

Project No. 1 (Answer Guide No. 9)

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**PART A — QUESTIONS ON LESSONS 1-4**

The answers provided below are considered to be a guide only. Assignment answers resembling these below would have received passing grades.

Marks:

- 5     1.     (a)     You could bring a civil action to recover damages for the battery which occurred, as well as for the damages suffered to your property. It is unlikely that damages suffered will be more than the financial limit of the Small Claims Court, so this court would be a good choice to bring your action in, as costs are a lot less, the court process is faster, and you do not need a lawyer to bring the action for you or attend with you in court. From there you would appeal to the Superior Court of the Province, for example the BC Supreme Court. The decision of this court would be heard in the provincial Court of Appeal. An appeal to the Supreme Court of Canada from the Court of Appeal is only possible if leave to appeal is granted by the court. Since this is not a matter of national importance, nor does there appear to be any significant legal issues, it is unlikely that the Supreme Court will hear the matter.
- 5                    (b)     To try to ensure that the judgment is paid:
- Set up an examination under oath of the judgment debtor to determine his/her assets
  - Seek an execution, where assets are seized and sold
  - Register judgments against any land
  - Obtain a garnishing order
- 5     2.     (a)     First of all, you have been making fraudulent misrepresentations and you can be sued by a purchaser, who may be allowed to rescind the contract or sue for damages. You could also face disciplinary action, which could result in suspension of your license by the real Estate Board, plus you would be responsible for the costs of any hearings into your behaviour.
- 5                    (b)     Your neighbour may make a claim for private nuisance. She must show that harm was done, or that there was interference with her proprietary rights, which she may be able to do if the screen is excessively tall and interferes with her use of her airspace.
- 5                    (c)     You may sell your share of the joint tenancy, so here, a  $\frac{1}{2}$  interest in the condominium. This will sever the joint tenancy, and whoever purchases the  $\frac{1}{2}$  interest will be a tenant in common with your daughter.
- 5                    (d)     The courts would need to consider whether the screen was a fixture or chattel, and in doing so, they would look at the degree and purpose of affixation. If the item was noted in the contract of sale, it would pass according to the intentions of the parties.

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30     Total Marks for Part A

**PART B — FIELD PROJECT**

Due to the individual nature of Part B, particularly questions 1 (a), (b) & (c), suggested answers are only provided for selected questions.

- 4     1.     (d)     (i)     One way to register the property to meet the owner's demands is to give the wife a life estate: "To my wife for her life, with remainder to my son."
- 3                     (ii)     The heating bill is the responsibility of the wife, as a life tenant is responsible for operational expenses. The insurance bill and remaining portion of the mortgage are the responsibility of the remainderman, in this case the son.
- 3                     (iii)    The wife cannot commit equitable waste.

30     2.     A report must include at least the following amount of information:

- Mark Knowles vs. Jeremy Brown
- British Columbia Supreme Court, Vancouver
- September 21, 2005.
- The Honourable Madam Justice Dhillon
- Plaintiff's Counsel: Mr. Guy Brown
- Defendant's Counsel: Mr. Gregory Calder

This case involves a motor vehicle accident (MVA), as Mark Knowles was rear-ended by Jeremy Brown. Mark Knowles' car suffered \$3600 in damages, and he has been off work, claiming he is disabled from being employed full-time as a house painter. From the session I viewed the plaintiff gave honest information as to his injuries, and how he was unable to do many things he used to do daily, such as go for long walks with his dog.

Liability is not in issue in this case, as the defendant has admitted to being at fault for the accident. Therefore no case law needed to be relied upon to determine liability. The main issue is the anticipated length of the plaintiff's disability, and this will be determined from medical evidence given by witnesses and through medical reports.

30     3.     The case brief format to be used for the three cases is as follows:

- Facts
- Issue(s)
- Decision
- Reasons
- Principle decided, or ratio

Stare decisis is the theory of following previously decided cases — "let the previous decision stand". Courts look at the decisions of equal or higher cases within the jurisdiction of their court and must follow these decisions, although they can distinguish cases on their facts. Stare decisis allows for predictability within the legal system.

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70     Total Marks for Part B