

**Write Your Exam Code Here:** \_\_\_\_\_

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

**THIS EXAM CONSISTS OF FIVE (5) PAGES (INCLUDING THIS PAGE)  
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA  
PETER A. ALLARD SCHOOL OF LAW**

**FINAL EXAMINATION – April 2019**

**LAW 459/508D  
Business Organizations**

**Section 1  
Professor Carol Liao**

**TIME ALLOWED: 180 Minutes**

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**NOTES:**

1. This exam is open book. Students may bring in the course text, statutes, instructor handouts, course outlines, and any student-prepared notes, *but nothing else*. No library books or other texts are permitted.
2. This exam has 6 questions, worth a total of 100 Marks. The marks are allotted to each question and suggested maximum times are also noted for each question. Total suggested times equal 160 minutes (180 total minutes minus 20 suggested reading minutes). These are only suggested times but students are advised to allocate their time accordingly.
3. If anything in any question seems ambiguous or erroneous to you, say so clearly in your answer and indicate any assumptions you are making to resolve the alleged ambiguity or error in order to address the question.
4. If you feel additional information is required to answer a question please indicate the additional information you feel necessary and explain why the additional information is necessary.
5. A reference to the “BCPA” is a reference to the *British Columbia Partnership Act*, R.S.B.C. 1996, c. 348, “BCBCA” is a reference to the *British Columbia Business Corporations Act*, S.B.C. 2002, c. 57, and “CBCA” is a reference to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44.

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END OF EXAM INSTRUCTIONS

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Amy and Fred are good friends that met while students at the Mallard School of Law. After law school, they both obtained articling positions: Amy went to work at a boutique firm specializing in personal injury law; Fred joined the Aboriginal business group of a large downtown law firm.

After a number of years of practising law and saving up some money along with a small inheritance, Amy happened upon an opportunity to purchase a \$1.5 million duplex home in North Vancouver (the "Property") which had not yet been publicly listed on the market. Amy was content living in her rental apartment near Gastown, but thought the Property would prove to be a good investment opportunity for her. According to her calculations, after making the initial down payment on the Property, the monthly rental income collected from the Property would be able to cover the monthly mortgage payments owed to the bank, and possibly even turn a slight profit for her. The Property would then serve as a self-sustaining investment property that would be quite profitable in the future if she were ever to sell. She was, however, unable to afford the down payment herself. She contacted Fred and asked if he would be interested in purchasing the Property with her. After performing his own due diligence, he also found it a good investment opportunity and agreed to purchase the Property with Amy.

They both agreed that Amy would contribute 75% of the down payment on the Property and Fred would contribute the remaining 25%. As well, they agreed that Amy would manage the Property and, after reimbursing herself for her time and any incurred costs, the rental income would then be used to pay down the mortgage on the Property. If any profits were gained, Amy and Fred would share it in proportion to the contribution they made on the initial down payment, 75% and 25%, respectively. There was no discussion on who would pay in the event of losses. At the end of each year, Amy would reconcile the annual rent received against the mortgage payments and expenses. Most years tended to break even, with some profit made in year four, which she split with Fred 75% and 25%, as agreed.

In year eight, Amy decided the Property needed some major renovations to continue to be profitable in the long run. She hired Endgame Ltd. to perform \$100,000 worth of renovations on the Property. Like most decisions regarding the Property, she did not confer with Fred on this decision.

That same year, Fred decided on a whim to purchase a \$150,000 luxury boat on credit after a rather acrimonious divorce. Soon after his purchase, he accidentally drove the boat into a nearby pier owned by Buckeye Moorage Ltd., causing \$1 million in damages. The insurance papers for the boat hadn't been signed and Fred is personally liable. Fred, however, has been financially decimated from legal fees paid over the years due to his divorce.

Fred now learns about the \$100,000 that Amy borrowed to pay for renovations on the Property by Endgame Ltd., which he never would have agreed to had Amy conferred with him about it. Buckeye Moorage Ltd. is now seeking compensation for the \$1 million it has incurred in damages to the pier.

### Question One

Please identify and analyse the legal issues that are occurring within the above fact pattern for the parties involved. In particular, citing relevant statutory and/or case authority, please be sure to address:

- (i) the legal relationship between Amy and Fred with respect to the Property, including the \$100,000 owed to Endgame Ltd. for renovations on the Property; and
- (ii) the likely outcome if Buckeye Moorage Ltd. pursued a claim against Fred and Amy for remedies in relation to the Property. **[23 Marks; suggested time 37 minutes]**

Like the saying, “doctors are the worst patients,” despite being lawyers Amy and Fred failed to heed advice they probably would have given to their own clients. Had Amy and Fred come to you for counsel prior to purchasing the Property, you would have informed them of potential legal risks, and you would have also made suggestions on how to avoid or mitigate such risks.

### Question Two

Please provide recommendations you would have given to Amy and Fred had they both come to you for counsel prior to purchasing the Property. Please explain the reasoning behind each recommendation and how each avoids or mitigates potential legal risks. **[12 Marks; suggested time 19 minutes]**

Amy has put in considerable years at her law firm, Infinity Stone LLP, and has been offered the position of partner. She decides instead to pursue a long held dream of hers to work in the art field and opens up her own art gallery. She incorporates a *CBCA* company, Clyne Art Galleries Inc. (“CAGI”). The corporation has one class of common shares and there is no authorized limit on the number of shares that could be issued. She also finds two angel investors, Mantis and Lupita, who each contribute \$100,000 and they along with Amy are each issued 1,000 common shares and become the three directors of CAGI.

### Question Three

- (i) How can it be assured that (1) Amy will remain the Chief Executive Officer of CAGI; and (2) that any decisions regarding the borrowing of money on the credit of CAGI is Amy’s, and Amy’s alone? If there are different methods of doing this, explain the advantages and disadvantages of each method and cite any relevant statutory and/or case authority. **[12 Marks; suggested time 19 minutes]**
- (ii) Provide two simple legal ways in which Amy, Mantis, and Lupita can try to restrict any new shareholders to only those that share Amy’s vision for the business. Please explain potential disadvantages in employing such legal methods, if any. **[8 Marks; suggested time 13 minutes]**

Ten years pass and CAGI now owns five art galleries in Vancouver, Calgary, Toronto, Ottawa, and Halifax. CAGI’s revenues grow as do their number of employees, with over 100 employees nationwide. In addition to taking on greater debt, CAGI sought to attract other investors through several rounds of funding. With the assistance of a lawyer, CAGI manages to comply with securities law requirements to avoid having to provide a prospectus or continuous disclosure documents that would otherwise have been required under securities legislation.

The company now has three classes of shares: Class A, Class B, and Class C.

- (a) The Class A shares are “common shares” having one vote per share. The Class B and Class C shares have no general right to vote at shareholder meetings.
- (b) The Class A shares participate pro rata in any dividends declared by the directors of CAGI, subject to the prior rights to dividends of the Class B and Class C shares.

- (c) The Class A shares participate pro rata in the proceeds upon the dissolution of CAGI, subject to the prior rights to proceeds on dissolution of the Class B and Class C shares.
- (d) The Class C shares have the right to an annual dividend of \$7 per share before any dividends can be paid on the Class A or Class B shares.
- (e) The Class C shares also have a right to be paid \$40 per share out of the proceeds on the dissolution of CAGI before any proceeds on the dissolution of CAGI can be paid to either the Class A or Class B shares.

There is no authorized limit on the issuance of any of the three classes of shares of CAGI.

#### Question Four

The CAGI board seeks to accomplish the following:

- (i) On advice from CAGI's financial advisors, the board wants to make Class B shares equal to Class C shares, with an annual dividend right of \$7 per share before any dividends can be paid to Class A shares, and an annual dissolution right of \$40 per share before any rights to proceeds on dissolution can be paid to Class A shares. What resolutions would have to be passed at a meeting of the shareholders of CAGI to make this happen? Explain noting any applicable statutory provisions. **[12 Marks; suggested time 19 minutes]**
- (ii) The board wants to give Amy special rights in recognition for all her hard work over the years as CAGI's founder. They would like to give Amy's 1,000 common shares – originally issued to her when CAGI was incorporated – with special voting rights of 100 votes per share. Please advise the board on whether this is possible, citing any relevant statutory and/or case authority. **[8 Marks, suggested time 13 minutes]**

One of the CAGI directors, Mantis, is approached at a CAGI event by an agent representing the estate of a well-known First Nations carver whose artwork has been displayed in international galleries and museums. The agent is considering partnering with CAGI to showcase the carvings and sell accompanying merchandise such as artbooks, posters, postcards, etc. Mantis thinks this would be a wonderful financial opportunity for CAGI, but is concerned that CAGI's portfolio would not be a good match for the carver's work. Lately CAGI had been showcasing more controversial contemporary art pieces that caused some negative news headlines, and Mantis privately suspects that it may get worse given future plans. She is concerned that this carver's work would be lost in CAGI's desire to push the envelope.

In addition to CAGI, Mantis is director on the board of the Banner Artists Foundation ("BAF"), which has connections with several art museums and reputable galleries that could provide a far better forum for this carver's work. She advises the agent of this, and helps the agent secure an appointment with BAF. This proves to be an excellent choice for the carver's estate, as the agent ends up securing a very lucrative contract with one of CAGI's closest competitors.

Months later, the board learns that Mantis was initially approached by the agent of this carver's estate. Amy, in particular, is quite angry Mantis never raised the opportunity with the board. She is a huge admirer of First Nations art and that carver's work in particular, and would have worked very hard to

secure a mutual beneficial agreement between CAGI and the carver's estate, including changing the direction of CAGI's business approach.

**Question Five**

Please advise Amy, Mantis, and the board on how the *CBCA* applies to the situation, including any steps that could have been taken to avoid the problem. **[14 Marks; suggested time 22 minutes]**

Over the years, Fred managed to put his difficult divorce behind him with counselling and the support of family and friends. He has been very successful building his practise in the Aboriginal business group of Larson Downey LLP under the supervision of Judith, who is a member of the Hupacasath First Nation and chair of the practice group. Fred is not indigenous and had a steep learning curve in understanding the injustices committed against Indigenous peoples as told in the Truth and Reconciliation Commission Report. Fred is continually learning about the unique context of First Nations partnerships, the legal structures most advantageous to First Nations, and important protocols for businesses wanting to engage with First Nations.

**Question Six**

You have been hired by Judith to work with her and Fred in producing a short introductory memorandum for businesses seeking to engage with First Nations on potential business projects. Based on what you have learned in Law 459 Business Organization, please provide the initial first draft of this memorandum for Judith and Fred. **[11 Marks, suggested time 18 minutes]**

**- END OF EXAMINATION -**