

LAW SOCIETY OF BRITISH COLUMBIA
SAMPLE QUALIFICATION EXAMINATION
SOLICITOR
ANSWER GUIDE

PRACTICE MANAGEMENT (5 MARKS)

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

1 mark for any one of the following:

- The lawyer does have a duty to charge a reasonable fee;
- Karen could negotiate with the lawyer;
- Karen could have the account reviewed by the Registrar; or
- Karen could use the fee mediation program administered by the Law Society.

See PM Professionalism: Practice Management, s. 5.06 and Legal Profession Act, s. 70.

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

See PM Professionalism: Practice Management, Chapter 6, Trust Accounting Handbook (V. 9—September 2019) at p. 7, 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, Chapter 6, Trust Accounting Handbook (V. 9—September 2019) at pp. 40–41, and Legal Profession Act s. 34 and Law Society Rule 3-89.

REAL ESTATE (15 MARKS)

- (2) 3. (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*, s. 5.02. [References are given for information only; they are not required ON ANY QUESTION for student to receive full marks.]

- (2) 4. The seller's lawyer will want written confirmation if the lawyer 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) 5. (1 mark for the risk and 1 mark for an example):

(a) The risk 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) 6. (a) You can act for both **IF** **OR** you cannot act for both **UNLESS**:

1 mark each for any two of the following, to a maximum of two 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)

- (b) You can take Garth’s signature if you advise him in writing that:

1 mark each for any two of the following, to a maximum of two marks:

- Garth is entitled to independent legal representations but has chosen not to get it; (1 mark)
- you do not act for or represent Garth in any way; (1 mark)
- you have not advised Garth with respect to the transaction but have only attended to the execution and attestation of documents (1 mark).

See *PM Real Estate*, s. 3.02; *BC Code* 3.4-1, commentary [0.1] and Appendix C.

- (3) 7. The seller should obtain a Clearance Certificate from Canada Revenue Agency before completion. (1.5 marks). Otherwise, the buyer is required under the *Income Tax Act* to hold back up to 50% of the entire purchase price to remit to the Canada Revenue Agency directly (1.5 marks).

See *PM Real Estate*, s. 5.10.

- (2) 8. 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 *PM Real Estate*, s. 7.06(1) and *Bank Act*, s. 418(1).

BUSINESS (15 MARKS)

- (3) 9. 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).

- (2) 10. 1 mark for either:

- 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:

- 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).

See *PM Business: Commercial*, s. 2.04(1)(c).

- (3) 11. 1 mark each for the following (to a maximum of three marks):

- The appliances are consumer goods.
- Artic may **seize** (i.e. enforce its security interest in the collateral) **OR sue** (for the full amount owing).
- If Artic 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. 3.01(2) and 3.08(8).

- (2) 12. 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) 13. In the derivative action, Grace can ask the Court:
- to order Anne to account for any profits made as a result of the sale
- or**
- for damages against Anne for failing to disclose her interest in Progress (1 mark for either answer);
- to set aside the sale or enjoin the company from entering into the proposed sale (1 mark); and
 - 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. 13.02(4), 5.03(2) and 5.04(1) and (2), and the *Business Corporations Act*, ss. 142(1), 147-152, and 232(2).

Note: This question is hard.

- (2) 14. 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*, ss. 6.02(15) and 14.07.

WILLS (15 MARKS)

- (2) 15. (d) The distribution is stirpital, so Lianne's share will devolve equally to her issue, Chloe and Devon. Mel gets nothing.

See APs 10.1 and 10.2 and *PM Wills* s. 4.04(6).

- (2) 16. No, the change to the Will is not valid. In order to validly alter the Will, the will-maker and two witnesses must attest to written additions. (2 marks)

Alternative marks:

No it is not valid but the will-maker may make a codicil and sign it according to the formal requirements (1 mark) or revoke the old Will and execute a new Will (1 mark).

No marks for “No” without correct explanation.

See WESA, ss. 54 and PM Wills, s. 2.06.

- (3) 17. (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. 2.09(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. 2.09(3) and WESA s. 46.

- (3) 18. 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 .5 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 ss. 3.03, 3.05 and 3.06.

- (5) 19. (a) **Manuel**

- Manuel is not entitled to anything from the Estate because he was not a spouse at the time of Georgia’s death (1 mark).
- The RRSP makes the Estate the beneficiary and as a result is governed under the Will. It will go to the residue of the Estate. (1 mark) *[This mark could also be earned by discussing the RRSP under the other beneficiaries.]*

See WESA, ss. 56 and 95 and PM Wills ss. 9.02(3), 4.02(7)(b) and 2.02.

- (b) **David and Elizabeth**

- David and Elizabeth share their mother’s gift of \$40,000 equally (or \$20,000 each or 1/6 of the residue each). (1 mark)
- Rosa was entitled to receive one-third of the residue of the estate but because she was a descendant who died leaving

children, her share is divided equally between David and Elizabeth. (1 mark)

See *WESA*, s. 46 and *PM Wills* s. 2.09(3).

(c) **Alejandro and Teresa**

- Alejandro and Teresa are each entitled to either \$40,000 (or 1/3 of the residue each) because they are beneficiaries. (1 mark)

See *WESA*, s. 46 and *PM Wills*, ss. 2.09(3).

50 MARKS