

LAWS 2201 Fall 2020

Professor Dawson

ASSIGNMENT 4: Short Answer Questions 2 (SAQ2)

TAKE HOME (Open Book) EXAMINATION

GENERAL INSTRUCTIONS

This Assignment is worth **33%** of your final grade and is marked out of 33 marks. It covers Chapters/Topics 6-11 inclusive and any associated readings (see Course Outline Schedule).

Submit your answer on cuLearn **no later than 12.00PM (NOON) EST on DECEMBER 23, 2020**, the last day of the Examination Period. You may submit earlier. There is a one-hour grace period to assist you if you have technical issues.

Late work receives ZERO marks. Note: You may lose up to 3.5 marks if you a) exceed total word count; or b) present work that is poorly supported/cited; or c) poorly written or proofread.

Recommendation: Plan to complete your work at least one day before you submit it to allow you time to come back and read it over. Check the FAQ Discussion Forum on cuLearn before you submit your work in case an important point affecting the assignment has been addressed

This is a Final Examination. *You are required to complete it by the end of the Examination Period.* You may use one of your remaining grace days, if any. Professor Dawson may grant a deferral because of serious illness or an unexpected emergency, that directly affects you for more than 3 days. You must use and sign the Extension Request Form (cuLearn). You may be required to provide documentation.

Note: Computer crashes are not a sufficient reason for a deferral. Back-up your work frequently (to the cloud, a storage device such as a USB key, or by sending yourself drafts in email).

Save your work in Word or as a PDF, using normal font and margins. You may single or double space your work. Include a cover page (or header) with your name, student number and the name of the Assignment. Include page numbers. Follow this naming protocol to assist us in managing the files: **Lastname_First initial Assignment name** (e.g., Samek_R_SAQ2).

UPDATED:

Use your own words in your answers. Doing so demonstrates that you understand the material.

Use quotations only to illustrate your answer not as a stand-in for your answer.

ALL justified, direct (and limited) quotation must be enclosed in quotation marks and footnoted without exception. Do not closely paraphrase.

ALL sources that you have used for each answer (even where you have not included quotations) must be cited.

Follow the citation instructions given (next page). Use FOOTNOTES only.

DO NOT DO ADDITIONAL RESEARCH. DO NOT USE SOURCES OUTSIDE OF COURSE MATERIALS.

Your answers must be your own original, individual work. Do not share or discuss answers with other students. See the Course Outline for Additional Information on Academic Offences.

CITATION INSTRUCTIONS

I do not require regular McGill legal citation (or as set out in the Law Style Sheet). However, you must still attribute your sources for direct quotes, paraphrased material, and source of ideas. Do not provide a bibliography.

Because the Assignment 4 (SAQ2) consists of short answer questions, I permit a shorter form of citation from than used in the Short Essays that allows you to omit the full citation to the original reference being used. This should save you time while upholding academic integrity.

You may use the first person but remember that you are working with assigned material not your own independent opinion.

All direct quotes must be enclosed in quotation marks. If a quotation is longer than 50 words, it must be given in a new paragraph, indented and single spaced. See earlier points about using your own words to demonstrate your understanding of the material and limiting direct quotation.

In the Short Essays, you were required to cite an article as follows: Bruce Ziff, “Tragedy of the Commons” in *The Principles of Property Law*, 7th Ed (Toronto: Thompson Reuters Canada) at 34, at *Casebook*, 250.

- In this Assignment, you would cite this source as: Ziff, at *Casebook* 250. When you refer to material on a later page, give the pinpoint page: Thus: Ziff, *Casebook* 250 at 251.

The same goes for cases and legislation cited. It is sufficient to give the title of the case or statute as it appears in the Casebook. For example: *Dred Scott v Sandford*, *Casebook* at 39. Legislation, [Name of statute], *Casebook* at [given page]. Add a pinpoint if different than the starting page of the item.

For material on cuLearn, you must still provide a bit more information – giving the author and title of the work. Rather than using a ‘starting page’, simply give the pinpoint page you are using in the cuLearn document. For example,

- In Assignment 1 you were to cite this cuLearn source as: Margaret Davies, “Land, Liberty and the Colonies” in *Property Meanings Histories Theories* (Oxford: Routledge Cavendish, 2007) 86, at *cuLearn*, 2. In this assignment, you would cite this source as Davies, “Land, Liberty and the Colonies”, *cuLearn*, at 2 [giving the page in the cuLearn PDF]

You should use the term *Ibid* if you are referring to the same source in the immediately preceding footnote.

You should use the term *Supra* when referring back to a source you have already footnoted. Format is [author or case name] *Supra* at Note ___ if you are referring to a source previously footnoted.

PART 1: SHORT ANSWERS - INSTRUCTIONS

This Part is graded out of **33** marks. Answer all questions and all parts of each question.

Length of all answers may not exceed **1475 words**. Footnotes are NOT included in the word count. You may write less. Where a question is worth more, use more words on it.

Numerate your answers according to each question's number. Use short form rather than essay form in your responses: provide short, clear, direct sentences that make each point relevant to the answer. Do not repeat the question in your answer.

Marks for each question are as follows:

Q	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	TOT
Mark	2	1.5	2	1.5	2	1.5	3	1.5	2	2	3	1.5	4	2	3.5	33

SHORT ANSWER QUESTIONS

1. Duff (*Casebook* at 155) wrote about the *Mullick v Mullick* case which involved a legal dispute about the relocation of an endowed Hindu idol in India. STATE what the Privy Council decided on the question of whether the idol was a legal person, and, drawing on Duff, SET OUT THREE main points about the legal person concept that flow from the *Mullick* case.
2. Explain whether the corporation is a legal person, or a form of property in Canadian law, or even both. Support your answer with ONE piece of legislation or points made in ONE course reading other than *Salomon v Salomon*.
3. In the following grid, identify THREE reasons for which the law today allows for artificial legal persons and EXPLAIN why ONE of the other reasons in the grid is incorrect. Be sure to cite associated the course reference in your answer.

Allow perpetual succession	Build transport infrastructure	Reduce corporate dominance in the economy
Keep big money out of politics	Limit legal liability of investors	Raise capital for large undertakings

4. Review the case of *Salomon v Salomon Ltd* (*Casebook* at 158). The central legal issue was who determining who should pay the debts of a business which had become insolvent. Give ONE reason why it was argued that Mr Salomon should pay the debts. Give ONE reason why it was argued that the business should pay the debts. STATE the decision (the result) given by the House of Lords in choosing between these two arguments.

5. Review Waldron, *Casebook* at 181, Ziff, *Casebook* at 197, and Davies, *Casebook* at 16). EXPLAIN why a society will consider it necessary to have a system or concept of property, offering at least FOUR distinct (numbered) points in your answer.
6. Briefly set out THREE of the main roles of law when a society has a property system (review authors noted in the previous question and Ziff, *Casebook* at 197)
7. Review Davies and Naffine, *Casebook* at 177, and Ziff *Casebook* at 185-186) and provide the normal legal definition of property and set out THREE of the types (or kinds) of entitlements/duties of an owner of property.
8. Property law 'sorts' material resources into different categories or types of property: Private Property, Public Property and Commons Property. Review Waldron (*Casebook* at 213). Briefly EXPLAIN the central organizing idea of each type of property.
9. Blackstone asked: "What gave a [person] a right to retain in a permanent manner that specific land that before was common access?" Various justifications have been advanced for private property. (See Ziff, *Casebook* at 217). Select ONE of the following justifications of private property: Briefly EXPLAIN it and provide ONE critique that has been made of its adequacy.

	Justifications (Select ONE from this list)
1	Provides optimal personal and social happiness (utility)
2	Facilitates freedom from the state and allows individuals to control their own destiny.
3	Enhances material wealth and provides and incentive to foster economic efficiency and productivity
4	Is appropriate (just) as a reward for labour or merit

In our studies we noted that property law does not include values of conservation or stewardship of natural resources, although this may be changing. Answer the following two questions:

10. Review (Karp, *Casebook* at 281) who advocates for a new balance to be struck between conservation interests while "preserving the essential ingredients (justifications) of private property" (at 285). His proposal would affect the ingredients of private property set out below. SELECT TWO of these element and EXPLAIN what would change if a conservation value were to be added to private property ownership:
 - a. Individual autonomy and expectations of land use
 - b. Property as part of an owner's identity and stability
 - c. Freedom from state interference
 - d. Individual liberty

11. Review the cases of *Palmer v Nova Scotia Forest Industries* (Justice Nunn) (*Casebook* at 270) and *Spraytech v Town of Hudson* (Justice L’Heureux-Dubé) (*Casebook* at 276). Both involved planned spraying of chemicals on private land. In *Palmer*, neighbouring landowners sought an injunction to prevent the spraying. In *Spraytech*, a municipality issued a bylaw prohibiting spraying of chemicals on private land. A landscaping company challenged this bylaw.

A. Give the RESULT in each case (to allow or not to allow spraying) – this should be a very short answer (about 15 words);

B. STATE legal principle or standard used by the judge to reach their decision (Note: Do not get into the municipal powers law in the *Spraytech* case);

C. IDENTIFY the value each judge chooses in their case, as between conservation and economic development; and

D. GIVE one example or illustration of this choice in their reasons for decision.

12. Merrell (*Casebook* at 189) examines several schools of thought (or theories) about the required feature(s) to say that property exists and can be legally enforced. Sort the following table to match each statement in Column 1 with the School of Thought in Column 2 and the correlated judicial opinion quoted in Column 3. This requires a very short answer (about 5 words: Simply write your answer as an equation in the following format: [column] + School + # of Judicial application.

	Statement about Property	School of Thought		Judicial application
A	“a resource identifiable by third parties, and a holder with a legitimate claim for exclusive possession, control and use.”	Nominalism (N)	1	“property must entail or have some exclusive right to make a claim against someone else... a collection (or bundle of rights) over things that and be enforced against others” Weiler J, <i>Tucows v Renner</i>
B	“a state enforced right of exclusion over things good against the world.”	Multiple variable essentialism (MVE)	2	“this case involves the search for an appropriate legal framework for new social facts which so up the inaptness of an old doctrine [trespass] developed upon a completely different social foundation...[law must] be able to adapt it in the "modern marketplace [as] property is "a legally endorsed concentration of power over resources.” Laskin CJ in <i>Harrison v Carswell</i> .

C	"a legally endorsed concentration of power over resources' that is an illusion."	Single variable essentialism (SVE)	3	'the most important thing is a durable right to exclude others (the public). The Mall was private property and the owner's rights were superior to the public interest of allowing lawful picketing in the Mall" Dickson J in <i>Harrison v Carswell</i>
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13. Merrell regarded the ability to exclude others from resources as central to determining whether a property system exists. Egan, *Casebook* at 298, noted that there are fundamental differences between Western and Indigenous understandings of property (land) and specifically of exclusion in relation to property (land). Drawing upon Egan, BUT USING YOUR OWN WORDS,
- A. EXPLAIN how Western and Indigenous concepts of exclusion differ,
 - B. STATE the different 'ethic or central idea' at the centre of each approach AND
 - C. DISCUSS how this gulf came to matter in settler-indigenous relations in Canada.
14. Review Gaudry, (*Casebook* at 290) and EXPLAIN the meaning of the 'doctrine (justification) of discovery' as it was used in Canada by the British, and the Hudson's Bay Company in particular. SET out his main critique of this doctrine or justification as used in Canada.
15. Review Stone (*Casebook* at 329) who called for "lawyers to be as bold and imaginative as those who convinced the US Supreme Court that a ...corporation was a "person".
- A. IDENTIFY the change in the law of persons and property that he wanted them to imagine or create;
 - B EXPLAIN TWO of the reasons he thought this would be a wise change to make; and
 - C.DISCUSS his response to ONE of the objection that he anticipated would be made to his proposal.

REMEMBER: CHECKLIST

DOUBLE CHECK AS YOU FINISH YOUR WORK

- ☐ Have you completed each part of each question?
- ☐ Have you used only course materials (Casebook, culearn and lectures) in preparing your answers?
- ☐ Have you cited ALL sources that you have used for each answer (even where you have not included quotations)?
- ☐ Have you used your own words and demonstrated that you understand the material?
- ☐ Have you enclosed justified direct (and limited) quotation in quotation marks and footnoted without exception?
- ☐ Have you used quotations only to illustrate your answers and not as the content of your answer (including not quoting slides directly)?
- ☐ Have you followed the citation instructions given or used McGill citation style? Have you used footnotes only?
- ☐ Have you named your file with your Last name, First initial, and Assignment info (SAQ2)?
- ☐ Have you proof-read your work – to correct typos, ensure you said what you intended to say, and ensure that you have written clearly?
- ☐ Have you made a back up copy of your Assignment?