***Property Law: Cases and Commentary***

***Author Memo re Errors in the Text with Thanks to My Colleagues***

This memo provides information for instructors who use this book. Unfortunately, as my colleagues have graciously pointed out, there are some errors in the text; a few are significant. I hope that this memo will assist instructors at present and that these corrections can be inserted in any subsequent printing.

**Page 15, last para before Discussion Notes:**

In *Donoghue v Stevenson*, Lord Macmillan observed that “the categories of negligence are not closed.” The dissenting judges focused on the need for flexibility in the common law, applying his observation to the categories of nuisance.

**Page 26, line 7:** The word “destroyed” is incorrect; it should be “donated.”

**Page 26, heading iii, para 1:** *Piljak Esate* involved complicated process issues, and the current description is incorrect. For ease of discussion, insert the following after the first two sentences and ignore the rest of the existing text:

The hospital claimed that it was entitled to the tissue samples. Are these tissue samples “property”? If so, who is entitled to them? In *Piljak Estate v Abraham*, 2014 ONSC 2893, the court held that the hospital owned the samples. To what extent is this case a precedent with respect to all samples and tissues extracted from a patient in a hospital?

**Page 26, heading iii, para 2:** In *KLW*, the contract failed to provide for what was to happen to the sperm after the husband’s death, thus creating a problem for the widow in accessing the sperm. In addition, the consent requirement is section 2 of the *Assisted Human Reproduction Act*,not BC law.

**Page 36, first full para, lines 4-7: Additional Information**

The cases cited here (*Krouse v Chrysler Canada Ltd* and *Athans v Canadian Adventure Camps Ltd*)were 1970s cases involving well-known male sports figures whose images had been used without their consent for commercial purposes. By contrast with these claims, the young woman in *Aubry* was not famous, but she nonetheless succeeded in her claim for damages, based on invasion of privacy. The claims are different, of course, and *Aubry* appears to offer some protection for “ordinary people,” pursuant to the *Quebec Charter of Human Rights and Freedoms* (a right to be anonymous), because the photo was published without her consent. To what extent should common law provinces offer similar protection?

**Page 189, note iii, *Sipsas* para 24:** Significant words were inadvertently omitted:

[24] This court has not determined whether inconsistent use is necessary in cases of unilateral mistake, although there is Superior Court authority that supports the proposition that it is not.

**Page 217, note i, para 2:** The text contains an error: The Crown divided the island into 67 freehold lots, subject to the requirement to settle the lands with tenants.

**Page 223, note ii:** The text contains an error: The Canadian Parliament enacted the *Succession to the Throne Act*, *2013* (SC 2013, c 6), incorporating by reference the UK statute.

**Page 264, last two lines:** For greater accuracy: The restriction in *Murley* was attached to a licence, rather than a property interest; the judge expressly stated that it would have been invalid if attached to a property interest.

**Page 268, note iii, last para, line 2:** The word “context” should be “conflict.”

**Page 306, line 1:** There are words missing. The sentence should state:

Subject rights of re-entry and possibilities of reverter to the lesser of a uniform period of 40 years or a life in being plus 21 years if there are any relevant lives.

**Page 374-75, note i (page 375, line 2):** There is a significant error. The words “similar to her dissenting opinion” should be “reversing her dissenting opinion.”

**Page 435, note vi:** *Wing Lee Holdings Ltd v Coleman* involved a series of assignments, each of which included a clause relieving an assignor of liability for future breaches by an assignee. When a current assignee failed to pay rent, the lessor sued the initial lessees. Among other arguments, the lessor attempted to rely on *Highway Properties*, but the court held that the lessor had not notified the current assignee of his intention when he re-entered the leased property and that there was no basis for his claim against the original lessees. Although this case discussed *Highway Properties*, the availability of the fourth remedy in the absence of privity of contract remains unclear.

**Page 484, note iii, para 1, last 2 sentences:** Clarification: By 2004, the gallery concluded that Beaverbrook had made gifts of many paintings to the gallery and that he had then had the accession records altered to make them appear as loans. That is, it was Beaverbrook, not the gallery, that arranged for the records to be altered.

**Page 570, note ii, last para, lines 3 to the end:** An alternative suggestion for the court’s obiter comment in para 28 is that the court was considering a severance pursuant to Rule 2, mutual agreement, which might take place in equity. In such a case, the son would be a tenant in common in equity with respect to an undivided one-third interest. Although it is probable that this interpretation is preferable to a suggestion that the appeal court’s decision is inaccurate, it is curious that the appeal court did not specify that its decision focused on concurrent interests in equity. See also page 571, note iv.