

Attachments:

Schedule A - Contract of Purchase and Sale

2 Pages

**THIS EXAMINATION CONSISTS OF 5 PAGES (INCLUDING ATTACHMENT)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION – APRIL 2022

**LAW 455.002
REAL ESTATE TRANSACTIONS**

PROFESSOR: Damon Chisholm

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

THIS EXAMINATION CONSISTS OF 5 QUESTIONS – QUESTION ONE HAS 2 PARTS

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.

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. George Heller 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) he is in agreement with the financial terms of the Contract;
 - b) he has been advised that there currently is a mortgage registered against the Property in favour of a private company in the amount of \$4,000,000;
 - c) he will be getting a mortgage from a bank to finance the purchase of the Property and will be getting a second mortgage from a friend.
 - d) he would like title to be held jointly in the name of George and his wife.

- 20 Part A George asks you to review the Contract. What amendments, if any, to the Contract would you recommend to George?

- 30 Part B Assume the Contract is entered into as set out in Schedule A without any changes. Prior to the Buyer satisfying the conditions they are advised by the Seller that the Seller has another offer which it is choosing to accept. George wishes to initiate an action for specific performance against the Seller.

Discuss George's chances of success in his claim against the Seller for breach of the Contract. What are the impediments? What steps must George take to initiate the claim?

- 10 2. Discuss the differences between patent and latent defects.

- 15 3. Explain the meaning of the phrase "ready, willing and able" and how it applies to the completion of a real estate transaction and its relationship with "tender" and remedies for innocent parties in a transaction that is faltering.

- 10 4. Discuss and explain the Doctrine of Merger including its present applicability.
- 15 5. What type of mortgage is being granting by George's friend as discussed above in Question 1? Please discuss what differences, if any, this has from the mortgage being obtained by George from his bank.

END OF EXAMINATION

SCHEDULE A

CONTRACT OF PURCHASE AND SALE

DATE OF OFFER: April 30, 2022

RECEIVED FROM: George Heller (the "**Buyer**")

DEPOSIT: \$1,500,000.00 Dollars

Being a deposit on account of the proposed purchase of: Legal Description: "PID: 010-563-569 Lot 4, District Lot 3 Plan VIP1542 with the municipal address of 689 Hornby Street, Vancouver (the "**Property**").

For the price of: \$16,500,000.00 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 Buyer acquiring suitable financing; and
2. Subject to Buyer obtaining suitable rezoning of the Property, at the sole and absolute discretion of the Buyer.

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 MAY 30, 2022, 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 July 15, 2022 ("**Completion Date**").
 - (a) Tender or payment of monies by the Buyer to the Seller will be by wire transfer.
 - (b) All documents required to give effect to this Contract will be delivered to the Buyer.
 - (c) Time shall be of the essence hereof.
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 July 10, 2022 (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 July 15, 2022 (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 Possession Date. 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. **ACCEPTANCE:** This offer will be open for acceptance until 5 o'clock p.m. on May 15, 2022 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.

GEORGE HELLER (BUYER)

9. Receipt of the above mentioned Deposit is hereby acknowledged by the undersigned,
10. 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 _____

KATIE GREEN (SELLER)