

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

FINAL EXAMINATION – APRIL 2021

LAW 469.002  
Civil Procedure

Adjunct Professors Gavin Cameron and Mark Fancourt-Smith

**EXAM PASSWORD: c65pH7**  
RESUME CODE: B14C75

**TOTAL MARKS: 90**

(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.

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This is an open book examination, meaning that you can refer to class notes, casebooks and other class readings.

**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.**

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**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](mailto: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.

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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**

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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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## GENERAL INSTRUCTIONS

This Final Examination consists of two parts:

- Part 1 requires you to answer **two** of three short answer questions: 20 marks (22% of the exam) each, for a total of 40 marks. Recommended time: 40 minutes each.
- Part 2 consists of a Fact Pattern with 10 questions, **all of which must be answered**: 50 marks (55% of the exam). Recommended time: 100 minutes.

*We strongly urge you to think out your answers before you begin writing. Focus on the specific issues raised in each question. In marking, we will reward reflection and economy of prose, rather than broad regurgitation. Excessive discussion of unimportant or irrelevant issues will lower the mark, rather than be ignored. You should make brief and specific reference to any applicable legislation, Supreme Court Civil Rules, case law, ethical obligations and rules of conduct, but do not need to recite them word for word.*

The examination is open-book.

Good Luck!

**THIS EXAMINATION CONSISTS OF 4 QUESTIONS IN TOTAL,  
ONLY 3 OF WHICH MUST BE ANSWERED:**

**2 OF 3 SHORT ESSAYS, AND 1 FACT PATTERN FOR WHICH ALL 10 QUESTIONS MUST  
BE ANSWERED**

**PART 1****SHORT ESSAYS (20 marks each)  
(ANSWER ONLY TWO OF THE FOLLOWING THREE QUESTIONS)**

1. You are a member of the British Columbia Supreme Court Civil & Family Rules Committee, a body which provides advice and makes recommendations on changes to the Supreme Court Rules that are fair, sustainable and have the public's confidence. You have been tasked with writing a memo to the other members of the Committee. What changes to the law and practice governing costs under Rule 14-1 and the common law (recognizing that the common law can be changed by statute or regulation) do you recommend, and why?.
2. What issues arise in settling multi-party (i.e. more than one defendant, more than one plaintiff, and add in a third-party for good measure) litigation? If you are counsel for the plaintiff, what do you have to take into account when trying to settle with some, but not all, of the parties? Same question if you are counsel for the defendant.
3. If you had the power to change the law and rules of civil procedure, and wished to promote access to justice, what changes would you make, and why?

## PART 2

### FACT PATTERN (50 marks total)

#### (YOU MUST ANSWER THE FOLLOWING 10 QUESTIONS)

Congratulations! You have been called to the bar and, after excelling during your articling year, have been hired as an associate in the litigation department of Hamlin, Hamlin, McGill (“HHM”), a boutique litigation firm.

Your principal, Chuck McGill (“**Chuck**”), asks you to sit in on a potential client intake meeting today, where you learn the following.

The potential client, Lalo Salamanca (“**Lalo**”), is 17 years old. He is there with his father, Don Julio Salamanca. His birthday is December 9. When he was younger, his parents gave him their 100 shares in Los Pollos Hermanos Inc. (“**Pollos**”), the holding company for a number of chicken-centric fast food restaurants in and around British Columbia. As a result, he owns 25% of the issued and outstanding shares of Pollos.

Pollos is a company incorporated pursuant to the British Columbia *Business Corporations Act*, with a registered and records office at 2800 – 550 Burrard St., Vancouver, B.C. Since the potential client was given the shares, the shares in Pollos have steadily increased in value, and Lalo’s 100 shares are now likely worth over \$250,000.

Lalo is concerned, as about one year ago, he stopped getting any information from the Company regarding its performance, or financial statements, or even whether or not an Annual General Meeting was to be called. At the same time, he stopped receiving the monthly dividend payments, worth approximately \$15,000 per month. He knows that the other shareholders are still receiving dividends.

Lalo is also concerned because when he was given the shares in Pollos, the shareholder loan that was attached to the shares, some \$1,000,000, was also assigned to him. As he is receiving no financial information from the Company anymore, he does not know the status of this loan, or whether other shareholders have been paid out their shareholder loans.

Lalo feels that he is being singled out because of a longstanding feud between his family and the President and CEO, Gustavo Fring (“**Fring**”). Fring owns 25% of the shares of Pollo, and 50% of an affiliated company, Luftwaffle Inc. (“**Luftwaffle**”), a German waffle-centric fast food outlet. Luftwaffle is incorporated in B.C., and has its head office in B.C. as well.

Fring is habitually represented by a local lawyer, Saul Goodman (“**Goodman**”), someone you know by reputation. That reputation is not good. You have heard stories of sharp practice, a lack of routine courtesy, and unreasonable procedural game-playing.

Lalo is reasonably sure that Fring is not acting alone, and the other directors are likely working with him to withhold the dividends and financial information from Lalo.

Rumours have swirled in recent years that Fring, Pollos, and Luftwaffle are not only engaged in the selling of fast food, but also illicit activities including money laundering. For now, however, those remain rumours; no investigations are underway and no charges have ever been laid.

Lalo wants to ensure his rights are protected, but is nervous about the process and associated cost. He is not sure whether or not to start litigation now, or wait and see if the same thing happens next year, and make a decision then. He wants to wait a few days and then will make up his mind about retaining HHM and whether or not to move forward with a potential claim.

“Let me tell you something,” Chuck says to you: “Clients don’t know what’s good for them, and if you let them think about this stuff too much, they chicken out. Here’s what you do: tell them they are going to win – *guarantee it* – that’s the only way to get them to hire you, and for us to get paid.”

“Also, they want to know you’re on their side, and that you’ll go to war for them. That is why I *never* tell a client to settle. No matter what. It’s better to go down in flames than to compromise and look weak. They want a fighter? They get a fighter. Tell them that.”

**Answer ALL of the questions below.**

**1. 4 Marks**

Chuck tells you to call Lalo directly, and tell him both pieces of information, in order to persuade him to hire HHM, i.e.: you will guarantee a win, and you promise never tell him to settle. Do you follow Chuck’s instructions? Why or why not?

**2. 3 Marks**

Lalo has hired HHM. His first question is by what date he has to start the claim. He said that he first realized something might be wrong in April of 2020, when the first dividend payments stopped coming. What do you tell him?

**3. 5 Marks**

Your initial advice to Lalo was to commence a Petition seeking relief under s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57, on the basis that the affairs of the Company are being conducted, and the powers of the directors are being exercised, in a manner that is unfairly prejudicial to him. You have determined that there are two additional directors, Lalo's evil uncles Tuco Salamanca and Hector Salamanca, and they are likely facilitating the withholding of information and dividends from Lalo.

- (a) Lalo reminds you that he also wants to be paid the dividends that he has been denied for the last year, and seek an award of damages. How do you recommend that he proceed, in terms of the appropriate proceeding or proceedings?
- (b) Whether you start a Petition or a Notice of Civil Claim, what will the style of cause be?

**4. 4 Marks**

You decided to proceed by way of a Notice of Civil Claim, and all parties have been validly served. Hector and Tuco Salamanca live in Alberta. You are under strict instructions to take default if the parties do not provide their Responses to Civil Claim within the time provided under the Rules. Saul Goodman has told you that he is representing all defendants, and that they intend to defend the claims.

- (a) Five days after the Notice of Civil Claim was simultaneously served on all parties, Chuck comes into your office, fuming. "Goodman delivered a Demand for Particulars – now we can't take default!" What do you tell him?
- (b) You manage to get the Response to Particulars out within 10 days, so you are now at 15 days since service of the Notice of Civil Claim. When can you take default (assuming no Response to Civil Claim is received), and what steps should you take in order to do so?

**5. 10 Marks**

Lalo had asked to examine Pollos' books and records before the litigation but had always been told he could not, with no explanation given.

You have just received the List of Documents from the Defendants. Among the documents listed and produced are the Central Securities Register ("**CSR**") and a number of directors' resolutions. The CSR shows that Lalo's shares were transferred to Fring a year ago. There is a directors' resolution approving the transfer, signed by Fring, Tuco, and Hector Salamanca, attaching a consent resolution of the shareholders on which your client's signature was obviously



forged.

You also see that in the financial statements of the Company, Lalo's shareholder loan to the Company is being reduced down by \$20,000 per month. You find some banking documents in the list showing that several \$20,000 payments have gone to Luftwaffle, and some to accounts possibly owned by Hector and Tuco Salamanca. There does not appear to be a valid business reason as to why these payments are being made.

- (a) What application do you recommend that Lalo bring? Against which people or entities?
  
- (b) What is the applicable test on the application that you choose and what facts or factors do you have in support of it?
  
- (c) Do you give notice of the application? What are the advantages and disadvantages of each choice?

**6. 6 Marks**

Since you discovered the payments to Luftwaffle, you have written to its President, Mike Ehrmentraut, with a list of questions and requests for documents. You know that the correspondence has been received, but you have received no response.

- (a) What application or applications do you suggest that Lalo bring to try to get to the bottom of the payments to Luftwaffle, apparently sourced from Lalo's shareholder loan?
  
- (b) What is the authority for bringing the application(s), what must you establish, and what factors support the granting of the order(s) you are seeking?

**7. 5 Marks**

Chuck wants to hire an expert, Pete Badger, to give an opinion as to evidence of tampering with the electronic version of the Company's General Ledger. He asks you what he needs to ensure the expert includes in the report.

- (a) What do you tell him that the report should include?

Chuck always uses Badger, because a) his credentials are impeccable, and b) he

always finds evidence of tampering in electronic records in every case in which he gives a report.

(b) Can you retain this expert? If so, are there any risks?

**8. 5 Marks**

You have instructions to try to bring a summary trial application to obtain judgment. Examinations for Discovery have not been done. Each of the defendants have filed Affidavits disputing virtually every fact you assert. "It's hopeless" says Chuck, "we've got a credibility issue on our hands and no Court will touch this on a 9-7 application."

(a) Lalo still wants to proceed. Based on the facts and the evidence you have, what do you tell Chuck about how a Court may deal with the application and try to resolve the disputed evidence?

(b) You still have two months before the summary trial. What steps or procedures do you recommend to Chuck to address the credibility issue?

**9. 3 Marks**

Sadly, the Court decided that the matter was unsuitable for summary determination, and found that it was unable to grant judgment on the basis of the application. The day after the dismissal, you get an email from Goodman with the subject line "Summary Trial". The email launches into text without saying to whom it is addressed. However, after a sentence or two, you realize it is not meant for you, but for the defendants, and when you look at the "To" line, you see that you have been included by accident. What do you do?

**10. 5 Marks**

The defendants have made a settlement offer in which they would retransfer the shares from Gus to Lalo, and replenish the shareholder loan, back up to \$1,000,000. The offer is open for a month, until the day before a scheduled mediation.

The day after you receive the offer, Lalo calls. He found a memo in a desk drawer that he thought he had already checked. The memo is from his father, Don Julio, in which he admits forging Lalo's signature on the share transfer documents, and

revealing that Gus Fring actually paid valuable consideration for the shares, and the assignment of the shareholder loan. It turns out that Gus has been telling the truth. Lalo still wants to take the settlement.

(a) What do you advise him about the risks of doing so?

Chuck tells you that of course the document will be listed and produced, *if* the mediation is unsuccessful and you have to go to trial.

(b) Can you recommend this strategy to Lalo? Why or why not?

<b>END OF EXAMINATION</b>
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***It has been our great pleasure teaching you this term.***

***We appreciated your enthusiasm and interest.***

***Our best wishes to you all for a happy future and a successful and enriching career, in law, or otherwise.***