

UNIVERSITY OF BRITISH COLUMBIA  
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2020

LAW 443.001  
Creditors' Remedies

Professor Edinger

**EXAMSOFT PASSWORD:**  
**EXAMSOFT RESUME CODE:**

**TOTAL MARKS: 100**

**WRITING TIME ALLOWED: 3 HOURS**  
**PREPARATION TIME ALLOWED: 10 MINUTES**

Preparation Time has been given to download/print/set up for your exam once the exam has been made available online through Canvas. This time cannot be used for writing exam answers. All exam answer uploads will be monitored to ensure that typing of answers only occurred for the allotted Writing Time.

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This is an open book examination, meaning that you can refer to class notes, casebooks and other class readings. The use of library books is not permitted.

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question.

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As this exam is being written off-campus and is unsupervised, any communication whatsoever (including but not limited to in person, telephone, e-mail, text, social media etc.) concerning the contents of this examination with anyone (other than your instructor or staff of the Allard School of Law) is strictly prohibited.

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When you have finished writing the exam, you must upload via Exemplify any exam answers that you were able to complete in Exemplify, if possible. See below for technical support contact information if you cannot upload your Exemplify file.

You must also upload to Canvas any exam answers that you completed in a word processing software or via hand-writing. Please convert your word processing software file into PDF format, or take a picture or scan of your handwritten pages putting them into one folder. Upload the answer file/folder into the "Exam Answer File Submission (Word Processor or Hand-written ONLY)" link in the Law Exams – April 2020 course on Canvas. Your answer file/folder should be named, and the coversheet of your answers should be titled with:

Your Exam Code, Course Number, Name of Course, and Instructor Name  
i.e., **9999 LAW 100.001 Law of Exam Taking (Galileo)**

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## THIS EXAMINATION CONSISTS OF 3 QUESTIONS

### MARKS

- 25** 1. Fred and Wilma Hardrock were married in Virginia, USA, in 1990. They lived there for most of their married life. Fred, a lawyer, was engaged in private practice in Virginia, Georgia and Texas. A licensed pilot, he owns his own plane which he uses for commuting between states.

In 2016, unhappy with his country's politics and policies and with his marriage, Fred moved to the Cayman Islands where many of the trusts he had set up for his clients were administered. Wilma refused to accompany him. Fred returned briefly to Virginia in 2017. Wilma wanted reconciliation but Fred wanted a divorce. They could not agree on the financial arrangements.

In January 2018, Fred met Bella, a British Columbia resident who was holidaying in the Caymans. In June 2018, Fred moved to British Columbia to be with Bella. He told her that he loved her and was contemplating buying a house for her as a gift, a place in which they could live together. He would be continuing to commute to Texas, however, because he was still a partner in a small law firm there and was lead counsel in three major class actions.

In July 2018, Fred's brother, Barney, informed Fred by email that, according to Virginia gossip, Wilma was planning to commence divorce proceedings.

In August 2018, Fred and Bella found the perfect house in Sechelt, British Columbia. Bella paid the deposit of \$20,000 and Fred paid the balance of the purchase price of \$795,000. Bella was registered on title as the sole owner.

In January 2019, Fred was served in Texas with process in the Virginia divorce action.

In September 2019, the Dean of Law at UBC persuaded Fred to contribute \$250,000 to a scholarship.

In July 2019, Fred was formally notified by Wilma's lawyer of the Virginia divorce judgment. Wilma had been awarded the family home in Virginia and a settlement of \$2.5 million. Fred immediately appealed the financial settlement.

In February 2020, Wilma retained you. She needs your assistance in enforcing her Virginia judgment against Fred.

Advise Wilma as to what, if anything, you can do to assist her in satisfying her Virginia judgment.

**MARKS**

**50**     **2.** In May 2011, after a lengthy defamation trial, the Supreme Court of New South Wales in Australia awarded Bob (B) judgment in the amount of \$850,000 against George (G). G left Australia immediately after the trial ended, having paid nothing to B. B has just learned that G is now teaching at the Allard School of Law at UBC. B flies to Vancouver and retains you to enforce his Australian judgment against G. From your contacts at the law school, you acquire the following information about G.

G was hired in December 2010 to start in July 2011. No-one was aware of the Australian litigation at the time G was hired and it has not since become known.

In 2012, G married Ann (A), a Canadian whom he met in Vancouver. She is a practicing lawyer. G and A are now separated but no divorce proceedings have been commenced yet.

As a UBC employee, G is paid twice a month. Most employees are paid by direct deposit in the bank account of their choice but G inexplicably insists on payment by cheque which he picks up personally at UBC Financial Services. Like all UBC employees, G also contributes to a private pension plan.

G is a beneficiary under a trust created for him and his siblings by his grandfather. He expects to receive a large payment from capital when he turns 50 next year. He is starting to make comments, heard most often when he is marking exams, about taking early retirement from UBC and moving to the south of France. His colleagues think that he is probably joking.

No-one knows what bank G uses but he has been seen going into the branches of the CIBC on campus and of the HSBC on 10<sup>th</sup> Ave. His colleagues assume that he has a general account in one or both banks for his UBC income and for the income for the arbitration work he does through a company he incorporated for that work.

G drives a Jaguar. It is common knowledge that G paid for the car but it is registered in A's name. The car is currently in the possession of a garage and subject to a mechanics lien because G refuses to pay for the work done on it by the garage. He claims that the bill is double the estimate.

G is an aspiring writer and has completed a mystery novel which he boasts will be a best seller when published. So far, no publisher has made G an offer. G has a hard copy of the manuscript sitting prominently on his office desk at the law school.

On the death of his father last year, G inherited shares in Bond Breweries, an Australian company.

G lives in a condominium on the UBC Endowment lands. Title to the long term lease is registered in A's name.

B has made an appointment to see the Dean of Law to tell her about the debt G owes him. He has an idea that he can get the Dean to fire G.

Draft a memorandum

- (1) advising B whether he can enforce the Australian judgment against G in B.C.;
- (2) advising B whether to proceed with his appointment to meet with the Dean; and
- (3) advising B as to the exigibility of the known assets, the appropriate processes for reaching them and about any exemptions or immunities G may claim.

## MARKS

- 25**    **3.** Two years ago, Dr. Munny (Munny) guaranteed a loan from the Bank of Montreal (BMO) for his son's company. The company was created to export water from British Columbia to California. The province indicated that all necessary permits and licences would be forthcoming but an election occurred before they were actually issued and the new government imposed a moratorium on the export of water from the province. The company is now being sued by the intended purchaser for breach of contract and the loan has gone into default. The BMO is suing Munny's son and has joined Munny as the guarantor.

You are acting for the BMO and have been provided with some information about Munny.

Munny is employed by the Faculty of Medicine at the University of British Columbia (UBC). UBC pays all its employees twice a month as required by the *Employment Standards Act*, RSBC 1996 c. 113. Munny is the well publicized recent recipient of a large research grant from NSERC. The grant is held at and managed by UBC. Munny banks at BMO and the bank informs you that Munn's UBC salary is deposited directly into an account in Munny's name.

Munny is known to be a bit of a gambler: he has invested heavily in the stock market and he is the one third owner of a racehorse, said to be very promising. Munny uses Global Securities, located in Vancouver, for all his investment activities. Although the full extent of Munny's investments is unknown, the BMO tells you that in the safety deposit box he rents, Munny has some share certificates in Canadian banks which he inherited from his father. The BMO adds that it knows that Munny also has shares in Microsoft.

It is common knowledge that Munny recently commenced a defamation action against the Globe and Mail newspaper and that, pursuant to the Supreme Court Civil Rules, Rule 3-4, the Globe has paid into court a tender of money by way of amends. The trial is set for next year but it is thought that the parties might settle before trial.

Advise the BMO whether it can immediately issue a prejudgment garnishing order against Munny's UBC salary and the bank account and how and whether it will be able to enforce its anticipated judgment against Munny's assets generally after judgment is issued.

**END OF EXAMINATION**