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.

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.

PLEASE READ THE BELOW CONFIDENTIALITY REGULATIONS CAREFULLY

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.

In the event any information comes to your attention regarding a breach of these regulations (by others, or inadvertently by you), please immediately contact Student Academic Services (studentservices@allard.ubc.ca) and make full disclosure.

A breach of these regulations may constitute student misconduct and you may be subject to penalty or discipline under UBC's Academic Misconduct policies.

What Do I Do If:

- **I cannot access the exam questions on Canvas**

If you experience technical difficulties accessing the exam questions on Canvas, email studentservices@allard.ubc.ca and the exam questions will be emailed to you. Please provide your phone number when emailing Student Services.

- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

If you experience technical difficulties with Examplify at the very beginning or during an exam, we encourage you to spend NO MORE THAN 5 MINUTES attempting to troubleshoot your technical difficulties with Examplify by restarting your computer. You will NOT BE GIVEN ANY EXTRA TIME to complete the exam if you experience technical difficulties with Examplify.

If your attempt to solve the technical problem is unsuccessful, or if you choose not to make such an attempt, you MUST immediately begin typing your exam answers in a word processing software (i.e., MS Word, Apple Pages). Only if your computer or word processing software is not working, should you begin hand-writing your exam using paper and pen.

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

- **I'm experiencing technical difficulties EXITING and UPLOADING the exam**

If you experience any difficulty exiting and uploading your Examplify exam answers, you must wait until the allocated time period specified on the coversheet of the exam has ended, then email Bernie Flinn, flinn@allard.ubc.ca, and he or another IT Support staff person will help you to upload your Examplify exam file. Please provide your phone number when emailing Bernie.

If you had to type using word-processing software or hand-write some or all of your answers, and experience difficulties uploading your exam answer file/folder to Canvas, email your exam answer file/folder to studentservices@ubc.ca.

- **I fall ill in the middle of an exam, or am otherwise interrupted such that I'm unable to continue writing my exam**

Please stop writing, note the time that you stopped, and email student.services@allard.ubc.ca immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

THIS EXAMINATION CONSISTS OF 5 QUESTIONS – QUESTION ONE HAS 3 PARTS

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.**

MARKS:

1. Billy Johnson attends your office and provides you with a copy of the attached contract of purchase and sale (the "**Contract**") (see attached Schedule A) and seeks your advice. He tells you that:

   a) he is in agreement with the basic terms of the Contract which was prepared by the Buyer;

   b) there is a mortgage registered against the Property in favour of a private company in the amount of $5,000,000. Billy requires the sales proceeds to pay out the mortgage;

   c) Billy's wife, Kelly Peterson, legally owns half of the Property;

   d) the Buyer will be getting a mortgage from a bank to finance the purchase of the Property; and

   e) he understands that the Buyer would like to build an enclosed pool on the property. He understands that the current zoning would not allow for such a pool, however Janet Henderson advised the Buyer that it would be not a problem and that the City of Vancouver would easily grant the re-zoning application.

20   Part A   Billy asks you to explain his rights and obligations under the Contract. Describe them. What amendments, if any, to the Contract would you recommend to Billy?

10   Part B   Billy has not discussed the zoning issue directly with the Buyer. He asks you to discuss any personal risks he may have.

30   Part C   Assume the Contract is entered into as set out in Schedule A. The Buyer chooses not to proceed with the inspection. The Buyer waives his condition on September 4, 2020, and proceeds to pay the Deposit. Billy decides he does not wish to proceed with the deal and refuses to remove his condition having never looked for a new property. The Buyer initiates an action for specific performance against Billy.

Discuss the Buyer's chances of success in his claim against the Seller for breach of the Contract and what are the impediments. What steps must the

Buyer take to initiate his claim? What happens with the deposit and how would damages, if any, be calculated?

10   2.   What is meant by a clog on equity? Please provide examples of what would be seen as a clog and what would not be seen as a clog.

10   3.   Discuss issues that parties should be concerned with when using a letter of intent between a buyer and seller to initiate a real estate transaction.

10   4.   Discuss the differences between patent and latent defects.

10   5.   Assume the Contract is entered into as set out in Schedule A. What type of mortgage is being granting by the Seller? Please discuss what differences, if any, this has from the mortgage being obtained by the Buyer as discussed in 1(d) above.

END OF EXAMINATION

SCHEDULE A ON FOLLOWING PAGE

SCHEDULE A

CONTRACT OF PURCHASE AND SALE

DATE OF OFFER: August 1, 2020

RECEIVED FROM: John Wright (the "**Buyer**")

DEPOSIT: $1,500,000.00 Dollars

Being a deposit on account of the proposed purchase of: Legal Description: "PID: 010-859-556 Lot 4, District Lot 3 Plan VIP1542 with the municipal address of 1515 Howe 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 Seller purchasing a new property prior to October 1, 2020; 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 September 1, 2020.

UNLESS EACH CONDITION IS WAIVED OR DECLARED FULFILLED BY WRITTEN NOTICE GIVEN BY THE BUYER TO THE SELLER OR BY THE SELLER TO THE BUYER, AS THE CASE MAY BE, 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.

3.   **TITLE**: Free and clear of all encumbrances without exception.

4.   **COMPLETION**: The sale will be completed on or before November 1, 2020 ("**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 on or before the Completion Date.

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.

5. **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.

6. **POSSESSION**: The Buyer will have vacant possession of the Property at 12:00 noon, on October 15, 2020 (the "**Possession Date**").

7. **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 November 1, 2020 (the "**Adjustment Date**").

8. **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 advises in writing. After that time, the Property and all included items will be at the risk of the Buyer.

9. **ASSIGNMENT**: In this Contract any reference to a party includes the party's heirs, executors, administrators, successors and assigns.

10. **AGENTS**: The Buyer and Seller agree that Janet Henderson, real estate agent, is agent for the Seller and that he will be paid a commission of 5% of the Purchase Price.

11. **MORTGAGE**: The Seller agrees to finance $2,000,000 as part of the Purchase Price by way of mortgage. The Buyer agrees to pay the Seller mortgage payments plus interest at an agreeable rate until paid in full.

12. **ACCEPTANCE**: This offer will be open for acceptance until 5 o'clock p.m. on August 15, 2020 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.

_____
JOHN WRIGHT (BUYER)

13. Receipt of the above mentioned Deposit is hereby acknowledged by the undersigned,

14. 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 _____

_____
BILLY JOHNSON (SELLER)

END OF SCHEUDLE A