

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

FINAL EXAMINATION – April 2021

LAW 443.001
Creditors' Remedies

Professor Edinger

EXAM PASSWORD: EfpRh3
RESUME CODE: B13A56

TOTAL MARKS: 100

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

(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS AND 10 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 the casebook, the statutory material 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@allard.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.

THIS EXAMINATION CONSISTS OF 3 QUESTIONS

Marks

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1. In May 2019, after a lengthy defamation trial, the Supreme Court of New South Wales in Australia awarded Bob (B) judgment in the amount of \$850,000 against George (G). G left Australia immediately after the trial ended, having paid nothing to B. B has just learned that G is now teaching at the Allard School of Law of Law at UBC. B flies to Vancouver and retains you to enforce his Australian judgment against G. From your contacts at the law school, you acquire the following information about G.

G was hired in December 2020 to start in July 2021. No-one was aware of the Australian litigation at the time G was hired and it has not since become known.

As a UBC employee, G is paid twice a month. Most employees are paid by direct deposit in the bank account of their choice but G inexplicably insists on payment by cheque which he picks up personally at UBC Financial Services. Like all UBC employees, G also contributes to a private pension plan.

G is a beneficiary under a trust created for him and his siblings by his grandfather. He expects to receive a large payment from capital when he turns 50 next year. He is starting to make comments, heard most often when he is marking exams, about taking early retirement from UBC and moving to the south of France. His colleagues think that he is probably joking.

No-one knows what bank G uses but he has been seen going into the branches of the CIBC on campus and of the HSBC on 10th Ave. His colleagues assume that he has a general account in one or both banks for his UBC income and for the income for the arbitration work he does through a company he incorporated for that work.

G drives a Jaguar. It is common knowledge that G paid cash for the car. The car is currently in the possession of a garage and subject to a mechanics lien because G refuses to pay for the work done on it by the garage. He claims that the bill is double the estimate.

G is an aspiring writer and has completed a mystery novel which he boasts will be a best seller when published. So far, no publisher has made G an offer. G has a hard copy of the manuscript sitting prominently on his office desk at the law school.

On the death of his father last year, G inherited shares in Bond Breweries, an Australian company.

G lives in a condominium on the UBC Endowment lands. Title to the long term lease is registered in A's name.

B has made an appointment to see the Dean of Law to tell her about the debt G owes him. He has an idea that he can get the Dean to fire G.

Draft a memorandum

- 10 (1) advising B whether he can enforce the Australian judgment against G in B.C.;
- 10 (2) advising B whether to proceed with his appointment to meet with the Dean; and
- 30 (3) advising B as to the exigibility of the known assets, the appropriate processes for reaching them and about any exemptions or immunities G may claim.

- 30 2. A number of writs of seizure and sale were delivered for execution to the Court Bailiff in Vancouver. All were for enforcement of judgments against the same unfortunate corporate debtor, Egbert Excavating Ltd. (EE)

On January 30, Black delivered a writ claiming \$55,000 from EE.

On March 25, the Court Bailiff seized a Caterpillar tractor from EE and, on April 30 sold it at public auction for \$50,000.

On May 10, the Court Bailiff received telephone calls from two more creditors of EE, Red and Green, asking to share in the distribution. Neither creditor has delivered anything to the Court Bailiff.

On May 12, the Minister of National Revenue (MNR) delivered a writ issued from Federal Court claiming \$15,000 from EE in unpaid taxes.

On May 15, the Director of Employment Standards delivered a writ claiming \$8,000 on behalf of unpaid employees of EE.

On May 28, White delivered a writ claiming \$5,000 from EE.

On June 1, EE informed the Court Bailiff that two other judgment creditors, Tan and Pink, had judgments registered on title to real property which EE owns in fee simple and that those judgments were registered in January, 2021. EE also informs the Court Bailiff that last month, December 2020, Tan had issued a garnishing order directed at EE's bank account, that the bank paid the \$6,500 then in the account into court and that the money has not yet been paid out to Tan.

The Court Bailiff retains you to advise her. She informs you that EE has virtually no other exigible assets besides the land and the tractor. She wants to know whether she can access the money in court and she needs assistance in drawing up a plan for distribution, the MNR having claimed immunity from the application of the *Creditor Assistance Act*.

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3. The British Columbia government is currently seeking comments from the profession on the Uniform Law Conference of Canada Model Act, the *Civil Enforcement of Money Judgments Act*, which the BC Law Institute recommended for adoption in a 2005 Report. Part 13 deals with appointment of receivers. Section 170 provides as follows:

s.170 (1) Subject to s. 171, on application made with or without notice by an instructing judgment creditor, or an enforcement officer who has received a subsisting enforcement instruction, the court may appoint a receiver with or without security, with respect to the property of the judgment debtor including without limitation:

- (a) specified property of a judgment debtor;
- (b) specified kinds of property of a judgment debtor;
- (c) all property of a judgment debtor.

(2) An order made under subsection (1) applies to property owned by a judgment debtor at the time of the appointment of the receiver and that is acquired by a judgment debtor during the period of the appointment of the receiver.

Discuss whether s.170 would change the law in British Columbia.

END OF EXAMINATION