

Write your Exam Code Here: _____

Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

Attachments:

1. Schedule A - Contract of Purchase and Sale

**THIS EXAMINATION CONSISTS OF 6 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**UNIVERSITY OF BRITISH COLUMBIA
ALLARD SCHOOL OF LAW**

FINAL EXAMINATION – April 2019

**LAW 455
REAL ESTATE TRANSACTIONS**

PROFESSOR: Damon Chisholm

TOTAL MARKS: 100

**TIME ALLOWED: 3 HOURS
Including 15 MINUTES Reading Time**

NOTES:

1. This is an open book examination. You may bring into the examination room and use during the examination the casebooks, forms and your notes and summaries. Use of library books or electronic devices is prohibited.
2. Please answer each specific question asked. If, in answering a question, alternative conclusions are reasonably possible, state and discuss the alternatives. If you need additional facts to answer a question, state what the facts are and why they are necessary. **Give reasons for each answer, including statutory and case law citations.**
3. Total examination time: 180 minutes.
4. Reading time: 15 minutes included in total exam time.
5. Please stick to the time guidelines.

THIS EXAMINATION CONSISTS OF 4 QUESTIONS – QUESTION ONE HAS 3 PARTS

MARKS:

1. John Claire attends your office and provides you with a copy of the attached contract of purchase and sale (the "Contract") (see Schedule A) and seeks your advice. He tells you that:
- a) he is in agreement with the basic terms of the Contract;
 - b) the Property is registered in the name of ABC Group Ltd., a company controlled by John and his spouse;
 - c) there is a mortgage registered against the Property in favour of a private company in the amount of \$2,000,000; and
 - d) he believes that his agent, Paul Lewis, advised the Buyer that there would be absolutely no issues getting the Property rezoned.
- 25 Part A John asks you to explain his rights and obligations under the Contract. He wants the deal to proceed and asks you to describe his options, how to accomplish each option and what are the risks associated with such options. What amendments, if any, to the Contract would you recommend to John.
- 5 Part B John asks you whether he could be liable for any statements made by Paul Lewis. Please describe any possible claims that could be brought against Paul.
- Part C Assume the Contract is entered into as set out in Schedule A. The Buyer proceeds diligently with the conditions however neither the rezoning nor the inspection occur prior to May 15, 2019. The Buyer waives conditions on May 15, 2019. John, believing he can now secure better pricing, decides he does not wish to proceed with the deal and refuses to close. The Buyer sues the Seller for breach of the Contract and claims for specific performance or damages in the alternative.
- 25 Discuss the Buyer's chances of success in its claim against the Seller for breach of the Contract.
- 10 Discuss the Buyer's chances of obtaining specific performance.

- 10 2. Describe what an equitable mortgage is, how it differs from a legal mortgage and when it can be created.
- 15 3. Discuss in detail why undertakings may be necessary to close a real estate transaction in British Columbia, how they are used and what must be considered as well as any inherent risks in the process. Please include any applicable statutory and judicial references. What undertakings would you propose for the Contract set out in Schedule A?
- 10 4. What is "time is of the essence", how can it be waived, and reconstituted. Please include any applicable statutory and judicial references.

SCHEDULE A

(see attached Contract of Purchase and Sale)

CONTRACT OF PURCHASE AND SALE

DATE OF OFFER: April 11, 2019
RECEIVED FROM: George Ruud (the "**Buyer**")
ADDRESS: 1234 Hastings Street, Vancouver
DEPOSIT: \$500,000.00 Dollars

Being Deposit on account of the proposed purchase of: Legal Description: "PID: 000-123-456 Lot 1, District Lot 2 Plan 456 with the municipal address of 789 Pender Street, Vancouver (the "**Property**").

For the price of: \$10,000,000.00 Dollars (the "**Purchase Price**") (of which the Deposit will form a part) PAYABLE ON THE FOLLOWING TERMS AND SUBJECT TO THE FOLLOWING CONDITIONS, IF ANY

1. Subject to the rezoning of the Property to allow for the development of a multi-residential townhouse development prior to May 15, 2019; and
2. Subject to an inspection to be done and accepted by the Buyer, at the sole and absolute discretion of the Buyer, prior to May 15, 2019.

UNLESS EACH CONDITION IS WAIVED OR DECLARED FULFILLED BY WRITTEN NOTICE GIVEN BY THE BUYER TO THE SELLER ON OR BEFORE THE DATE SPECIFIED FOR EACH CONDITION, THIS CONTRACT WILL BE THEREUPON TERMINATED AND THE DEPOSIT RETURNABLE IN ACCORDANCE WITH THE REAL ESTATE SERVICES ACT.

The Buyer offers to purchase the Property for the price and on the terms and subject to the conditions herein set forth.

1. **TITLE:** Free and clear of all encumbrances without exception.
2. **COMPLETION:** The sale will be completed on or before June 1, 2019 ("**Completion Date**").
 - (a) Tender or payment of monies by the Buyer to the Seller will be by cash only.
 - (b) All documents required to give effect to this Contract will be delivered to the Buyer.
 - (c) Time shall be of the essence hereof.

If the Seller has existing financial charges to be cleared from title, the Seller must clear such charges.

If the Buyer is relying upon a new mortgage to finance the Purchase Price the Buyer, while still required to pay the Purchase Price on the Completion Date, may wait to pay the Purchase Price to the Seller until after the transfer and new mortgage documents have been lodged for registration in the appropriate Land Title Office if the Buyer has made available to the Seller a lawyer's undertaking to pay the Purchase Price upon the lodging of the transfer and new mortgage documents.

3. **COSTS:** The Seller will bear all costs of the conveyance and if applicable any costs relating to arranging a mortgage and all costs of clearing title.
4. **POSSESSION:** The Buyer will have vacant possession of the Property at 12:00 noon, on June 1, 2019 (the "**Possession Date**").
5. **ADJUSTMENTS:** The Buyer will assume and pay all taxes, rates, local improvement assessments, fuel, utilities and other charges from, and including the date set for adjustments and all adjustments both incoming and outgoing of whatsoever nature will be made as of June 1, 2019 (the "**Adjustment Date**").
6. **RISK:** All buildings on the Property and all other items included in the purchase and sale will be and remain at the risk of the Seller until the Buyer says otherwise on the Completion Date. After that time, the Property and all included items will be at the risk of the Buyer.
7. **ASSIGNMENT:** In this Contract any reference to a party includes the party's heirs, executors, administrators, successors and assigns.
8. **AGENTS:** The Buyer and Seller agree that Paul Lewis, real estate agent, is agent for both the Buyer and Seller and that he will be paid a commission of 5% of the Purchase Price.
9. **MORTGAGE:** The Seller agrees to finance \$5,000,000 as part of the Purchase Price by way of mortgage. The Buyer agrees to pay the Seller \$1,000.00 per month inclusive of interest at market rates until paid in full.
10. **ACCEPTANCE:** This offer will be open for acceptance until 5 o'clock p.m. on April 30, 2019 and upon acceptance of the offer, or counter-offer, by accepting in writing and notifying the other party of such acceptance there shall be a binding Contract of Purchase and Sale on the terms and conditions set forth herein.

GEORGE RUUD (BUYER)

11. Receipt of the above mentioned Deposit is hereby acknowledged by the undersigned,
12. The Seller hereby accepts the above offer and agrees to complete the sale upon the terms and conditions set out above.

Seller's acceptance is dated _____

JOHN CLAIRE (SELLER)