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THIS EXAMINATION CONSISTS OF SIX (6) PAGES (INCLUDING THIS PAGE)
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THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – April 23, 2019

LAW 469
Civil Procedure

Professors Goulden/Kuntz

TOTAL MARKS: 100

TIME ALLOWED: THREE HOURS

NOTE:

1. This is an open book examination. Students may refer to any written material, including computer printouts, but may not use computers, except for the use of ExamSoft Exemplify, or by special arrangement and then only for typing and not database searching.
2. Where applicable, students should cite the relevant rules and cases.
3. Answer all questions.

THIS EXAMINATION CONSISTS OF 14 QUESTIONS

Wayne Graham is a chemical engineer contractor who carries on business through his professional corporation, Great One Ltd. ("Great One"). Great One's key product is a technology that makes trees grow 100 times faster than the natural growth rate, called "tree growth hormone" or "TGH". Great One entered into a services agreement with OxyPlus Inc. ("OxyPlus"), a research company that focuses on plant generation. Gordie Down is OxyPlus' principal and directing mind. Under the services agreement, Great One would supply OxyPlus with TGH made using materials at OxyPlus' facilities. This arrangement allowed Wayne to have a private lab where he could create TGH for OxyPlus. Wayne kept the formula for TGH on a single chart that he stored out of sight in a locked office in his private lab at OxyPlus, along with other personal belongings, such as an expensive custom stationery set. The agreement also provided that Great One would remain the sole owner of all intellectual property rights associated with TGH.

On March 31, 2019, Wayne and Gordie were both attending a charity event that was raising funds for the preservation of the world's rainforests. The event was widely attended by many important people in the engineering industry, including many former and potential clients, as well as numerous colleagues of Wayne. At the event, in the middle of a crowded room, Gordie stormed over to Wayne and loudly told him that Wayne was "finished" and said "I would never work with you again" and that "nobody anywhere should ever work with such a horrible person." Wayne stood silent and perplexed. Gordie went on to say "I would never have associated myself and my business with you if I had known about all of those hateful and hurtful things that you said about this charity, its purposes, and the people of Namibia." Stunned and confused, Wayne left the event.

The next day, April 1, 2019, Wayne's access card had been deactivated and he could not access OxyPlus' building and private lab. Gordie met him outside and told him that he considered their agreement repudiated by Wayne and that he was to leave OxyPlus' premises immediately. Gordie also told Wayne that his belongings would be mailed to his home.

On April 15, 2019, Wayne came to you for advice. Wayne tells you that he has not received any of his belongings and that he did not receive the last payment he was entitled to while he was performing the agreement. He also tells you that his friend from engineering school, Bobby Lore, told him that OxyPlus was now advertising itself on its website as the world's exclusive producer and seller of TGH, and that Gordie has been continuing to repeat the false statements he made about Wayne at the event.

1. Draft the main document you need to commence a proceeding based on the above facts.
(10 MARKS)
2. How do you ensure the defendant(s) get a copy of the originating document? Do the defendant(s) need to follow the same process for delivering their response to the plaintiff(s)? Why or why not? (3 MARKS)

3. Gordie's lawyer is not impressed with your originating document and does not feel that Gordie can properly respond given serious alleged information gaps. Identify and describe the process that Gordie's lawyer will use to get more details about the claim. (3 MARKS)
4. Gordie tells his lawyer that he never once told a lie about anything to do with Wayne, at the event or anywhere else. What must be included in the response to the originating document in order to advance this defence? (2 MARKS)
5. Bobby later tells Wayne that he heard Gordie was going to destroy the chart and all records of TGH so that it could never be made again just to spite Wayne.
 - a. What can you do to stop this conduct before the issues are determined at trial? Explain the process for getting into court quickly to obtain a court order(s). What orders would you ask the judge to make?
 - b. Identify the test to be applied and the authority for the test, to satisfy the court that an order should be made. Identify a professional responsibility issue that may arise in this process.

(10 MARKS)

6. Assume that the pleading period has ended, and you now wish to inspect documents.
 - a. Do you need to make a demand for discovery of documents? Explain. (2 MARKS)
 - b. When you receive Gordie's list of documents, you notice that several key documents are missing that should have been disclosed. What can you do to obtain those documents? (2 MARKS)
 - c. If you have to go to court, who will hear the application and where will it be heard? (2 MARKS)
 - d. Gordie tells you that some of the missing documents are in the possession of a third party who is not involved in the action. What must you do to obtain these documents? (2 MARKS)
 - e. Maurice Bouchard, an employee of OxyPlus who Wayne got along well with while he was under contract, tells Wayne that he saw an e-mail from Gordie to Sidney Gosby, an OxyPlus employee with whom Wayne did not get along with at all, where Gordie said that he was going to "make a scene" at the charity event so that he could make TGH himself. The e-mail is not listed on Gordie's list of documents, Maurice does not have a copy of the e-mail, Sidney refuses to hand it over, and Gordie denies that such an email exists. Prepare an affidavit you

would rely on in court to support production of this e-mail from Gordie or Sidney.
(7 MARKS)

7. You later learn that Sidney was also at the charity event, saw the entire incident between Gordie and Wayne, and recorded the incident on his cell phone. Sidney refuses to be helpful, refuses to testify, and refuses to turn over the footage.
 - a. You know that Sidney can provide statements that would assist Wayne. What can you do to get him to provide such statements? (2 MARKS)
 - b. Is there any action available to you to try and bring in Sidney's cell phone and the footage from the day of the incident as evidence? (2 MARKS)
8. Of the following documents in Wayne's possession, which ones would you list on Wayne's list of documents? If they are to be listed, specify in what section of the list they would be listed, and if they are not to be listed, explain why not.
 - a. A chronology of events Wayne prepared for you. (2 MARKS)
 - b. A printout of a blog post written by Wayne criticizing charities who host extravagant events to raise money when those events themselves consume too much overhead cost. (2 MARKS)
 - c. An e-mail between Wayne and Gordie discussing their agreement to the term in the contract where Wayne and his company retained total intellectual property rights over TGH. (2 MARKS)
 - d. An e-mail from you to Wayne where you ask him some questions about the chronology of events he provided. (2 MARKS)
 - e. A text chain between Maurice and Wayne discussing whether Wayne has ever considered a product for making greener grass. (2 MARKS)
9. Gordie's lawyer decides to schedule an examination for discovery of Wayne. What is the lawyer trying to achieve by taking this step? (3 MARKS)
10. During the examination for discovery of Wayne, Gordie's lawyer asks Wayne about a speeding ticket he got while he was attending university. What if anything would you do in response to this question? (2 MARKS)
11. Assume that examinations for discovery of both Wayne and Gordie have been conducted and completed and that you have the transcripts for each.
 - a. At trial, you would like to use the transcript of Gordie's examination for discovery evidence. Can you? Why or why not? (2 MARKS)

- b. Can you read in Wayne's evidence from his examination for discovery? Why or why not? (2 MARKS)
 - c. During your discovery of Gordie, he admits to several facts plead in your originating document, and he agrees that he wrote a number of the e-mails and letters that would be useful at trial. Describe what you would do before trial in order to use this evidence at trial. (2 MARKS)
12. To prove Wayne's damages at trial, you decide to hire Hayley Wizer, an actuary, to calculate the losses associated with Gordie's conduct including his slew of comments and production and sale of TGH.
- a. Describe, in terms of process and timing, what needs to be done in order for Hayley's evidence to be presented in court. (2 MARKS)
 - b. If there is a written component to Hayley's evidence, what must it contain? (4 MARKS)
 - c. Gordie's lawyer talked with her own consultant who does not think Hayley's calculations are accurate. Gordie's lawyer is also worried that Hayley may be holding a grudge against her and her firm because they no longer retain Hayley to assist with cases after an incident 6 months prior. What does Gordie's lawyer do, both before trial and at trial, to address her concerns with Hayley and her evidence? (4 MARKS)
13. The trial dates are rapidly approaching and Wayne is wondering whether there is a way he can avoid the expense and effort associated with a full trial.
- a. Identify and explain three options by which you could have the proceeding adjudicated without a full trial. (3 MARKS)
 - b. Identify three options available to pursue a settlement of the lawsuit. (3 MARKS)
 - c. Which option might have the most impact on the costs of the action if the parties fail to settle? Why? (2 MARKS)
 - d. Explain how to initiate the process for a settlement option that involves the court, and one benefit of this option. (2 MARKS)
 - e. If Gordie makes a concession or admission during settlement negotiations, but ultimately there is no settlement and the parties proceed to trial, can you or Wayne refer to Gordie's statement at trial? Why or why not? (2 MARKS)

14. After the trial concludes, the judge decides that you have won the case and awards \$120,000 in damages.
- a. Is your client entitled to costs? Explain. (2 MARKS)
 - b. Would your answer to (a) change if Gordie had made a formal offer to settle prior to trial for \$150,000? Explain. (2 MARKS)
 - c. Would your answer to (a) change if your client was awarded \$30,000 in damages? Explain. (2 MARKS)
 - d. Identify the two kinds of cost orders that a judge may make after a trial, and explain the difference between them. (4 MARKS)

END OF EXAMINATION