 55

### 3.4 Fixtures

*Property Law Reader* 5<sup>th</sup>, 237-43

*LaSalle Recreations Ltd v Canadian Camdex Investments Ltd*

[Scott v Filipovic](#), 2015 BCCA 409 (excerpts)

[Personal Property Security Act](#), RSBC 1996, c 359, ss 36(2)-(5)

#### 4. POSSESSION (2 classes)

Unit 4 introduces the concept of possession and its importance in establishing property rights. Possession plays a much-diminished role than it once did when it comes to property rights in land. The Unit touches briefly on the concept of adverse possession, known colloquially as “squatters’ rights”, before turning to personal property and investigating the law of finders. However, even in this body of law dealing with personal property, the right to possession of land still plays a role. Finally, the Unit concludes with an analysis of the requirements associated with the gifting of property, particularly the concept of delivery and of transfers through delivery.

- 4.1 Possession & Land
- 4.2 Finders
- 4.3 Transfers through Delivery

At the end of this unit, students should be able to:

- Explain the concept of possession and its role in determining property rights in land and to things;
- Define possession and abandonment in the context of finders;
- Explain the distinction between lost property and hidden property, and the importance of that distinction in the law of finders;
- Identify the gratuitous bailee when it comes to found property;
- Describe the importance of delivery in the gifting of property; and
- Describe the important elements, and the cultural specificity of those elements, in a gift of property.

In addition, students will have the opportunity to:

- Consider the interplay of statute and case law; and
- Practice deriving principles from case law.

##### 4.1 Possession and Land

*Property Law Reader* 5<sup>th</sup>, 305  
[Limitation Act](#), SBC 2012 c 13, s 28  
[Land Title Act](#), RSBC 1996 c 250, s 23  
[Property Law Act](#), RSBC 1996, c 377, s 36

##### 4.2 Finders

*Property Law Reader* 5<sup>th</sup>, 342-54; 357-60  
*Trachuk v Olinek*

##### 4.3 Transfer through Delivery

*Property Law Reader* 5<sup>th</sup>, 360-76, 82  
 Baron, "Gifts, Bargains, and Form"  
 Kimmerer, *Braiding Sweetgrass*  
*Nolan v Nolan & Anor*

## 5. FREEHOLD ESTATES (3 classes)

The doctrine of estates is another foundational feature of real property in the common law system. Tenure (introduced in Unit 2) permitted what may be described as a vertical division of interests in land between people within a social hierarchy, with the Crown at its apex. The doctrine of estates permits a horizontal division of interests in land—a division of interests over time. Unit 5 introduces the two principal categories of estates—freehold estates and leasehold estates—and then focuses on the two remaining types of freehold estate: the fee simple and the life estate. We turn to the particular characteristics of leasehold estates in Unit 6.

- 5.1 The Fee Simple
- 5.2 Transferring Estates
- 5.3 Life Estates

At the end of this unit, students should be able to:

- Explain the doctrine of estates and the distinctions between freehold and leasehold estates;
- Describe the primary features of the different freehold estates, particularly the estate in fee simple and the life estate;
- Differentiate between words of purchase and words of limitation in the transfer of interests in land, and understand what each do;
- Explain the statutory modification of the common law rules regarding the language required when transferring interest in land;
- Specify the required elements of a contract for purchase and sale of land;
- Describe in general terms the powers and obligations of life tenants; and
- Explain the doctrine of waste as a mechanism for balancing different interests.

In addition, students will have the opportunity to:

- Revisit the doctrine of tenure;
- Compare common law and statute-based rules; and

### 5.1 Fee Simple

*Property Law Reader* 5<sup>th</sup>, 385-95  
 Gray & Gray, *Elements of Land Law*  
 Ellickson, "Property in Land"  
 JA Shoemaker, "Fee Simple Failures: Rural Landscapes and Race"

## 5.2 Transferring Estates

*Property Law Reader* 5<sup>th</sup>, 395-99

*Thomas v Murphy*

[\*Law and Equity Act\*](#), RSBC 1996, c 253, s 59

[\*Property Law Act\*](#), RSBC 1996, c 377, ss 4, 15, 19

[\*Land Title Act\*](#), RSBC 1996, c 250, ss 185, 186(4)-(8)

BCREA & CBA Standard Form Residential Property Contract for Purchase & Sale (2023)

BC Land Title & Survey Authority, [Transfer Forms A, B & C](#)

[\*Wills, Estates and Succession Act\*](#), SBC 2009, c 13, s 41(3)

## 5.3 Life Estates

*Property Law Reader* 5<sup>th</sup>, 399-400; 412-22

Ontario Law Reform Commission

*Powers v Powers Estate*

[\*Property Law Act\*](#), RSBC 1996, c 377, ss 10, 19(2)

[\*Law and Equity Act\*](#), RSBC 1996, c 253, s 11

[\*Wills, Estates and Succession Act\*](#), SBC 2009, c 13, s 41(3)

## 6. LEASEHOLD INTERESTS (3 classes)

Leasehold interests or estates are among the oldest in the common law, pre-dating the freehold estates which emerged out of the tenurial relationships—the landlord and tenant relationships—that lay at the heart of a feudal system. Although ancient in origin, many of us experience our first formal interaction with the law of real property through the signing of a residential tenancy agreement. Statutory reforms have substantially modified the common law so far as it applies to residential tenancies, and we turn to some of these reforms, with a particular focus on evictions, in the final topic. The other topics—on the nature of a lease, the interests and obligations of parties to a lease—deal primarily with commercial leases.

- 6.1 The Nature of a Lease
- 6.2 Leasehold Interests
- 6.3 Leasehold Obligations
- 6.4 Residential Tenancies – Evictions

On the completion of this unit, students should be able to:

- Recognize, define, and distinguish leases and licences;
- Identify the essential elements of a lease;
- List the “usual covenants” in a lease;
- Describe the distinction between the assignment of a lease and a sub-lease;
- Explain the concept of “privity of estate”;
- Describe the nature of the landlord’s covenant to provide “quiet enjoyment”; and
- Outline the bases on which a landlord may evict a residential tenant.



In addition, students will have an opportunity to:

- Derive principles from case law and apply them to interpret the text of a lease;
- Revisit the debate over the respective roles of courts and legislatures when matters of law and public policy intersect; and
- Consider public policy behind residential tenancy reform.

### 6.1 The Nature of a Lease

*Property Law Reader* 5<sup>th</sup>, 633-43

*Fatac Ltd. (in liquidation) v Commissioner of Inland Revenue*

### 6.2 Leasehold Interests

*Property Law Reader* 5<sup>th</sup>, 643-48

*Merger Restaurants v DME Foods Ltd*

### 6.3 Leasehold Obligations

*Property Law Reader* 5<sup>th</sup>, 656-65

*Southwark LBC v Tanner*

[\*National Housing Strategy Act\*](#), SC 2019, c 29, s 313

### 6.4 Residential Tenancies – Evictions

*Property Law Reader* 5<sup>th</sup>, 665-67

Tenant Resource & Advisory Centre (TRAC), “Ending a Tenancy: [Evictions](#)”

Balanced Supply of Housing, “British Columbia Eviction Process”

[\*Residential Tenancy Act\*](#), ss 46, 47, 49, 51.1, 52

## 7. EQUITY (5 classes)

There is what appears, at first encounter, an odd, yet utterly fundamental distinction in the common law between rules of law (as developed by the courts of common law) and rules of equity (as developed by the court of equity). The oddness comes from the peculiar disjunction between some rules that are legal and others that are equitable. However, the common law evolved with these two separate streams of rules co-existing within it. The different streams were the preserves of entirely separate courts, but in the nineteenth century the separate courts were fused into a single structure with jurisdiction over law and equity. This unit introduces the common law and equitable courts, and then considers their different treatment of mortgages. It then turns to focus on one of the principal contributions of the equitable courts—the trust—through an analysis of resulting trusts and constructive trusts.

- 7.1 Origins of Equity
- 7.2 Mortgages in Law & Equity
- 7.3 Resulting Trusts
- 7.4 Remedial Constructive Trusts

## 7.5 Institutional Constructive Trusts

On the completion of this unit, students should be able to:

- Identify the courts of common law and equity;
- Explain the emergence of the Court of Chancery;
- Enumerate some of the equitable maxims and connect one or more maxim to one or more equitable remedy;
- Describe the principal elements of a mortgage contract;
- Explain the emergence of the equities of redemption and foreclosure; and
- Describe “a clog on the equity of redemption” and how the courts have acted to protect the equitable right to redeem.
- Describe the role of the “use”, its demise, and the rise of the trust;
- Identify the circumstances that produce a resulting trust;
- Identify the circumstances that create a presumption of advancement;
- Explain the rise of the constructive trust as a remedy for unjust enrichment, and how its importance has been modified by statute; and
- Define the different ways in which the term “common law” is used.

In addition, students will have an opportunity to:

- Explore the connection the historical development of the common law and contemporary doctrine;
- Consider the policy choices that underlie common law rules; and
- Practice applying common law rules to sample problems.

### 7.1 Origins and Maxims of Equity

*Property Law Reader* 5<sup>th</sup>, 487-501

Girard, “History and Development of Equity”

Gray and Gray, *Elements of Land Law*

[Law and Equity Act](#), RSBC 1996, c 253, ss 4, 5, & 44

### 7.2 Mortgages in Law & Equity

*Property Law Reader* 5<sup>th</sup>, 883-97

Rose, “Crystals and Mud in Property Law”

*Sartor et al v Boon et al*

*Dical Investments Ltd v Morrison*

### 7.3 Resulting Trusts

*Property Law Reader* 5<sup>th</sup>, 507-18

*Pecore v Pecore*

[Property Law Act](#), RSBC 1996, c 377, s 19(3)

## 7.4 Remedial Constructive Trusts

*Property Law Reader* 5<sup>th</sup>, 519-35; 545-47

*Kerr v Baranow*; *Vanasse v Seguin*

"*Murdoch v Murdoch: The Sign*" Radio Drama (available on Canvas)

[\*Family Law Act\*](#), SBC 2011, c 25, ss 1, 3, 81

## 7.5 Institutional Constructive Trusts

*Property Law Reader* 5<sup>th</sup>, 547-56

*Soulos v Korkontzilas*

## 8. QUALIFIED TRANSFERS (3 classes)

This unit focuses on various mechanisms developed in the common law to place conditions on and, in effect, to extend individual control over, private property. The recurring issue in the area of conditional transfers is to find an appropriate balance between private power and other public policy considerations. The unit begins with an introduction to some of the basic concepts and distinctions, including those between vested and contingent interests, and between defeasible and determinable interests. It then turns to a number of cases where the appropriate balance between private power and public policy is central.

8.1 Basic Concepts

8.2 State Limitations on Private Power – Public Policy

8.3 State Limitations on Private Power – Economic Efficiency

On the completion of this unit, students should be able to:

- Describe the difference between reversionary interests and remainder interests;
- Distinguish between vested and contingent interests, and between defeasible and determinable interests;
- Explain the effects of a finding that a condition subsequent, a condition precedent, and a determinable limitation is invalid;
- Point to some of the common sources that provide content for the public policy doctrine;
- Describe the different standards that apply when determining whether a condition is void for uncertainty;
- Explain the different modes of possible restraints on alienation and the degree to which the common law will countenance such restraints; and
- Recognize when a rule against perpetuities issue may arise.

In addition, students will have an opportunity to:

- Revisit the doctrine of estates;
- Apply rules of construction to the interpretation of provisions in a testamentary disposition or will; and

- Consider the interaction of common law and statutory rules.

### 8.1 Basic Concepts

*Property Law Reader* 5<sup>th</sup>, 557-71  
*Stuartburn (Municipality) v Kiansky*  
*McKeen Estate v McKeen Estate*  
*Caroline (Village) v Roper*  
[Property Law Act](#), RSBC 1996, c 377, s 10

### 8.2 State Limitations on Private Power – Public Policy

*Property Law Reader* 5<sup>th</sup>, 571-88  
*Re Leonard Foundation Trust*  
 Ziff, “Welcome to the Newest Unworthy Heir”  
[Human Rights Code](#), RSBC 1996, c 210, s 9

### 8.3 State Limitations on Private Power – Economic Efficiency

*Property Law Reader* 5<sup>th</sup>, 604-20 (including comments 1 & 2)  
*H.J. Hayes Co. v Meade*  
*Fennell v Fennell*  
*Trinity College School v Lyons*  
[Perpetuity Act](#), RSBC 1996, c 358, ss 6-13

## 9. INDIAN RESERVES & FIRST NATION LAND MANAGEMENT (2 classes)

This unit considers the history of colonial land policy in British Columbia and its intersection with Canadian law and Indigenous law in the 21<sup>st</sup> century. The focus is on Indian reserves as property interests constructed under the *Indian Act*, and then on the efforts of Indigenous peoples to reassert their governance of and control over traditional territories.

- 9.1 Property on Reserves
- 9.2 First Nation Land Management

### 9.1 Property on Reserves

*Property Law Reader* 5<sup>th</sup>, 478-82  
 Woodward, “16 Types of Aboriginal Interests in Land”  
*Nicola Band et al v Trans-Can. Displays et al*, 2000 BCSC 1209 (excerpts)

### 9.2 First Nation Land Management

*Property Law Reader* 5<sup>th</sup>, 482-85  
 Lavoie & Lavoie, “Land Regime Choice in Close-Knit Communities”  
 Framework Agreement on First Nation Land Management, [Executive Summary](#)

[Musqueam Land Code](#) (2012), Preamble, ss 3-6, 30  
[Musqueam Land Use Plan](#), ss 1 & 2.1  
MST Development Corporation [Projects](#)  
[Property Law Act](#), RSBC 1996, c 377, s 44

## 10. TITLE REGISTRATION (4 classes)

Title registration is the dominant system for recording interests in land in the Canadian common law provinces. The particulars of each title registration system vary from province to province, but the basic structures are similar. In this Unit, we draw on cases from several jurisdictions to develop the foundational principles, but the focus is on British Columbia's title registration system as an example of how title registration systems operate. One of the recurring issues in this unit is the extent to which title registration systems displace the rules at common law. We begin with an analysis of the common law priorities and the principles of title registration.

- 10.1 Common Law Priorities & Deeds Registration
- 10.2 Title Registration & Fraud
- 10.3 Registration of Charges
- 10.4 Title Registration and the Abolition of Notice

On the completion of this unit, students should be able to:

- Classify the priority rules at common law;
- Describe the origins and recount the history of title registration in Canada;
- Identify the general principles of title registration and correlate the principles with sections of British Columbia's *Land Title Act*;
- Explain how title registration departs from a common law deeds system;
- Identify the place of the fee simple interest in title registration systems;
- Explain the fraud exception to indefeasible title and the differences between immediate and deferred indefeasibility;
- Describe the interaction of statutory provisions that create a system of immediate indefeasibility in British Columbia;
- Explain the assurance principle and when someone is entitled to compensation from the assurance fund in British Columbia;
- Define "charge" in British Columbia's title registration system and explain how they are treated differently than fee simple interests;
- List and explain the different categories of notice;
- Explain some of the different ways in which the doctrine of notice has been modified in title registration jurisdictions;
- Predict the effect of notice of a prior unregistered interest in British Columbia; and
- Identify circumstances in which indefeasible title is only a rebuttable presumption.

In addition, students will have an opportunity to:

- Consider the development of title registration in its historical context;
- Practice applying rules to different fact scenarios;

- Analyze the interaction between the common law and statute-based systems;
- Revisit the circumstances that give rise to resulting trusts; and
- Return to the justifications for property.

### 10.1 Common Law Priorities & Deeds Registration

*Property Law Reader* 5th, 913-921, 934-937

Levmore, "Good-Faith Purchaser"

*Northern Counties of England Fire Insurance v Whipp*

*Rice v Rice*

O'Connor, *Security of Property Rights and Land Title Registration Systems*

Youdan, "The Length of a Title Search in Ontario"

### 10.2 Title Registration & Fraud

*Property Law Reader* 5th, 938-942

Harris, Review of *The Law of the Land*

Harris, "[Indefeasible Title in British Columbia](#)" (2006)

[Land Title Act](#), RSBC 1996, c 250, ss 20, 23(2), 25.1, 25(2), 43, 296(2)-(3), 294.61 and/or 304

[Nisga'a Land Title Office](#)

### 10.3 Registration of Charges

[Land Title Act](#), RSBC 1996, c 250, ss 1, 23(2), 25.1, 26, 27(3), 197

[Gill v Bucholtz](#), 2009 BCCA 137, 1-5, 17-19, 26-28

Harris & Mickelson, "[Finding Nemo Dat in the Land Title Act](#)" (2012)

### 10.4 Title Registration and the Abolition of Notice

*Property Law Reader* 5th, 950-952

Harris & Au, "[Title Registration and the Abolition of Notice](#)"

[Szabo v Janeil](#), 2006 BCSC 502

[Land Title Act](#), RSBC 1996, c 250, s 29

## 11. SHARED OWNERSHIP (3 classes)

To this point in the course, we have seen how the bundle of rights and obligations that comprise ownership can be divided into various estates and that different people may have different rights and obligations with respect to the same land at the same time. Examples include the grant of a life estate to one person with the remainder in fee simple to somebody else, or the grant of a lease to a tenant with the reversion in fee simple remaining with the landlord. In this unit, the focus is on the rights and obligations of people who share the same interest in land at the same time or, as in condominium, combine an individual interest with a shared interest. In particular, it focuses on co-ownership in the forms of joint tenancy and tenancy in common. It also introduces and considers some of the issues that arise in what has rapidly become the dominant legal form in multi-unit buildings in many cities around the world: condominium.

- 11.1 Basic Concepts and Creating Shared Interests
- 11.2 Severing Joint Tenancies and Terminating Co-Ownership
- 11.3 Condominium

### 11.1 Basic Concepts and Creating Shared Interests

*Property Law Reader* 5th, 719-735

Alexander, "Governance Property"

Thom, "Addressing the Challenge of Overlapping Claims"

Ontario Law Reform Commission, "Report on Basic Principles of Land Law"

British Columbia Law Institute, "Report on Joint Tenancy"

Ontario Law Reform Commission, "Report on Basic Principles of Land Law"

*Robb v Robb*

[\*Property Law Act\*](#), RSBC 1996, c 377, ss 11(2), 12

[\*Business Corporations Act\*](#), SBC 2002, c 57, ss 30 & 31

### 11.2 Severing Joint Tenancies and Terminating Co-Ownership

*Property Law Reader* 5th, 735-43; 748-50

*Re Sorensen*

Carter, "The Partition Act"

[\*Property Law Act\*](#), RSBC 1996, c 377, ss 18(1) & (3)

[\*Partition of Property Act\*](#), RSBC c 347, ss 2, 6 & 7

### 11.3 Condominium

*Property Law Reader* 5th, 758-768

Harris, "Condominium: A Transformative Innovation"

*Ottawa-Carleton Standard Condominium Corporation*

Harris, "Embedded Property"

## 12. SERVITUDES (3 classes)

This unit focuses on non-possessory interests in land, or proprietary interest that do not include a right to possession. More specifically, we look at three non-possessory interests in land: easements, profit à prendre, and covenants. Each of these forms of property provides their holders with some capacity to use or to restrict the use of land that belongs to somebody else. In addition, easements and covenants are two mechanisms that enable the private regulation of multiple properties. This unit introduces the requirements of these legal forms, but also some of the potential public policy concerns with the spread of private zoning.

- 12.1 Easements and Profit à Prendre
- 12.2 Profit à Prendre
- 12.3 Restrictive Covenants

On the completion of this unit, students should be able to:

- Explain the elements of an easement at common law and how these elements have been modified by statute;
- Describe the nature of profit à prendre;
- Explain how courts have balanced protection for state and private property with freedom of expression;
- Describe the emergence of covenants as a property interest and set out the requirements that must be met in order for the burden of a restrictive covenant to run with the land; and
- Comment on the sources that judges use to infuse the doctrine of public policy with content.

In addition, students will have an opportunity to:

- Reflect on the history of racism in the development of the law of property;
- Apply common law tests to hypothetical fact scenarios; and
- Consider the connections between law and public policy.

## 12.1 Easements

*Property Law Reader* 5<sup>th</sup>, 781-93

*Husky Oil Operations v Shelf Holdings Ltd*

Thomson, "Easements, Errors, and Energy Projects"

*Robinson v Pipito*

[\*Land Title Act\*](#), RSBC 1996, c 250, ss 24, 140, 218

[\*Property Law Act\*](#), RSBC 1996, c 377, ss 18(5) & (7), 35

## 12.2 Profit à Prendre

*Property Law Reader* 5<sup>th</sup>, 815-22

*R v Tener*

*Saulnier v Royal Bank of Canada*

## 12.3 Restrictive Covenants

### A. Burdens and Benefits

*Property Law Reader* 5<sup>th</sup>, 830-44

*Tulk v Moxhay*

Ziff, "Restrictive Covenants"

*Noble et al v Alley*

[\*Human Rights Code\*](#), RSBC 1996, c 210, s 9

[\*Land Title Act\*](#), RSBC 1996, c 250, ss 1 "building scheme," 220(1)-(3), 222

[\*Property Law Act\*](#), RSBC 1996, c 377, s 35

### B. Termination



*Property Law Reader* 5<sup>th</sup>, 872-74

Ziff, "Restrictive Covenants"

[1530 Foster Street Ltd v Newmark Projects Ltd](#), 2018 BCCA 198