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 EXAMINATION CONSISTS OF 5 PAGES (INCLUDING THIS COVER)
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THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2019

LAW 394
Mining Law

Section 1
Instructors: Alan Monk and Don Collie

TOTAL MARKS: 100

TIME ALLOWED: 2 HOURS
and 15 minutes reading time

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NOTE:

1. This is an open book examination. All printed course materials and materials distributed to the class during the course (e.g., Powerpoint slides, cases, diagrams) are permitted to be accessed.

2. Refer to legislation, regulations (including section numbers) and case law, where applicable.

3. ANSWER ALL QUESTIONS.

THIS EXAMINATION CONSISTS OF 19 QUESTIONS

<u>MARKS</u>

4 1. Your client holds a mineral claim in B.C., which is in good standing. Part of the mineral claim is covered by a legacy mineral claim, which is also in good standing, and that legacy mineral claim is held by someone other than your client. Is your client entitled to the minerals on the area covered by the legacy mineral claim and why? Does your answer change if the legacy claim is terminated under the provisions of the *Mineral Tenure Act*?

5 2. After land has been mined, the land must be reclaimed. Please describe what reclamation is, when it is performed, and briefly describe what governs reclamation of a particular mine? Over the life of a mine how does the government protect itself from being responsible for the cost of reclamation in case a mining company goes bankrupt, insolvent or otherwise can't pay the reclamation costs?

6 3. Please describe generally how an option agreement in respect of mining claims or other mineral tenures operates and contrast it against a purchase agreement for mineral claims.

4 4. In what circumstances would the holder of a claim convert the claim into a lease? Explain the main differences between a claim and a lease in your answer.

6 5. Please describe generally the functions of each of the "Management Committee" and the "Operator" in a typical Joint Venture, and explain how the parties to a joint venture participate in the Management Committee. Can a change in the "Participating Interests" or "Interests" (as defined in the model joint venture agreement we provided in class) of the parties affect the Management Committee and, if so, how? In what circumstances can the Operator change from one party to the other? In providing your answer, please assume the model joint venture agreement we provided in class is "typical".

6 6. Your client, a B.C. incorporated company, acquired the mineral rights to an area on which they propose to build a copper/gold mine in northern B.C. The mine will produce 70,000 tonnes per year. Your client's mine plan proposes to build a tailings pond, which will require the removal of a

lake that contains fish. Will your client's mine trigger a B.C. environmental review and/or a federal environmental review? Will your client need a B.C. Mines Act permit? Why?

4 7. Please explain whether or not a Net Profits Interest royalty that attaches to a mining property can result in premature closing of a mine or a decision not to build a mine. Does a Net Smelter Return royalty that attaches to a mining property have the same result and why?

5 8. Your client, Ms. Smith, recently staked a mineral claim in Northern B.C., which she has called the "lucky" claim. The claim is entirely within a large piece of land owned by Mr. Grumpy, who resides on a cabin on the northernmost side of the property (north of the "lucky" claim). Mr. Grumpy has built a road across his property to his cabin, which runs from a public highway to the south and proceeds north along the boundary of one side of the "lucky" claim to Mr. Grumpy's cabin. Ms. Smith now wants to explore her claim. Ms. Smith calls you and says she understands she can use Mr. Grumpy's road to get to the "lucky" claim so she can explore, but she wanted you to confirm that. She also asks you what her rights are if Mr. Grumpy wants to charge her for using his road. How do you advise her?

3 9. Please explain the concept of "commingling" and in what circumstances it makes sense to include a clause allowing commingling in an agreement, and it what cases it does not make sense? Name two types of agreements that may include a commingling clause.

5 10. Your client holds a mineral claim on certain land in B.C., part of which is owned by the Government of British Columbia. The remainder of the land covered by your client's mineral claim is owned by Mr. Knott. Your client wishes to begin exploring her claim, including drilling, on both parts of the land. Please advise your client of her rights and obligations with respect to entering and exploring the property.

2 11. Your client wishes to purchase a Crown-granted Mineral Claim located in B.C. Under what government registry or recording system would you search to determine who the current owner of the Crown-granted Mineral Claim is?

6 12. You act for a junior mining exploration company. You are asked to prepare a Confidentiality Agreement which is going to be provided to a senior company which is interested in making an investment in your client. Why might it be a good idea to include a non-solicitation clause in the Confidentiality Agreement which you are preparing?

6 13. As a general rule, in mining industry Confidentiality Agreements, in which party's interest is it to define the term "Transaction" broadly? And why?

6 14. You are acting for a company which is to be the "Recipient" of confidential information in a mining industry Confidentiality Agreement. While reviewing the draft agreement, you run across the defined term "Representatives" of the Recipient. Given that you are acting for the Recipient, do you want that term to be defined narrowly, or broadly? Why?

6 15. As a general rule, if you are acting for the party earning in under a mineral property option agreement (i.e., the Optionee), do you want the defined term "Exploration Expenditures" to be defined as broadly and inclusively as possible, or as narrowly as possible? Why?

8 16. A client of yours, Moose Pasture Mines Inc. contacts you and advises that they would like to do a "flow through" share offering, as some potential investors have expressed interest in participating in such a financing. Your client also advises you that they are running low on funds to cover general and administrative expenses, such as office rent, office supplies, head office salaries, professional fees, overhead, etc. How do you advise the client with respect to this proposed share offering, so that the client can realize its objectives?

6 17. Your client, Skinflint Resources Inc., contacts you to say that they desperately need to raise some money via equity financing. Skinflint is a junior mining company with its common shares listed on the TSX Venture Exchange. Donald Drumpf, Skinflint's notoriously parsimonious CEO, tells you that because Skinflint is very low on funds, although it needs to do an equity financing, it is imperative that transaction costs be kept to an absolute minimum and that Skinflint retain as much of the funds raised as possible. With that in mind, of the various possible equity financing structures, which would you recommend to Mr. Drumpf, and why?

6 18. Humungous Mining Corp. is a reporting issuer listed on the TSX which has several large producing mines, including one of the largest producing gold mines in the world, known as the Gargantua Mine. Humungous itself if one of the largest gold mining companies in the world. Maxine Power, the CEO of Humungous, emails you and tells you that Humungous has a new mineral reserve estimate for the Gargantua Mine. The proven and probable reserves will be increasing from 10 million ounces of gold to 25 million ounces. She understands that the announcement of this increase in reserves will trigger the filing of a technical report under National Instrument 43-101. She also asks whether this will require Humungous to retain an independent qualified person, or several independent qualified persons, to prepare or supervise the preparation of the technical report. How do you advise her?

6 19. You act for Remote Resources Ltd., which has a mineral property located in a remote and hard to reach region of the Mongolian Desert. Remote is in the process of preparing an initial mineral resource estimate for this property. Because this will be a reasonably advanced-stage report with a resource estimate, the report will be written by two qualified persons, one who is doing the resource estimate and another who is preparing the other sections of the report. Kimberley Wexler, Remote's VP of Exploration, contacts you about the requirement that the report's authors pay a site visit to the property. Both authors have contacted her with the expectation that they will be visiting the property, as a result of this requirement in National Instrument 43-101. She's concerned about the expense of flying two people to the site, and other attendant expenses such as lodging, paying for their time etc. How do you advise her?

END OF EXAMINATION