

THE UNIVERSITY OF BRITISH COLUMBIA
ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2021

LAW 455.002
REAL ESTATE TRANSACTIONS

Damon Chisholm

EXAM PASSWORD: 7wK35T
RESUME CODE: B13F2C

TOTAL MARKS: 100

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

(9:00 AM PDT) **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, casebooks and other class readings. The use of library books is not permitted.

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.

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, including statutory and case law citations.**

MARKS:

1. Grant Mitchell attends your office and provides you with a copy of the attached contract of purchase and sale (the "**Contract**") (see attached Schedule A) and seeks your advice. He tells you that:
 - a) the Contract was prepared by the Buyer, but he is in agreement with the basic terms;
 - b) there is a mortgage registered against the Property in favour of a personal friend of Grant's. There is a balancing remaining of approximately \$9,000,000. Grant does not have sufficient funds to pay out the mortgage today;
 - c) Grant and his wife, Kelly, are in the process of divorcing and Kelly has filed a lien against the Property. Grant noted that the divorce is quite adversarial;
 - d) he is unsure if the city allows for rentals in the neighbourhood and suspects that they do not, but he understands that Tim may have mentioned to the Buyer that rentals are allowed.

- 20 Part A Grant asks you to review the Contract and let him know if there are any issues. Describe them. What amendments, if any, to the Contract would you recommend to Grant?

- 10 Part B Grant has not discussed the prospect of rentals directly with the Buyer. He asks you to discuss any personal risks he may have.

- 30 Part C Assume the Contract is entered into as set out in Schedule A. The Buyer chooses not to proceed with the inspection. The Buyer waives all conditions on August 1, 2021, and proceeds to pay the Deposit. Grant decides he does not wish to proceed with the deal and refuses to remove his condition having never looked for a new property. The Buyer initiates an action for specific performance against Grant.

Discuss the Buyer's chances of success in his claim against the Seller for breach of the Contract and what are the impediments. What steps must the Buyer take to initiate his claim? What happens with the deposit and how would damages, if any, be calculated?

- 10 2. Discuss with reference to the relevant case law what constitutes a title default on the part of the Vendor.
- 10 3. Please describe what the test is for when a statement will be found to be a warranty statement as opposed to a mere representation.
- 10 4. Discuss how solicitor undertakings are used to complete a real estate transaction where the vendor must discharge an existing mortgage and a purchaser is using a new mortgage to finance the purchase of real property.
- 10 5. Describe what a collateral agreement is and how/when it would be utilized. What are the bars for its enforcement?

END OF EXAM QUESTIONS

SCHEDULE A BEGINS ON THE FOLLOWING PAGE

SCHEDULE A**CONTRACT OF PURCHASE AND SALE**

DATE OF OFFER: April 1, 2021

RECEIVED FROM: Peter Thompson (the "**Buyer**")

DEPOSIT: \$800,000.00 Dollars

Being a deposit on account of the proposed purchase of: Legal Description: "PID: 010-989-856 Lot 9, District Lot 1 Plan VIP4466 with the municipal address of 2365 Angus Dr, Vancouver, BC (the "**Property**").

For the price of: \$18,000,000.00 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 an inspection to be done and accepted by the Buyer, at the sole and absolute discretion of the Buyer, prior to August 1, 2021.
2. Subject to the Buyer obtaining suitable financing, prior to August 1, 2021.
3. Subject to obtaining re-zoning to allow for basement rentals, prior to August 1, 2021.

UNLESS EACH CONDITION IS WAIVED OR DECLARED FULFILLED BY WRITTEN NOTICE GIVEN BY THE BUYER TO THE SELLER OR BY THE SELLER TO THE BUYER, AS THE CASE MAY BE, 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 Buyer 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 September 30, 2021 ("**Completion Date**").
 - (a) Tender or payment of monies by the Buyer to the Seller will be by cash only.
 - (b) All documents required to give effect to this Contract will be delivered to the Buyer.
 - (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 on or before the Completion Date.

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 Buyer will have vacant possession of the Property at 12:00 noon, on September 20, 2021 (the "**Possession Date**").
5. **ADJUSTMENTS:** The Buyer 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 September 30, 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 closing. After that time, the Property and all included items will be at the risk of the Buyer.
7. **ASSIGNMENT:** In this Contract any reference to a party includes the party's heirs, executors, administrators, successors and assigns.
8. **AGENTS:** The Buyer and Seller agree that Tim Singleton, real estate agent, is agent for the Seller and that he will be paid a commission of 5% of the Purchase Price.
9. **MORTGAGE:** The Seller agrees to finance \$1,000,000 as part of the Purchase Price by way of mortgage. The Buyer agrees to pay the Seller mortgage payments plus interest at a rate of 11% until paid in full.
10. **ACCEPTANCE:** This offer will be open for acceptance until 5 o'clock p.m. on April 10, 2021 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.

PETER THOMPSON (BUYER)

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

GRANT MITCHELL (SELLER)