

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 6 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 – DECEMBER 2019

**LAW 455.001
REAL ESTATE TRANSACTIONS**

PROFESSORS GREG UMBACH AND PAUL YEUNG

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, the B.C. Real Estate Law Guide (CCH) and your notes and summaries. Use of library books and laptops or household 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.
3. Total examination time: 180 minutes
4. Reading time: 15 minutes included in total exam time.

THIS EXAMINATION CONSISTS OF 5 QUESTIONS

MARKS

1. Mr. Ron Burgundy, the owner of a once hip night club, comes to see you at the office on the morning of February 12, 2019. He wants to get out of the night club business and fly off to Hawaii. He shows you a contract of purchase and sale for his slowly dying joint the "Baxter" at 123 Milk Was A Bad Choice Lane, Vancouver, B.C. (the "**Property**"). He tells you that:
- (a) he is happy with the proposed Purchase Price for the Property;
 - (b) he is unsure of the exact floor space at the Property, but he thinks that it is no more than 35,000 square feet;
 - (c) the Property is registered in the name of Mr. Ron Burgundy at the Land Title Office company;
 - (d) there is an existing mortgage over the Property of approximately \$1,250,000 which Mr. Ron Burgundy took out when he bought the Property;
 - (e) the Purchaser has not given any written notice regarding the conditions set out in the Contract; and
 - (f) three years ago Mr. Ron Burgundy tried to get approval to build a large swimming pool on the roof, but the City of Vancouver turned down his application.
- 40 Mr. Ron Burgundy asks you to explain the weaknesses of the Contract as drafted. Mr. Ron Burgundy has realized that he loves the "Baxter" too much and would like to avoid completing the sale; what are his options and describe the risks associated with each option and how to accomplish each of them. Refer to case law and statutory provisions as appropriate.
- 20 2. A client comes to your office who is looking to acquire a piece of industrial property that he is looking to develop into a mixed-use commercial/residential development. The client is new to the real estate business and is looking to your expertise to guide him through the process. Draft and discuss some potential conditions precedent that your client may consider having inserted into the contract of purchase and sale for the subject property.

- 20 3. Explain how undertakings are used to complete real estate transactions in British Columbia and discuss some of the risks associated with the use of undertakings in the real estate context.
- 10 4. What are the obligations of a vendor to reveal defects in a property where no representations or warranties are made? What remedies does a purchaser have for property defects in such circumstances?
- 10 5. Discuss and explain the Doctrine of Merger.

CONTRACT OF PURCHASE AND SALE

DATE OF OFFER: February 10, 2019

RECEIVED FROM: Wes Mantooth, or Nominee (the "**Purchaser**")

ADDRESS: 123 Milk Was A Bad Choice Lane, Vancouver, B.C.

THE SUM OF: \$10,000 Dollars Cash

Being Deposit on account of the proposed purchase of the property described as: 123 Milk Was A Bad Choice Lane, Vancouver, B.C. (the "**Property**")

For the price of: \$1,400,000.00 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 consent of the Purchaser's mother Dorothy Mantooth; and
2. Subject to an inspection to be done and accepted at the Purchaser's reasonable discretion by February 22, 2019.

EACH CONDITION IS FOR THE SOLE BENEFIT OF THE PURCHASER. UNLESS EACH CONDITION IS WAIVED OR DECLARED FULFILLED BY WRITTEN NOTICE GIVEN BY THE PURCHASER 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 Purchaser 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 March 1, 2019 ("**Completion Date**").
 - (a) Tender or payment of monies by the Purchaser to the Seller will be by cash only.
 - (b) All documents required to give effect to this Contract will be delivered to the Purchaser but registerable form is not necessary.
 - (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 Purchaser is relying upon a new mortgage to finance the Purchase Price the Purchaser, 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 Purchaser 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 Purchaser will have vacant possession of the Property at 12:00 noon, on March 1, 2019 (the "**Possession Date**").
5. **ADJUSTMENTS:** The Purchaser 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 March 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 Purchaser says otherwise on the Completion Date. After that time, the Property and all included items will be at the risk of the Purchaser.
7. **REPRESENTATION:** The Purchaser confirms its agreement to purchase the Property on the basis that the Seller represents and warrants that the Purchaser may expand the property by constructing on the roof (including but not limited to recreational facilities) and that the Property consists of 35,000 square feet of floor space.
8. **ASSIGNMENT:** In this Contract any reference to a party includes the party's heirs, executors, administrators, successors and assigns.
9. THERE MAY BE REPRESENTATIONS, WARRANTIES, GUARANTEES, PROMISES OR AGREEMENTS OTHER THAN THOSE SET OUT HEREIN; ALL OF WHICH WILL SURVIVE THE COMPLETION OF THE SALE.
10. **AGENTS:** The Purchaser and Seller agree that Mr. Brick Tamland, real estate agent, is agent for both the Purchaser and Seller and that he will be paid a commission of 10% of the Purchase Price.
11. **MORTGAGE:** The Seller agrees to carry part of the Purchase Price by way of mortgage. The Purchaser agrees to pay the Seller \$1,000.00 per month with some interest and the Purchaser may pay the whole mortgage at any time. The Seller's mortgage will not be registered at the Land Title Office but the Purchaser

promises to execute a registerable mortgage in favour of the Seller upon the Seller's request.

12. **ACCEPTANCE:** This offer will be open for acceptance until 5 o'clock p.m. on February 20, 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.

**WES MANTOOTH
(PURCHASER)**

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 _____.

BAXTER LTD. (SELLER)