

**LAW SOCIETY OF BRITISH COLUMBIA**  
**SAMPLE QUALIFICATION EXAMINATION**

**PART I**

**ANSWER GUIDE**

**BUSINESS (15 MARKS)**

- (3) 1. They point to an asset purchase (1 mark). If shares are purchased, the employment continues, and the employer stays the same and must pay severance to dismiss any employee (1 mark). If Janine buys assets, she does not acquire the workforce (1 mark).

**See PM Business: Commercial, s. 2.04.1(j).** [References are given for information only; they are not required ON ANY QUESTION for student to receive full marks.]

- (2) 2. (a) Negotiate a holdback of part of the purchase price.

**or**

Obtain a right of set-off against any unpaid portion of the purchase price. (1 mark for either answer.)

- (b) Get a guarantee (or indemnity) of the obligations of the seller from a shareholder of the seller (not from the seller itself since the seller is a corporation which will soon have no assets). (1 mark)

**See PM Business: Commercial, s. 2.04.1(c).**

- (3) 3. One (1) mark each for the following:

- The appliances are consumer goods.
- Ace may **seize** (i.e. enforce its security interest in the collateral) **OR sue** (for the full amount owing).
- If Ace seizes, the debt is extinguished (regardless of whether or for how little the collateral sells for).

**See PPSA, s. 1, definition of “consumer goods”, ss. 58 and 67, and PM Business: Commercial ss. 3.04.3 and 3.10.8.**

- (2) 4. Yes, since you own at least 1/20 of the issued shares and have the right to vote at a general meeting, you can requisition the directors to hold a general meeting (2 marks). No marks for 'yes' alone.

**Note: Section 167 of the Business Corporation Act sets out certain exceptions to this.**

**See PM Business: Company, s. 7.02.2 and *Business Corporations Act*, s. 167(1) and (2).**

- (3) 5. In the derivative action, Wong can ask the Court:
- (a) to order Lafarge to account for any profits made as a result of the sale  
**or**  
for damages against Lafarge for failing to disclose her interest in Progress (1 mark for either answer);
  - (b) to set aside the sale or enjoin the company from entering into the proposed sale (1 mark); and
  - (c) for damages against the three directors for breach of their duty of diligence in failing to make reasonable inquiries about the zoning of the land. The directors would have to pay the difference between the sale price and the price they should have obtained given the planned rezoning (1 mark).

**See PM Business: Company, ss. Derivative Actions 13.02.4, Duties Owed 5.03.2 and Conflicts 5.04.1 and .2, and the *Business Corporations Act*, ss. 142(1), 147-152, and 232(2).**

**Note: This question is very hard.**

- (2) 6. You need to know if there are restrictions on transfer (or rights of first refusal) (1 mark) in the articles or a shareholders' agreement (1 mark for either).

**See PM Business: Company, 6.02.15 and 14.07.**

**WILLS (15 MARKS)**

(5) One (1) mark each for any **five** of the following six answers:

1. (a) i. Manuel may get the \$20,000 depending on the RRSP designation.

The student may get a ½ mark for EITHER:

- If Manuel is designated as the beneficiary in the RRSP he will still receive the \$20,000 regardless of the divorce [when a valid designation is made in an RRSP, the benefit does not form part of the Estate (WESA, s. 95)]

**or**

- If the RRSP makes the Estate the beneficiary then the gift will lapse because Georgia and Manuel are now divorced. The \$20,000 will go to the residue of the Estate.

ii. **Manuel** gets nothing from the residue portion of the Will because he and Georgia were divorced after she made her Will (1/2 mark).

See WESA, ss. 56 and 95 and PM Wills ss. 9.02.3, 4.02.7(b) and 2.02.

**Note: There are a number of estate planning considerations that the lawyer would consider if they were asked to advise Georgia prior to her death that are not explored in this answer.**

**This answer would likely be worth 2 points on a real exam.**

(b) **David and Elizabeth** share their mother's gift equally, either \$16,666 or \$20,000 each (1 mark). Rosa was entitled to receive one-third of the residue of the estate. Since the gift to Manuel of a share of the residue lapsed, he receives no portion of the estate. However, the amount David and Elizabeth will receive depends on whether the RRSP was payable to the estate or passed outside the estate. If the RRSP was payable to the estate, then David and Elizabeth are each entitled to \$16,666 (1/2 of their mother's \$33,333, which was 1/3 share of the \$100,000 residue). If the RRSP was made payable to the estate, then David and Elizabeth would each receive \$20,000. This is because with the RRSP in the estate, the residue would be \$120,000. Rosa's 1/3 share would have been \$40,000, which is now divided equally between David and Elizabeth (1 mark).

See WESA, s. 46 and PM Wills s. 2.06.3(a)(ii)

- (c) **Alejandro and Gabriela** are each entitled to either \$33,333 or \$40,000 (1 mark), a third of the residue. The amount depends on whether the residue is \$100,000 (if the RRSP passes outside the estate) or \$120,000 if the gift to Manuel of the RRSP valued at \$20,000 was changed to make the estate the beneficiary.

**See WESA, s. 46 and PM Wills, ss. 2.02**

- (2) 2. No, the change to the will is not valid. In order to validly alter the Will, the will-maker and the subscribing witnesses must attest to written additions or a codicil (1 mark) or the will-maker must revoke the old Will and execute a new Will with the changes and comply with the formal requirements (1 mark).

No marks for “No” without correct explanation.

**See WESA, ss. 54 and PM Wills, ss. 2.03.**

- (3) 3. (a) No. The gift to Anisa adeemed, and the executor has no authority to transfer a different gift to Anisa. (1 mark)

**See PM Wills s.2.06.2.**

- (b) The Canadian Red Cross Society. (1 mark) because the gift lapsed, and it falls into the residue (1 mark).

**See PM Wills s.2.06.3 and WESA s.46.**

- (3) 4. Yes, you acted correctly because:

- you met with, and interviewed, the uncle alone. (1 mark)
- you confirmed his instructions. (1 mark)
- you satisfied yourself re: his mental capacity. (1 mark)

Possible alternative 1/2 mark for stating that the lawyer should speak with the client’s doctor about his mental condition before drafting the will.

No mark for “yes” alone.

**See PM Wills s.3.03 and 3.05**

- (2) 5. (d) The distribution is stirpital, so Lianne’s share will devolve equally to her issue, Cheryl and Danny. Mel gets nothing.

**See APs 10.1 and 10.2 and PM Wills s.4.04.6.**

**REAL ESTATE (15 MARKS)**

- (2) 1. (c) (2 marks). The following explanation is not required for full marks:

A solicitor must ascertain whether property taxes are paid to date. Zoning is not something that a solicitor normally deals with in a residential conveyance without client instructions. Similarly, a solicitor should seek instructions on obtaining a survey, but it's not a task that the solicitor will do automatically. Ordering a company search would not apply unless one of the parties is a company or the property is owned by a company.

**See PM Real Estate, ss. 5.02.**

- (2) 2. The seller's lawyer will want written confirmation if s/he is required to give an undertaking to pay out an existing financial encumbrance. (2 marks)

**Note: Alternative 1 MARK may be awarded for:**

If the mortgage is being assumed, the buyer's lawyer will want written confirmation of the status of the mortgage for the purpose of preparing the statements of adjustments.

**See PM Real Estate, ss. 5.15.3 and 5.15.4**

- (2) 3. (1 mark for the danger and 1 mark for an example):

(a) The danger is there might be a charge registered on title after a satisfactory post-registration search which has retroactive or intervening effect which impairs the title.

(b) **Example:** an *FLA* s. 99 notice, a caveat, a builders lien, a CPL, a statutory lien, or a delay **or** omission by Registry staff which therefore makes the post-registration search unreliable.

**or**

(a) The post-registration search may be satisfactory but the document may subsequently be rejected by the Registry before perfected registration.

(b) **Example:** the document may be rejected for a technical deficiency.

**See PM Real Estate, s. 7.13.**

- (4) 4. You can act for both **IF** **OR** you cannot act for both **UNLESS**:

One (1) mark each for any four of the following, to a maximum of four marks:

- This is a “simple conveyance”. (1 mark)
- You advise each party in writing that no information can be treated as confidential between them. (1 mark)
- You get written consent of both parties. (1 mark)
- You explain the legal issues relevant to the matter to each party. (1 mark)
- You follow the requirements of Appendix C, s. 5 of the BC Code. (1 mark)

**See PM Real Estate, s. 3.02, BC Code 3.4-1, Commentary 0.1, Appendix C.**

- (3) 5. The seller should obtain a Clearance Certificate from Canada Revenue Agency before completion. (1/1/2 marks). Otherwise, the buyer is required under the Income Tax Act to holdback up to 50% of the entire purchase price (1/1/2 marks).

**See PM Real Estate, s. 5.10.**

- (2) 6. The new policy is not acceptable (1 mark). Banks are prohibited from making loans in excess of 80% of the value of the property without insurance (1 mark).

**See *Bank Act*, s. 418(1) and PM Real Estate, s. 7.06.1.**

### **PRACTICE MANAGEMENT (5 MARKS)**

1. The Law Society has no power to reduce the account (1 mark).

One (1) mark for any one of the following:

- The lawyer does have a duty to charge a reasonable fee;
- It would be better for the client to negotiate with the lawyer; or

- It would be better for the client to have the account reviewed by the Registrar.

**Note:** Alternative 1 Mark may be awarded for:

- The client could also use the fee mediation program administered by the Law Society.

**See PM Professionalism: Practice Management s. 5.06.**

2. (a) Dhillon should deposit \$300 of her own funds to cover these fees. (1 mark)

**See PM Professionalism: Practice Management s. 6.01(5) and Law Society Rule 3-60(5).**

- (b) Dhillon should pay the funds to the Law Society (1 mark) and provide the Law Society with details about the client and the matter. (1 mark)

**See PM Professionalism: Practice Management s. 6.01(14) and Legal Profession Act s. 34 and Law Society Rule 3-89.**

**50 MARKS**