

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

FINAL EXAMINATION – DECEMBER 2020

LAW 455.001
Real Estate Transactions

Professor Umbach and Professor Yeung

EXAM PASSWORD: v2B7WX
RESUME CODE: ABB3C9

TOTAL MARKS: 100

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

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS**

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 class notes, casebook, class readings and materials, and prepared condensed annotated 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

LAW 455.001

1. Ms. Motivated Seller, the owner of a prime development property at 123 Random Place Lane, comes to see you at the office on the morning of November 21, 2020. She shows you the attached contract of purchase and sale and seeks your advice. She tells you that:
 - (a) she is happy with the proposed Purchase Price for the Property;
 - (c) the Property is registered in the name of Ms. Motivated Seller's company, 12345 BC Inc.;
 - (d) Ms. Motivated Seller had tried to previously get approval from the City for a residential condo tower but found the process too difficult to complete;
 - (e) there is an existing mortgage over the Property of approximately \$500,000 which Ms. Motivated Seller took out when she bought the Property; and
 - (e) the Purchaser has not given any written notice regarding the conditions set out in the Contract.

Ms. Motivated Seller asks you to explain the weaknesses of the contract of purchase and sale as drafted and any issues that may put her at a disadvantage. Suggest relevant changes and or amendments to address these weaknesses. Refer to case law and statutory provisions as appropriate. **(40 marks)**

2. Describe the features of a mortgage. Discuss the differences between legal and equitable mortgages, especially in how they arise. Include in your answer reference to statutory provisions and relevant case law. **(20 marks)**
3. Your client is considering buying a commercial property currently zoned industrial in order to develop it into a mixed residential/commercial development. Draft and discuss some conditions precedent that your client may want in a purchase and sale agreement. **(20 marks)**

4. Facts:

- a. You are acting for the Seller in a residential transaction;
- b. The contract is drafted on the standard form CBA Contract of Purchase and Sale;
- c. As part of closing, the Seller needs to pay-off and discharge a mortgage in favour of HSBC;
- d. The Purchaser is represented by an Ontario lawyer who is unfamiliar with the process of undertakings in BC;

The Purchaser's lawyer will not agree to use standard CBA undertakings and provides you with a set of altered undertakings that requires you to have a discharge for the HSBC mortgage in hand prior to the close of the transaction. Discuss the steps you would take in this scenario in respect to the altered undertakings presented by the Purchaser's lawyer. **(20 marks)**

END OF EXAM QUESTIONS

Contract of Purchase and Sale begins on the following page

CONTRACT OF PURCHASE AND SALE

DATE OF OFFER: November 21, 2020

RECEIVED FROM: Ms. Desperate Buyer or Nominee (the "**Purchaser**")

ADDRESS: 123 Random Place Lane, Vancouver

THE SUM OF: \$400 Dollars Cash

Being Deposit on account of the proposed purchase of: Legal Description: "the prime development property at 123 Random Place Lane" (the "**Property**").

For the price of: \$1,500,000.00 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 Ms. Desperate Buyer's spouse, acting reasonably, prior to December 26, 2020; and
2. Subject to an inspection to be done and accepted at the sole and absolute discretion of the Purchaser, prior to December 26, 2020.

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 January 1, 2021 ("**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 January 1, 2021 (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 January 1, 2021, (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 develop the Property into a residential condo tower of at least 25 floors. There may be representations, warranties, guarantees, promises or agreements other than those set out herein; all of which survive the completion of the sale.
8. **ASSIGNMENT:** In this Contract any reference to a party includes the party's heirs, executors, administrators, successors and assigns.
9. **AGENTS:** The Purchaser and Seller agree that neither party is represented by an agent for this transaction.
10. **MORTGAGE:** The Seller agrees to carry part of the Purchase Price by way of mortgage. The Purchaser agrees to pay the Seller \$5,250.00 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.
11. **ACCEPTANCE:** This offer will be open for acceptance until 5 o'clock p.m. on December 23, 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.

MR. DESPARATE BUYER (PURCHASER)

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

MS. MOTIVATED SELLER (SELLER)