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**THIS EXAMINATION CONSISTS OF 4 PAGES (INCLUDING THIS PAGE)
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**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

**FINAL EXAMINATION
APRIL 2019**

**LAW 443
CREDITORS REMEDIES**

**SECTION 1
PROFESSOR EDINGER**

TOTAL MARKS – 100

TIME ALLOWED – 3 HOURS plus 10 minutes reading time.

Notes:

This is an open book examination. You may bring into the examination room and use the casebook, the statutory materials and your notes.

If you require any further information to solve the problem, state what information is required and why you need it.

THIS EXAMINATION CONSISTS OF 3 QUESTIONS

MARKS

- 40** **1.** Ken and Barbara (Barbie) were married in 2000 in California, where they resided. Ken was a lawyer in private practice. He was also a licensed pilot and owned his own aeroplane.

In 2017, unhappy with both the politics in the United States and his marriage to Barbie, he went to the Cayman Islands to check on the many trusts which he had set up for his clients there. Barbie declined to accompany him. In the Caymans, he met Bella, on holiday there from British Columbia. Ken was smitten with Bella and decided to move to British Columbia to be with her. He and Bella flew to British Columbia in his aeroplane at the end of her holiday.

Barbie started divorce proceedings in California. She was awarded the family house and a final judgment of \$3.5 M. Ken was notified of the divorce and the award.

Ken and Bella purchased a house on the sunshine coast on waterfront property in Sechelt, British Columbia. Bella paid \$10,000 and Ken paid the (very large) balance. Title to the house, however, is registered in Bella's name only.

They opened a joint account in a bank in Sechelt. Ken made all the deposits. In California, joint accounts are not garnishable. He assumed that British Columbia law would be the same. A lover of art, Ken purchased four valuable paintings which were hung in the house. Ken also invested \$750,000 in bitcoin, believing that the future lay in cryptocurrency.

The Dean of Law at UBC persuaded Ken to make a donation of \$350,000 to the law school for scholarships and bursaries.

Barbie retains you. She wishes to collect the \$3.5 M awarded her by the California court. Draft a memorandum advising her whether she can enforce her California judgment in British Columbia and indicating which assets, if any, might be exigible.

- 2.** As a cost saving measure, Peter Ross (PR), an employee of Ocion Water Ltd., was laid off in January 2017. He was paid severance.

PR had made an investment in Ocion and also had made a loan to the company. Ocion owed PR a total capital amount of \$50,000. This debt was evidenced by a

promissory note for which the due date was December 1, 2018. The debt bore simple interest, payable monthly, at a rate of 12% per annum.

Ocion made one interest payment to PR at the demand of PR. On November 15, 2018, Ocion sent PR an email asking him for an extension on payment of the \$50,000 (without further interest) until December 1, 2019. PR declined to discuss an extension and commenced an action for the debt on January 16, 2019. He issued a pre-judgment garnishing order which was delivered to Ocion's bank. (As a former employee, PR knew where Ocion did its banking.) In the affidavit in support of the garnishing order, PR stated that the promissory note was due and payable to him on December 1, 2017. He also stated that he had made "many demands" for payment.

The pleadings were appended to the garnishing order and the promissory note was attached as an exhibit.

- 15 **a.** Ocion retains you. Ocion informs you that it believes that it has a bright financial future but that, at the moment, it has a very serious cash flow problem; it is not able to satisfy the promissory note. Draft a memorandum advising Ocion of any arguments it might make to get the garnishing order set aside.
- 5 **b.** Would it make any difference to your answer if the action brought by PR were for wrongful dismissal?

3. Bill, divorced from Hillary and now married to Monica, lives on a 500 acre farm in the interior of British Columbia. Droughts wildfires and crop damage in recent years have caused Bill to edge into debt.

In addition to his farm problems, Bill was seriously injured in a motor vehicle accident three years ago. He has been involved in litigation. ICBC has just paid a proposed settlement into court and Bill is about to accept it.

One of Bill's biggest creditors is Buckerfields from which he purchases seed and, more recently, food for his valuable herd of Awassi sheep. But he has other creditors and many charges are registered against his title. Title to the farm is registered in Bill's name only despite his frequent promises to Monica that he will change the registration to joint tenancy with her. The charges on title are:

- July 2002 - a first mortgage in favour of the Bank of Montreal.

- January 2010 - a judgement in favour of creditor A; reregistered in December 2012; November 2014; October 2016.
- November 2013 – a Federal Court judgment in favour of the Crown in right of Canada; reregistered October 2015; September 2018.
- December 2014 – a second mortgage in favour of HSBC.
- April 2016 – judgment in favour of creditor B, Buckerfields; reregistered May 2018;
- May 2016 – a judgment for support in favour of Hillary, Bill's first wife. Bill is supposed to pay her \$1500 a month and has paid her nothing for two years.
- May 2017 – a judgment in favour of D
- March 2018 – a judgment in favour of the Director of Employment Standards on behalf of Bill's two employees who have not been paid for the last six months.

The Court Bailiff has received delivery of two writs of seizure and sale from creditors E and F.

- 5** **a.** Creditor D is anxious to be paid and consults you. Is he entitled to commence proceedings for sale under the *Court Order Enforcement Act*?
- 20** **b.** If there is a shortfall, how should the proceeds be distributed?
- 15** **c.** Bill believes that Monica may leave him if the farm is sold. May he raise that argument at any point in the proceedings? Will Bill be left with nothing?

END OF EXAMINATION