NOTES:

1. This is an open book examination. You may bring into the examination room and use during the examination the casebooks, forms, statutory material and your notes and summaries. Use of library books and computers (except if using ExamSoft) are prohibited.

2. 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.

3. Total examination time: 180 minutes inclusive of reading time

4. Please stick to the time guidelines.
MARKS

1. John Whatajerk, the owner of a shopping centre at 001 Robson Street, comes to see you at the office on the morning of December 1, 2014. He shows you the attached contract of purchase and sale and seeks your advice. He tells you that:

(a) he is delighted with the proposed Purchase Price for the Property;

(b) he is unsure of the exact floor space at the Property but he thinks that it is no more than 20,000 square feet;

(c) the Property is registered in the name of John’s company, What a Rip Inc.;

(d) there is a tenant in the property that has a lease for 2 years (ending February 1, 2016) which is not registered on the title;

(e) there is an existing mortgage over the Property of approximately $300,000 which John took out when he bought the Property;

(f) three years ago John tried to get approval to build a hair salon on the Property but the Municipality turned down their application; and

(g) the purchaser was introduced to the Property by an agent who his listing agent has an agreement with to share commissions and he things that the Purchaser’s agent, Mr. D. Trumpp, told the buyer that there was no problem allowing the operation of a hair salon on the Property.

40 Part A. John asks you to explain the contract as drafted discussing the weaknesses to his position as seller and outline his options with respect to selling the Property including the risks associated with each option and how to accomplish each of them. What changes, if any, would you recommend to the form in order to ensure John will be able to complete the sale and enforce his rights?

10 Part B. Assume John accepts the contract as drafted, the conditions are removed and the deal completes with the Buyer assuming the existing mortgage. The Buyer has also asked John to accept a mortgage back (vendor mortgage) or to carry part of the purchase price after the closing by securing that part of the purchase price by a mortgage on the title to the Property. John asks you to explain his position with respect to the mortgage that is being transferred and what, if anything, he should do to protect himself making specific references to statutory protection for John and also to explain what the status of his vendor mortgage would be and what risks he takes on if he decided to agree to that.
2. What are the main issues of concern when a private party is obtaining an interest in land from the Provincial Government (Crown) that is affected by a first nations land claim? How can a party protect itself in respect of these issues?

3. Describe the features of mortgage security and discuss the differences between legal mortgages and equitable mortgages especially how they arise. Include in your answer reference to statutory provisions and relevant case law.

4. What options does a vendor have to enforce a contract for the sale of real estate where the purchaser has breached its obligations? What are the strengths and weaknesses of each option?
CONTRACT OF PURCHASE AND SALE

DATE OF OFFER: December 1, 2014

RECEIVED FROM: Spiderman or Nominee (the "Purchaser")

ADDRESS: 001 Robson Street, Vancouver

THE SUM OF: $100 Dollars Cash

Being Deposit paid to the Purchaser’s lawyer, on account of the proposed purchase of:

Legal Description: “the yellow house 50 metres from the Starbucks on Robson Street” (the “Property”)

For the price of: $10,000,000.00 Dollars or $5,000,000 per acre (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 The Superfriends; and

2. Subject to an inspection conducted by a professional home inspector prior to December 12, 2014, acceptable to the Purchaser.

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 February 15, 2015 (“Completion Date”).

   (a) Tender or payment of monies by the Purchaser to the Seller will be by cash only.

   (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 February 15, 2015 (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 February 15, 2015 (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 build a hair salon on the Property and that the Property consists of 25,000 square feet of floor space.

8. **ASSIGNMENT:** In this Contract any reference to a party includes the party’s heirs, executors, administrators, successors and assigns.

9. **THERE MAY BE REPRESENTATIONS, WARRANTIES, GUARANTEES, PROMISES OR AGREEMENTS OTHER THAN THOSE SET OUT HEREIN; ALL OF WHICH WILL SURVIVE THE COMPLETION OF THE SALE.**

10. **AGENTS:** The Purchaser and Seller agree that D. Trumpp, real estate agent is agent for both the Purchaser and Seller and that he will be paid a commission of 10% of the Purchase Price which shall be earned at the time this agreement is executed by all the parties.

11. **MORTGAGE:** The Seller agrees to carry part of the Purchase Price by way of mortgage. The Purchaser agrees to pay the Seller $1,000.00 per month with 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.

12. **ACCEPTANCE:** This offer will be open for acceptance until 5 o’clock p.m. on December 15, 2014 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.

_________________________________________________________________

**SPIDERMAN (PURCHASER)**

13. Receipt of the above mentioned Deposit is hereby acknowledged by the undersigned.

14. 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 ________________________.

_________________________________________________________________

**JOHN WHATAJERK. (SELLER)**