

THE NCA HUB

Examination Preparation

CANADIAN PROPERTY LAW STRATEGIC NOTES

11 Topics | All Assigned Cases | Exam Intelligence | Issue-Spotter Framework

NCA Syllabus: Revised for October 2025 | Ziff's Principles of Property Law, 8th ed. (2023)

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EXAM INTELLIGENCE — BOTH SAMPLE EXAMS DECODED

SAMPLE EXAM 1 (2022, also released as 2024 sample): Q1 (30 marks) — Will interpretation covering trust, life estate, condition subsequent, Rule Against Perpetuities, and joint tenancy. Q2 (25 marks) — Multi-issue boundaries: accretion (lake receding), fixtures (hut on logs), finders/trespass/possession, easements by necessity, subsurface minerals. Q3 (15 marks) — Title to land with mines and minerals; profit à prendre; 25-year exclusive possession grant (= lease). Q4 (15 marks) — Joint family venture (Kerr v Baranow) — pure doctrine essay. Q5 (15 marks) — Priorities at common law and under Torrens title.

SAMPLE EXAM 2 (2025 — NEWEST): Q1 (25 marks) — Will interpretation: condition precedent/subsequent, determinable interest, Rule Against Perpetuities, and equitable interests in the matrimonial home and farm (Sharon's unjust enrichment/constructive trust claim). Q2 (25 marks) — Cave escape room: airspace/subsurface (cuius est solum), trespass, fixtures (lockers anchored to concrete), registered right-of-way (easement — scope and use). Q3 (25 marks) — Commercial lease: three sub-parts on Spencer's Case/covenants running, assignment and landlord's right to refuse consent (Richfield), Highway Properties remedies; then shared ownership disputes between co-owners. Q4 (25 marks) — Five True/False questions testing: symbolic delivery for gifts; Statute of Uses; Aboriginal rights without exclusive possession; JFV prerequisite for constructive trust; Torrens unregistered interest priority.

⚠ **EXAM TIP** — THE PROPERTY EXAM REWARDS BREADTH, NOT JUST DEPTH. The exam instructions in both sample exams explicitly state: 'Identify RELEVANT uncertainty on the facts and in the law. Consider all plausible arguments and plausible alternative outcomes.' Missing a sub-issue costs marks regardless of how well you handle the ones you identified.

MASTER FRAMEWORK — THE FIVE PROPERTY LAW QUESTIONS

Before writing any analysis, run every fact pattern through these five questions to identify all issues. Then structure your answer by addressing each issue in order of apparent mark weight.

QUESTION 1: WHO OWNS WHAT? — Establish the Interest and Its Scope

Begin by identifying the nature of every interest. Is this real or personal property? Is this a legal or equitable interest? What estate does the holder have — fee simple, life estate, leasehold, or lesser interest? What is the physical scope — surface only? Airspace? Subsurface? Minerals? Were the magic words (common law) or statutory presumption used? Always label interests precisely: "fee simple absolute," "life estate," "determinable fee simple," "joint tenancy," "tenancy in common," "easement," "restrictive covenant," "profit à prendre," "Aboriginal title."

QUESTION 2: IS THE INTEREST VALID? — Check for Vitiating Rules

Condition subsequent or determinable: Is the limiting condition certain (H.J. Hayes v Meade)? Does it violate public policy (Leonard Foundation; McCorkill)? Does it restrain alienation (Blackburn v McCallum)? Condition precedent: Is it sufficiently certain? Does it violate the RAP? Rule Against Perpetuities: Must the interest vest, if at all, within lives in being plus 21 years? Apply the worst-case test. If possible to violate → VOID. For equitable interests: Was the trust properly constituted? Is there a resulting trust issue (Pecore)? Was there unjust enrichment giving rise to a remedial constructive trust (Kerr v Baranow)?

QUESTION 3: DOES THE INTEREST BIND THIRD PARTIES? — Priority and Registration

Property rights bind third parties — that is what makes them proprietary rather than personal. Identify all priority contests: Common law: Prior legal vs subsequent legal; prior equitable vs subsequent equitable; prior legal vs subsequent equitable; prior equitable vs subsequent legal (the bona fide purchaser for value without notice rule). Registration: Is this a deeds registration province or a land titles province (Torrens)? Torrens: Does the registration confer immediate indefeasibility? Is the fraud exception engaged? Easements and restrictive covenants: Do they run with the land to successors?

QUESTION 4: WHAT ARE THE RIGHTS AND OBLIGATIONS OF CURRENT OWNERS?

Life tenant: Right to use and enjoy; duty not to commit voluntary waste; obligation to pay outgoings; ameliorating vs permissive vs voluntary waste. Co-owners: Right to possession of the whole; duty to account for profits taken exclusively; right to compel partition or sale. Landlord/Tenant: Duty of quiet enjoyment; covenant to pay rent; Spencer's Case covenants running to assignees; assignment vs sublease distinction. Easement holder: Right to use the servient tenement for the granted purpose; scope limitations (Harris v Flower rule — cannot use easement to benefit non-dominant land).

QUESTION 5: WHAT REMEDIES ARE AVAILABLE?

Trespass to land: Injunction; damages; recovery of land. Breach of a covenant: Injunction (restrictive covenant); damages. Lease remedies: Highway Properties three options on tenant's repudiation; termination; specific performance (rare). Easement termination: By unity of seisin; by release; by abandonment. Joint tenancy: Severance converts to TIC; partition or sale. Constructive trust: Proportionate share of accumulated wealth where JFV established.

TIER	TOPICS	APPEARS ON EVERY EXAM?
Tier 1 — HIGHEST PRIORITY	Estates/Will Interpretation (Ch.4); Conditional Transfers/RAP (Ch.7); Equitable Interests/JFV (Ch.6); Priorities and Registration (Ch.11)	YES — both sample exams
Tier 1 — HIGHEST PRIORITY	Boundaries — airspace/subsurface, fixtures, accretion (Ch.2)	YES — both sample exams
Tier 2 — VERY LIKELY	Servitudes — easements, restrictive covenants (Ch.10); Leases (Ch.8); Shared Ownership (Ch.9); Indigenous Rights/Tsilhqot'in (Ch.5)	At least one sample exam each
Tier 3 — OCCASIONAL	Property in Context/Constructive Taking (Ch.1); Possession/Finders/Gifts (Ch.3)	Q3/Q4 type questions

CHAPTER 1 — PROPERTY IN CONTEXT | SOURCES | CONSTRUCTIVE TAKING

1.1 Sources of Canadian Property Law

Canadian property law is a hybrid of three streams. Indigenous traditions governed land relationships before European contact — based on use, stewardship, and communal connection rather than exclusive ownership. English law was received, bringing feudal structures, the doctrine of tenure, and the doctrine of estates. The Statute Quia Emptores (1290) allowed free alienation while preserving the feudal structure; the Tenures Abolition Act (1660) converted all tenures to free and common socage. Reception erased pre-existing Aboriginal title — an erasure now recognised as constitutionally problematic under s.35 of the Constitution Act, 1982.

1.2 Basic Divisions in Property Law

Real vs Personal Property

Real property (realty) is land and interests in land — the common law provided a "real" remedy (recovery of the thing itself). Personal property (personalty) is all other property — movables (choses in possession) and intangibles (choses in action). The distinction determines which legal rules apply. Leasehold estates occupy an anomalous position: classified as chattels real — real because they relate to land, chattels because historically the common law did not protect the tenant with a real action.

Legal vs Equitable Interests

Legal interests are recognised and enforced by common law courts — generally binding on all. Equitable interests arise in courts of equity — enforceable against all except a bona fide purchaser for value of a legal estate without notice. The trust is the quintessential equitable device.

The Numerus Clausus Principle

The numerus clausus principle ("the number is closed") holds that property interests must conform to a fixed and recognised list of forms. Parties cannot by contract create entirely new categories of property rights that bind third parties. The principle ensures predictability and limits fragmentation of title.

1.3 Constructive Taking of Property — Annapolis Group

RULE — CONSTRUCTIVE TAKING: *Annapolis Group Inc v Halifax Regional Municipality*, 2022 SCC 36

FACTS: Annapolis accumulated 965 acres in Halifax with the intention of developing it. Halifax zoned the land Urban Settlement/Urban Reserve, requiring Halifax to pass a secondary planning resolution before serviced development could occur. Halifax refused to pass such a resolution, effectively preventing any development. Annapolis sued for constructive taking.

TWO-PART TEST (from *Canadian Pacific Railway Co v Vancouver (City of)* 2006 SCC 5): (1) The government acquired a **BENEFICIAL INTEREST** in the property or flowing from it; **AND** (2) The regulation removed **ALL REASONABLE USES** of the land.

ANNAPOLIS CLARIFICATION (5-4 majority, Wagner CJ): "Beneficial interest" does NOT require that the state actually acquire a proprietary interest. An **ADVANTAGE** flowing to the state from its regulation suffices. Evidence of the public authority's **INTENTION** is relevant. The nature of the land and its historical uses; whether the regulation targets a specific landowner or advances a general public policy objective; and relative social utility are all relevant non-exhaustive factors.

DISSENT (Karakatsanis J, 4 judges): Constructive taking should require actual acquisition of a proprietary interest corresponding to the deprivation suffered.

1.4 Property and the State — Charter and Constitutional Protections

Under s.92(13) of the Constitution Act, 1867, "property and civil rights in the province" fall within exclusive provincial jurisdiction. The Canadian Charter of Rights and Freedoms contains NO express guarantee of property rights — a deliberate political choice. There is no Canadian equivalent of the US Fifth Amendment "takings clause" as an express constitutional provision. Indirect Charter protections include s.8 (unreasonable search or seizure), s.7 (life, liberty, security of the person), and s.15 (equality guarantee). Expropriation legislation (e.g., Expropriation Act, RSC 1985; Ontario Expropriations Act, RSO 1990, c E.26) provides procedural protections and compensation rights when property is formally taken.

⚠ **EXAM TIP — CONSTRUCTIVE TAKING IS TESTED IN CONTEXT.** Use the Annapolis two-part test whenever government regulation prevents a landowner from using their land: (1) did the state acquire an advantage? (2) were all reasonable uses removed? Note the majority lowered the bar — mere "advantage" to the state suffices without formal proprietary acquisition.

CHAPTER 2 — BOUNDARIES OF PROPERTY: AIRSPACE | SUBSURFACE | FIXTURES | RIPARIAN

2.0 Legal Descriptions of Land

Canadian law uses several systems of land description: (a) METES AND BOUNDS — traditional common law method, used in parts of Ontario and Atlantic provinces; (b) THE DOMINION LAND SURVEY SYSTEM — used throughout the Canadian prairies, dividing land into townships, ranges, and sections; (c) PLAN OF SUBDIVISION — modern urban land described by reference to a registered plan assigning lot numbers; (d) UNIT/CONDOMINIUM DESCRIPTIONS — identifying the unit number and plan under applicable provincial condominium legislation.

2.1 The Latin Maxim — Airspace and Subsurface Rights

RULE — THE LATIN MAXIM + DIDOW

THE LATIN MAXIM: Cuius est solum, ejus est usque ad coelum et ad inferos — "Whoever owns the soil owns everything up to the heavens and down to the depths of the earth." THE MAXIM IS NOT ABSOLUTE.

AIRSPACE — *Didow v Alberta Power Limited*, 1988 ABCA: Alberta Power installed power lines crossing the airspace above the Didows' land without consent. HELD: A landowner has rights in the airspace above their land, though not to unlimited heights. Installing power lines through a landowner's airspace WITHOUT consent constitutes TRESPASS to land. Damage need not be proved. Rights extend as high as is reasonably necessary for the use and enjoyment of the land and structures on it. Statutory limits (Aeronautics Act) permit aircraft to fly at reasonable heights without committing trespass.

SUBSURFACE: Ownership extends downward into the earth. Minerals and subsurface resources are generally included UNLESS separately reserved or severed by an earlier grant or by Crown reservation.

Mines and Minerals

Mines and minerals are a distinct proprietary interest that can be separated from surface rights by an earlier grant or reservation. If a grant is silent, the question of what passes depends on the words of the instrument and the applicable provincial legislation. *MacKenzie v Alberta (Registrar)* 2022 ABCA 277 (paras 30–33) affirms that mineral interests can be held as a distinct freehold estate separate from the surface. *PrairieSky Royalty Ltd v Yangarra Resources Ltd*, 2025 ABCA 240 (paras 29–34) reinforces the proprietary nature of mineral estates and their separability from surface rights.

SAMPLE EXAM Q3 (2022) application: Ramsey held title to Blackacre "including all mines and minerals, except coal." When Ramsey sold Blackacre to Fielding "no mention was made of minerals." Under the statutory fee simple presumption (exam assumption), Fielding received the entire interest held by Ramsey — including all mines and minerals EXCEPT coal (already excepted from Ramsey's original grant).

2.2 Land Bounded by Water — Riparian Rights and Accretion

RULE — ACCRETION: *Blewman v Wilkinson* [1979] NZCA

RIPARIAN RIGHTS: Where land is bounded by a river, lake, or other watercourse, the landowner holds riparian rights — including the right to access and use the water adjacent to their land. The bed of a navigable river is generally Crown property. The bed of non-navigable rivers may belong to the riparian owner to the middle of the stream.

ACCRETION: Where a water boundary shifts GRADUALLY and IMPERCEPTIBLY, the riparian