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THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – APRIL 12, 2019

LAW 468-004
Ethics and Professionalism

Professors Armour and Hume

TOTAL MARKS: 70

TIME ALLOWED: 2 HOURS
(including reading time)

- NOTE:
1. This is an open book examination.
 2. The examination counts for 70% of the grade in this course. The other 30% is based on in-class participation and student presentations.

THIS EXAMINATION CONSISTS OF 3 SECTIONS

IN EACH OF THE SECTIONS OF THIS EXAM, MAKE APPROPRIATE REFERENCE TO SOURCES COVERED IN THE COURSE INCLUDING CASE LAW, BC CODE OF PROFESSIONAL CONDUCT PROVISIONS INCLUDING COMMENTARIES, ASSIGNED READINGS AND LECTURES .

LAW 468-004, Section 1

MARKS **SECTION 1: ESSAY QUESTIONS** [10 marks out of 70]

ANSWER ONE OF THE FOLLOWING QUESTIONS

Allow 18 Minutes for this Section

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1. You have been named to a Canadian Bar Association committee tasked with finding solutions to Access to Justice issues in British Columbia.
 - a. Outline all solutions you would consider to address the issue.
 - b. Describe the solutions you would recommend including your rationale for each solution.
 - c. Explain any possible role for the Law Society in helping to resolve Access to Justice Issues.

 2. Discuss the importance (or not) of civility in the practice of law. Include in the discussion:
 - a. Arguments, for and against, law societies' regulation of civility.
 - b. Reference to key cases and relevant BC Code of Professional Conduct provisions.

LAW 468-004, Section 2

MARKS **SECTION 2: SHORT QUESTIONS****ANSWER 6 OF THE FOLLOWING 8 QUESTIONS.****Each question is worth 3.5 marks for a total of 21 marks for the section.****Allow 36 Minutes for this Section**

1. Describe the good character test.
2. Under what circumstances should you decline to act in a matter?
3. Why is it important to be clear whether you are giving legal or non-legal advice?
- 21 4. Name 6 similarities between solicitor/client privilege and the duty of confidentiality.
5. Identify the requirements around undertakings and why undertakings are important to the profession.
6. Describe the steps you would take if you receive documents that you believe were not intended for you and were in fact intended for the opposing party.
7. What are the ethical obligations when seeking information from a witness?
8. You did the documentation to evidence the sale of your client's business. You realize that you made a mistake in the documentation that is material and is to the disadvantage of your client. You have approached the lawyer for the "other side". They have indicated that they will not agree to rectification of the contract. Describe the steps you will take.

LAW 468-004, Section 3

MARKS **SECTION 3: FACT-BASED SCENARIOS, ANSWER THE QUESTIONS FOR BOTH SCENARIOS [39 marks out of 70; 25 marks for the first question, 14 marks for the second question]**

QUESTION #1

Allow 42 Minutes for this Question

Melissa has been practicing litigation for 5 years and finds herself practicing on her own as the firm she was with disintegrated with each lawyer going their own way. Because she had done most of the work on a civil claim, the client, Hard Hat, indicated they wanted her to continue to represent them after her old firm folded.

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Hard Hat is a company that manufactures the “Safety First” bike helmet. Hard Hat is being sued by Ace Rider who crashed after hitting a bump in the road while on his road bike. Ace alleges that he suffered a serious concussion because the Safety First helmet he was wearing was defective. He has not been able to return to work in the 2 years since the accident happened. Hard Hat acknowledges that Ace was wearing one of their Safety First helmets at the time of the accident. Apparently the bump in the road is nothing out of the ordinary and Hard Hat have told you they don’t want to allege that Ace was contributorily negligent as they want to keep the case simple.

Ace alleges that, when he purchased the Safety First helmet from Hard Hat, he was enticed by the claims on Hard Hat’s website that the Safety First helmet had received the highest possible safety ratings and was endorsed by several cycling racing teams.

When Hard Hat first approached Melissa’s old firm, none of the senior litigators was available for the initial meeting as the lawyers were preoccupied with much infighting. Melissa was asked to meet with the Chief Legal Officer (CLO) of Hard Hat. He showed her the Notice of Civil Claim. She skimmed it. Because the Response to Civil Claim was due in a couple of days, the CLO told Melissa that he needed to know right away whether she would represent Hard Hat. He also said he needed her views on the case immediately. He told her that no one else had complained about the Safety First helmets failing in any way. He also told her that the helmet had received the highest ratings possible and was endorsed by several racing teams. He also said that the Safety First helmet Ace was wearing shattered into hundreds of tiny pieces showing that Ace must have been going too fast. Based on those assurances, Melissa told the CLO that she was confident she would win the case for Hard Hat.

LAW 468-004, Section 3 (Question #1 Continued)

As Melissa is reviewing the documents of Hard Hat to determine those she needs to disclose to the plaintiff, she comes across a memo in the CLO's file. It is addressed to Hard Hat's Chief Executive Officer from the Chief Operating Officer. The CLO is copied on the memo. In the memo, the Chief Operating Officer advises that in fact the cycling helmet that Ace was wearing at the time of his accident had never been tested and had therefore, never been rated. It had also never been endorsed by racing teams. He also discloses in the memo that they have become aware that the helmet is defective because of the inferior materials used to manufacture them. The memo says that the helmet is essentially useless as protective head gear and in fact may be worse than that. There have been accidents where cyclists wearing the Safety First helmet have suffered significant blood loss when the helmet has shattered piercing the scalp of the rider.

Melissa is aware that the Safety First helmet is still being sold as she saw a number of them when she was recently in her neighbourhood bike shop. Melissa decides she will have to figure out what to do about this memo later. In the meantime, she prepares a list of documents based on the rest of the documents she has located and sends the list to the lawyer for Ace. The memo from the Chief Operating Officer to the CEO is not on the list.

In the course of preparing for trial, Melissa views Hard Hat's website which, as Ace alleges, claims that the helmet has received the highest possible safety ratings and was endorsed by several cycling racing teams. Because Hard Hat's Response to Civil Claim denies making any such claims, she tells Hard Hat to immediately remove those statements from the website. It does so. Neither the original website pages, nor the now "cleaned up" ones, are disclosed to the lawyer for Ace as relevant documents.

As counsel for the parties can't agree on the length of trial, the lawyer for Ace requests a Case Planning Conference. In the course of that conference, the judge turns to Melissa and mentions that she recalls another case where Hard Hat was sued with similar allegations being made. In fact, in the course of conducting research, Melissa came across a decision of the Alberta Queens Bench where Hard Hat was found liable in a case with facts remarkably similar to the one in which she is representing Hard Hat. Melissa knows that case isn't binding on the BC Supreme Court so she tells the judge that she isn't aware of any such case.

LAW 468-004, Section 3 (Question #1 Continued)

As part of her trial preparation, Melissa interviews the Chief Operating Officer. He tells her that he will get on the stand and talk about the very positive ratings they have received. He will also talk about the endorsements of the helmet. Melissa doesn't tell the Chief Operating Officer that she knows about the memo. She decides the best way to deal with this is to avoid specifically asking the Chief Operating Officer any questions about the ratings and endorsements and hope that the lawyer for Ace does likewise. The meeting with the Chief Operating Officer concludes with the Chief Operating Officer telling Melissa that he is glad Melissa is his lawyer. Melissa doesn't respond.

The trial is scheduled to start a week from now. Melissa has just turned her mind to the memo which has still not been disclosed even though it has been almost a year since she provided the List of Documents to Ace's counsel. For the first time, Melissa has concerns about the memo. You are a well-respected lawyer practicing in the area of professional responsibility for lawyers. Melissa comes to you for advice.

1. What steps if any should Melissa take with regard to the information in the memo?
2. In addition to any other course of action she might take, Melissa says that she is quite sure there is an exception to solicitor/client privilege and confidentiality that applies to this situation. She just isn't sure what that might be as she didn't pay attention to that session in her UBC Ethics course. Advise Melissa generally on the exceptions to solicitor/client privilege and confidentiality and specifically whether any might apply in this situation.
3. Melissa wants to withdraw from the file. She asks you for advice in that regard including what she is able to tell the judge.
4. Melissa now realizes she likely didn't conduct herself in exemplary fashion throughout the course of this file. What advice would you give her as to ethical issues that arise given her course of action throughout the file including what she should have done differently or not done?
5. Discuss whether you believe Melissa has professionally misconducted herself.

In each of your responses to the above questions, give your reasoning for the answers you provide and discuss any relevant provision in the Code of Professional Conduct of British Columbia and case law.

LAW 468-004, Section 3 (Continued))

MARKS**QUESTION #2****Allow 24 Minutes for this Question**

A Co. Ltd. is a land development company. Lawyer X is a member of GP, a two lawyer firm with its office in Surrey, B.C. Lawyer X has restricted his practice in the last several years to litigation matters. However he has never acted in any employment litigation. His only partner Y, restricts his practice to residential conveyances.

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The firm has represented A Co. Ltd. with respect to a wide variety of matters for approximately ten years. The firm represented A Co. Ltd. between 2015 and 2016 with respect to the acquisition and subdivision of a 120-acre parcel of land in Surrey (Surrey subdivision). The firm did not provide any services to A Co. Ltd. in 2017 and 2018 other than attending to the annual corporate filings of A Co. Ltd which work was performed by the firm's designated paralegal resulting in billings of \$300 per annum.

The firm learned that in 2017 another law firm, HLC, was acting for A Co. Ltd. with respect to a dispute concerning a subdivision development in Richmond, B.C. HLC also acted for A Co. Ltd. in the dismissal of several employees by A Co. Ltd.. In September 2018, Lawyer Y was approached by his cousin, who asked him to act on his behalf and ten others with respect to the purchase of lots in the Surrey subdivision. In November 2018, one of the former employees of A Co. Ltd. asked lawyer X to act on his behalf with respect to his dismissal by A Co. Ltd.

1. Discuss the ethical issues raised by the requests to act against A Co. Ltd.
2. Discuss whether Lawyer Y can act on behalf of the ten purchasers of lots in the Surrey subdivision.
3. Discuss whether there are other considerations that apply to Lawyer Y acting for his cousin.
4. Discuss whether Lawyer X can or should act on behalf of the former employee with respect to her dismissal by A Co. Ltd.
5. In your responses, give the reasoning for the answers you provide and discuss any relevant provisions of the Code of Professional Conduct of British Columbia and case law.

END OF EXAMINATION