

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

FINAL EXAMINATION – DECEMBER 2020

LAW 394.001
MINING LAW

Instructors: Don Collie and Alan Monk

EXAM PASSWORD: Y2n7hx
RESUME CODE: ABB2B6

TOTAL MARKS: 100

(8:50 AM PST) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 2 HOURS AND 15 MINUTES**

8:50-9:00 AM Preparation Time (Exam writing not permitted) – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

9:00 AM Exam Writing Time – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

This is an open book examination, meaning that you can refer to all course materials and your notes.

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. Do not email your professor or anyone else about this while the exam is in progress.

ACADEMIC INTEGRITY

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. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

CONFIDENTIALITY REGULATIONS – READ 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 the Student Services 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 Exemplify at the very beginning or during an exam, you may attempt to solve your problem/reboot your computer **BY YOURSELF**. You are **STRONGLY** encouraged to spend **NO MORE THAN 5 minutes** attempting to do so. You will **NOT BE GIVEN ANY EXTRA TIME** to complete the exam. **If your attempt to solve the problem is unsuccessful**, or if you choose not to make such an attempt, you **MUST** immediately **begin hand-writing** your exam answers with pen on lined paper. **You may NOT type your exam answer in word-processing software.**

When you have finished writing the exam, you must upload the exam answers that you completed in Exemplify (if you are prompted for a Resume Code, it is on the coversheet of the exam questions). Email Bernie Flinn, flinn@allard.ubc.ca, for help with this. Please provide your phone number in the email. Bernie or another IT Support staff person will then help you to upload any answers that you typed in Exemplify.

You must also upload to Canvas your hand-written exam answers into the "Exam Answer File Upload (Word Processor or Hand-written ONLY)" folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file 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 Exemplify 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 Exemplify exam file. Please provide your phone number in the email.

If you have approved accommodations to type your answers using Word Processing Software, and experience difficulties uploading your exam answer file to Canvas, email your exam answer file 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 studentservices@allard.ubc.ca immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

END OF COVER PAGES

MARKS

- 4** 1. Please briefly describe the free entry system and discuss whether it is still relevant since the implementation of on-line claim staking in B.C.

- 3** 2. Can a mining lease and a placer claim exist on the same piece of land? Please explain.

- 3** 3. With respect to the surface rights to a mineral claim, what if any authorization is required to conduct drilling on a mineral on the claim?

- 5** 4. Your client, Rotomining, has entered into a tentative agreement to acquire the Pincer Property from Mr. Scruffy, a prospector. Mr. Stern, the President of Rotomining calls you and asks what due diligence should be conducted on the mineral property. You ask what kind of tenures comprise the property and he responds: "Mineral claims and Crown Granted Mineral Claims". Please advise what government registry (or registries) or recording system (or recording systems) you will search and why you will be conducting the searches (i.e., what information you are looking for).

MARKS

- 5** 5. Your client, Ms. Gold, is a prospector who just acquired several mineral claims in the B.C. Interior. She recently drove to look at the claims and realized that the claims are several miles off of Highway 93, and in order to access them for exploration purposes, he will have to pass over land owned by Mr. Grumpy, who has posted “Private Property – Do Not Enter!” all along the boundaries of his property. Please advise Ms. Gold how she can access her claims.
- 6** 6. Your client, Mr. Silver, is a budding prospector who just acquired a mineral claim in the Okanagan, B.C. He is planning a prospecting program for the Summer of 2021. Having never planned an exploration program before, he wants to know if he requires any government authorizations or permits to commence her exploration program. Having taken Law 394, you ask him what kind of exploration he will be conducting, and he responds “grab samples”, possibly using a pick axe. (a) Please advise Mr. Silver in response to his question. (b) Assuming Mr. Silver then tells you he may also conduct drilling, would your answer change and why?
- 5** 7. Please describe the purpose of reclamation in the mining cycle, when it is conducted and how the Government of B.C. protects itself from having to pay to clean up the mine site if the mining company is unable to do so (e.g., bankruptcy).

MARKS

- 6 8. In early 2019, your client, Embargo Mining, was negotiating with Freebird Mining, who was interested in possibly purchasing Embargo's world-class, high-grade El Dorado gold property in Mexico. Embargo provided Freebird with lots of confidential exploration data on its El Dorado property and told it that the information was confidential, although it didn't require Freebird to sign a confidentiality agreement. Upon reviewing the confidential information, the Freebird geologists were very excited. In January 2020, Freebird promptly ended negotiations with Embargo, stating that it was no longer interested in the El Dorado property. In March 2020, Embargo geologists noticed that its confidential property data (as disclosed to Freebird) included some preliminary sampling data from what appeared to be a prospective deposit two kilometres outside of the boundaries of the El Dorado property. Excited by this potential new discovery, the Embargo geologists went to stake the property, but learned that Freebird had staked it in February 2020. A Freebird geologist let it slip to one of the Embargo geologists that they found the prospect as a result of reviewing Embargo's data, "but these new claims are nowhere near your property". Your client doesn't think it is right that the prospect was "scooped out from under them" by Freebird, and asks you if there is anything they can do. Please advise your client.
- 7 9. Your client, Thunderbird Mining Inc., is considering doubling the size of its existing copper/gold mine, which currently produces 80,000 tonnes a year of ore and is 500 hectares in size (both the tonnes per year and the hectares would be doubled for the expanded mine). Thunderbird has acquired mineral claims over the proposed expansion area. There is a lake within the proposed expansion area that is popular with the local community for recreational fishing, and the proposed mine plan may result in that lake being negatively affected from an environmental perspective. Please explain what permits and authorizations must be obtained and generally explain how the permitting process will be conducted.

MARKS

- 6** 10. Please compare and contrast a net smelter returns royalty with a net profits interest royalty. Which royalty must be considered as a cost of the mining operation in a feasibility study and why? Of the two royalties, which is more difficult to confirm that the proper amount of royalty payments is being paid to the royalty holder and why?
- 7** 11. You act for Michael O'Hara, who as optionor optioned his Shanghai Gulch gold property to Elsa Bannister, a notoriously aggressive (and perhaps even shady) mining promoter. The Option Agreement stated that a \$100,000 cash payment would be payable to Mr. O'Hara on signing, and then in order to earn her option and acquire a 100% interest in the Shanghai Gulch property Ms. Bannister would be required to spend a minimum \$5,000,000 in Exploration Expenditures over the next 5 years and make further cash payments to Mr. O'Hara of \$100,000 on each anniversary date of the agreement. Mr. O'Hara has contacted you and tells you that much to his chagrin, Ms. Bannister has failed to make the initial cash payment on signing, and she is claiming that because all they have is an option agreement she is under no legal obligation to make that payment. How do you advise Mr. O'Hara?
- 6** 12. You act for Talladega Minerals, which is negotiating an option agreement which would see Talladega earn a 100% interest in the Whitesnake Gold Property in Alabama from the current owner, Cal Naughton. The parties have tentatively agreed that in order to fully earn its option, Talladega must spend a minimum \$1,000,000 on Exploration Expenditures each year over 5 years and a minimum \$5,000,000 in total. Ricky Bobby, the President of Talladega, is concerned that if, for example, he spends more than he needs to on Exploration in any given year (e.g., \$1,200,000 instead of just \$1,000,000), that extra money "just goes up in smoke". How do you respond to Mr. Bobby?

MARKS

- 6** 13. A client of yours, Bernice Madoff, has incorporated a company, and right now she is the only shareholder, director and president. She tells you that in order to get a mining venture financed, she is planning to sell shares to investors. She understands that there is no need for her to worry about securities laws or anything like that, because her company is private, is not listed on a stock exchange and securities laws only apply to public companies whose shares trade on stock exchanges. How do you respond to Ms. Madoff?
- 6** 14. In the context of a mining industry Confidentiality Agreement, when you are acting for the discloser of confidential information, why is it important to have a strong and clear “restricted use” clause in the agreement?
- 7** 15. Your client, Emilio Largo, owns the Thunderball mineral property located on a remote location in the Bahamas. A British investor named Mr. Bond has been sniffing around the property and showing interest, so they are negotiating a confidentiality agreement pursuant to which Mr. Largo would provide Mr. Bond with information about the Thunderball property. Mr. Largo has expressed concern to you that if he provides this information to Mr. Bond, then Mr. Largo will later have to chase after Mr. Bond and pester Mr. Bond in order to get that information returned to him. How do you advise Mr. Largo?
- 6** 16. When comparing a typical Net Smelter Returns (NSR) Royalty Agreement to a typical metal Streaming Agreement, who would be more likely to have a security interest over the assets comprising the project, a royalty holder or the holder of a metal stream? Why?

MARKS

- 6 17. As you know, National Instrument 43-101 *Standards of Disclosure for Mineral Projects* was brought into force in response to the Bre-X scandal. Please provide an example from the facts of the Bre-X scandal (as related in our power point slides from the class) which would have been a trigger requiring Bre-X to prepare and file a NI 43-101 compliant technical report, had NI 43-101 been in existence at the time. Alternatively, please provide an example from the facts of the Bre-X scandal of Bre-X and/or its management contravening NI 43-101 (again, had NI 43-101 been in existence at the time).
- 6 18. Please explain the reasoning behind section 3.5 of National Instrument 43-101. Why does it exist? What is the practical utility of this provision? Please provide an example of how a mining company would utilize the exemption set out in section 3.5.

END OF EXAMINATION