

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

FINAL EXAMINATION – DECEMBER 2020

LAW 463.001
Securities Regulation

Professor Maziar Peihani

EXAM PASSWORD: Vebx8T
RESUME CODE: ABB42F

TOTAL MARKS: 100

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

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED:** 2 hours 30 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. Students may refer to all materials used in this course, including the text and your own 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.

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What Do I Do If:

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- **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.**

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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**

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

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END OF COVER PAGES

Question One: 100 Marks

Prime Mining Corp. (“**Prime**”) is a Canadian resource company incorporated under the *British Columbia Business Corporations Act* (“**BCBCA**”). Prime maintains its corporate headquarters in Vancouver, BC and is involved in mineral exploration and development. Prime is a venture issuer and has one class of common shares which are listed on TSX-V under the symbol “PMC”. The company’s Chief Operating Officer (“**CEO**”) is Mark Evans and its Chief Financial Officer (“**CFO**”) is Linda Doherty. Its financial year ends December 31.

Prime owns significant coal projects in British Columbia. The Hedley Mascot Mine located eight kilometres northeast of Elkford, in southeastern British Columbia, is the company’s flagship asset, accounting for 50% of Prime’s assets. Prime acquires this mine from BHP Group Ltd (“**BHP**”), another mining company incorporated under the BCBCA, by issuing bonds worth \$2,000,000 to BHP. The mine site is comprised of 11,806 hectares of coal lands of which approximately 2,265 hectares have been mined or are scheduled for mining. The company sells a portion of its coal at the mine-gate to Canadian customers, while the remaining coal inventory is transported through the Port of Vancouver to China, Japan, and other Asian markets.

In 2017, Prime’s board approves a medium term-strategy which focuses on diversifying the product mix, expanding the customer network and operating in a socially responsible manner. Given the high Greenhouse Gas (“**GHG**”) emissions associated with coal production and consumption, the company seeks to expand into other mining sectors, especially copper, which is a major component of electric vehicles and for which demand is projected to surge in the coming years. To this end, on September 1, 2018, Prime acquires the Taseko Mine, a copper-molybdenum mine near William Lake in Central British Columbia for \$1,000,000, which represents 25% of Prime’s paid-up share capital. Prime finances 50% of this transaction by obtaining a loan from a shareholder at a 12% annualized rate of interest payable upon maturity in 2 years. The remaining 50% is financed by the following transactions:

- On August 1, 2018, Prime offers its existing shareholders the opportunity to purchase more shares at a 30% discount to current market value. Robert Wade and Jacob Vestergaard both existing holders of Prime’s common shares, use this opportunity and each subscribe for an additional 10,000 shares on August 2, 2018. On October 1, 2018, Robert sells his newly acquired shares to Shawn, a young professional with an annual income of \$100,000 in the last two years. Also, later in August 2018, Prime issues new shares valued at \$50,000 to Tribeca West, the owner of Prime’s Vancouver office in return for 2021-2022 rent.
- On August 1, 2018, Prime issues convertible preferred shares valued at \$50,000 to Canaccord, a registered investment dealer. On September 1, 2018, Canaccord converts the preferred shares to common shares. On December 10, 2018, Canaccord sells the shares at the same price to Sam Schick, a retired police officer, who together with his spouse, Madeline, has an annual income of \$100,000.

In September 2018, Greenhill & Co (“**Greenhill**”), a financial advisory firm engaged by Prime, prepares a special report for the company on the risks and opportunities facing the mining sector. The report notes that demand for coal is likely to decline and the trade tensions between Canada and China could drive down the sale of commodities to Chinese customers. On November 5, 2018, Prime releases its 3rd quarter financial statements. The accompanying Management Disclosure and Analysis (“**MD&A**”) notes that the trade tensions with China and the long-term shift from fossil fuels to green energy could result in cash flow reductions. However, it says that management is confident that the company’s business strategy, which focuses on expanding into copper exploration and production as well as the company’s ability to expand its customer base beyond China, will enable the company to reach its growth objectives. The MD&A goes on to say that while dividends are not guaranteed the company’s existing cash, marketable securities, and funds generated from the mining operations should be sufficient to maintain the current dividend level for the next 12 months.

On November 6, 2018, Prime’s senior management participate in an earnings call with investors and analysts. The conference call begins with Mark Evans stating that any forward-looking statement made on the call is subject to the qualifications in the company’s public disclosure documents. He points out the risk of cash flow reductions but explains the company’s expectations about how any decreased cash flow might be offset by possible sources of new cash flow that might result from the company’s growth strategy. He concludes his presentation by saying that: “for all reasons taken together, we’re confident in our ability to sustain the current dividend level”. In mid-November 2018, Sandra Coffin, a retired school teacher looking to grow her retirement income, purchases 10,000 of Prime’s shares. Sandra’s primary interest in acquiring Prime’s shares is the income from monthly dividends that are being paid out on Prime’s shares. Sandra invests in Prime’s shares at the recommendation of Pari Javid, who works as a financial analyst at GreenHill. Pari, who happens to be on the November conference call, purchases 20,000 of Prime’s shares for herself after the call.

Throughout the 4th quarter of 2018 and 1st quarter of 2019, the demand for coal falls and Prime faces difficulties in implementing its growth strategy. The copper produced at Taseko Mine is of a low grade and less attractive to international buyers who could obtain higher quality copper from other suppliers. On February 25, 2019, Prime’s board meets to discuss the company’s growth trajectory and cash flow projections. After a deliberate review of the company’s strategy, objectives and new forecasts based on new assumptions, the board decides to reduce dividends by 65%. Linda Doherty also informs the board that next quarter’s financials will likely be released with delay. On the morning of February 26, Prime issues a press release announcing the decision to stop dividends. Following the press release, Prime’s share price falls by 40%. Sandra and Pari are deeply upset about this development as they had thought that the Prime’s shares would maintain their dividend level.

As Sandra and Pari are considering their options against Prime, Treck Minerals Inc. (“**Treck**”), a reporting issuer regulated by the British Columbia Securities Commission (“**BCSC**”), is looking to increase its market share in the mining sector. It engages the services of Geneva Consulting Group Inc. (“**Geneva**”), an advisory firm specializing in mergers and acquisitions, to search for new acquisitions. Ross Buckley and Douglas Hyndman are Geneva’s senior officers who take the lead on providing advice on Treck’s acquisition strategy. They identify Prime as a promising

acquisition candidate given its undervalued share price, high growth prospects, and the geographical proximity of its mining sites to Treck's mines. They also point out that Prime has only one class of common shares and this clean capital structure allows for optimal structuring of the acquisition. They, however, suggest that Treck would be better off approaching Prime's shareholders directly rather than negotiating a deal with the incumbent management. Treck which already owns 5% of Prime's shares since January 1, 2019, goes ahead and purchases another 5% of Prime's shares on TSX-V on February 6, 2019. Next day Treck purchases 20% of Prime's outstanding shares from four of its shareholders. Given the recent substantial decline in Prime's shares, Treck agrees to buy these shares at a 20% premium over current market value. On the same day and before the market closes Ross and Douglas also each buy 10,000 Treck shares on TSX-V.

On March 1, Treck sends a take-over bid circular to Prime's shareholders, offering to acquire all issued and outstanding shares of Prime for a 15% premium over current market value. In its bid circular, Treck criticizes Prime's mid-term strategy, calling Prime's board incompetent and unable to deliver long-term value to shareholders. Treck warns the company's share price will continue to decline unless Prime transforms its business model under a new management. In response to Treck's hostile bid, Prime's board approves a shareholder rights plan which allows the existing shareholders to purchase newly issued shares at a 30% discount to market price. Treck, however, is not ready to walk away. Mark Evans is shocked when he finds out that Treck has managed to purchase another 2% of Prime's shares on TSX-V on the same day that the rights plan was announced. The rights plan will remain open until June 15.

It is now June 1, 2019. 90% of Prime's shareholders have tendered their shares and no rival bids have yet emerged. Treck is running out of patience and wants to complete the acquisition as soon as possible.

Please advise on the securities regulation issues that arise in this matter. Do not consider issues regarding registration of market intermediaries and professionals. (100 marks)

END OF EXAMINATION