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**THIS EXAMINATION CONSISTS OF 6 PAGES (INCLUDING ATTACHMENT)
PLEASE ENSURE YOU HAVE A COMPLETE PAPER**

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

FINAL EXAMINATION – DECEMBER 2021

**LAW 455 Section 1
Real Estate Transactions**

Professor Umbach and Professor Yeung

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS PLUS 15 MINUTES READING TIME

- NOTE:
1. This is an open book examination, meaning that you may refer to class notes, casebook, class readings and materials and prepared condensed or annotated notes.
 2. ANSWER ALL QUESTIONS

THIS EXAMINATION CONSISTS OF 3 QUESTIONS – QUESTION 2 HAS PART A AND PART B.

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MARKS

1. Ms. Kardashian, the owner of a property at 456 Main Street, comes to see you at the office on the morning of November 15, 2021. 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. Kardashian's company, I'm Super Famous Inc.;
 - (d) Ms. Kardashian had tried to previously get approval from the City for a bejeweled residential condo tower exclusively for pets but found the process too tiresome to complete;
 - (e) there is an existing mortgage over the Property of approximately \$750,000 which Ms. Kardashian 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.

- 50 Ms. Kardashian 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. If relevant suggest changes and or amendments that might solve these weaknesses. Refer to case law and statutory provisions as appropriate.

- 25 2. Assume the parties in the above contract of purchase and sale have agreed to use the standard lawyer's undertakings to close the transaction. Please:
 - a) Outline the undertakings that would be given by each of the Seller's and Purchaser's lawyers. Include an explanation of the steps taken in the closing the transaction; and
 - b) Explain the risks involved with the use of undertakings to close transactions.

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- 25 3. Your client a developer has found an industrial property that they feel is in an area of the City of Vancouver that is ripe for development in the next twenty years. The property has a long history of being used for heavy industry and has been on the market for some time. In order to eventually develop the property your client feels that it will need to in the future acquire some of the neighbouring properties as well. Your client wishes to put in a low-ball offer in hopes of securing a property with a lot of potential upside. Please draft some conditions precedent that your client may want to have in their purchase and sale agreement. Please also provide some strategic advice for those conditions precedent for your client.

END OF EXAMINATION

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CONTRACT OF PURCHASE AND SALE

DATE OF OFFER: November 15, 2021

RECEIVED FROM: Mr. YE (formerly Kanye West) or Nominee (the "**Purchaser**")

ADDRESS: 825 Main Street, Vancouver

THE SUM OF: \$333 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: \$2,500,000.00 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 Mr. YE's collaborator Jay-Z, acting reasonably, prior to December 25, 2021;
2. Subject to an inspection to be done and accepted at the sole and absolute discretion of the Purchaser, prior to December 25, 2021; and
3. Subject to the Purchaser being satisfied acting reasonably that he will be able to get the proper approval for the Property for the construction of a museum dedicated to the history of the sneaker (name to be determined) on the lower floor of any development on the Property prior to December 25, 2021.

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.

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- (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 10 floors. There may be representations, warranties, guarantees, promises or agreements other 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 \$10,000.00 per month with

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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 21, 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.

MR. YE (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. KARDASHIAN(SELLER)