

**Write Your Exam Code Here:** \_\_\_\_\_

Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

THIS EXAMINATION CONSISTS OF EIGHT(8) PAGES (INCLUDING THIS PAGE).  
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER.

**FACULTY OF LAW**  
THE UNIVERSITY OF BRITISH COLUMBIA

FINAL EXAMINATION – December 2018

**Ethics and Professionalism – Law 468.001/555C.001 (fall term)**  
Instructor – Greg DelBigio

**EXAM INSTRUCTIONS – READ WITH CARE!**

THIS EXAM IS FOR BOTH GRADUATE AND UNDERGRADUATE STUDENTS

TIME ALLOWED: 2 Hours including reading time.

TOTAL MARKS: 100

PLEASE NOTE THE POINTS ALLOCATED TO EACH QUESTION AND USE YOUR TIME WELL.

THIS IS AN OPEN BOOK EXAM.

PLEASE READ EACH QUESTION WITH CARE.

## QUESTION #1 (50 points)

### FACTS

Judge X works at the downtown courthouse. The courthouse is immediately across the street from another court building. The doors to each of the buildings are opposite each other and in the middle of the block. The intersections with crossing lights are 50 meters away, either to the left or right.

Because it is much closer to simply cross the street, in the middle of the street, when going from one building to the other, it is not uncommon to see people doing this instead of going to either of the intersections. However, this is jay walking and pedestrians are supposed to cross at the intersections.

On one particularly drizzly Vancouver day, Judge X needed to go from one building to the other. X was in a bit of a hurry and on that day, X crossed the street, in the middle, rather than at one of the intersections with the crossing lights.

Judge X was not alone in doing this but, rather unfortunately, Judge X's actions were witnessed by a person (Angry Litigant) Judge X had ruled against in a recent case. Angry Litigant made a complaint to the judicial council saying the Judge X had broken the law and was not fit to be a judge.

## **APPLICABLE RULES and PRINCIPLES**

Use the following principles in answering this question:

5. Given the independence accorded judges, they share a collective responsibility to promote high standards of conduct. The rule of law and the independence of the judiciary depend primarily upon public confidence. Lapses and questionable conduct by judges tend to erode that confidence. As Professor Nolan points out, judicial independence and judicial ethics have a symbiotic relationship.<sup>5</sup> Public acceptance of and support for court decisions depends upon public confidence in the integrity and independence of the bench. This, in turn, depends upon the judiciary upholding high standards of conduct.

[O]nly by maintaining high standards of conduct will the judiciary (1) continue to warrant the public confidence on which deference to judicial rulings depends, and (2) be able to exercise its own independence in its judgements and rulings.<sup>6</sup>

In short, judges should demonstrate and promote high standards of judicial conduct as one element of assuring the independence of the judiciary

Statement:

Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary.

Principles:

1. Judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons.
2. Judges, in addition to observing this high standard personally, should encourage and support its observance by their judicial colleagues.

Commentary:

1. Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality and good judgment. The Canadian judiciary has a strong and honourable tradition in this area which serves as a sound foundation for appropriate judicial conduct.

2. While the ideal of integrity is easy to state in general terms, it is much more difficult and perhaps even unwise to be more specific. There can be few absolutes since the effect of conduct on the perception of the community depends on community standards that may vary according to place and time.

3. As one commentator put it, the key issue about a judge's conduct must be how it "...reflects upon the central components of the judge's ability to do the job."<sup>10</sup> This requires consideration of first, how particular conduct would be perceived by reasonable, fair minded and informed members of the community and second, whether that perception is likely to lessen respect for the judge or the judiciary as a whole. If conduct is likely to diminish respect in the minds of such persons, the conduct should be avoided. As Shaman put it, "...the ultimate standard for judicial conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office."<sup>11</sup> The judge should exhibit respect for the law, integrity in his or her private dealings and generally avoid the appearance of impropriety.

4. Judges, of course, have private lives and should enjoy, as much as possible, the rights and freedoms of citizens generally. Moreover, an out of touch judge is less likely to be effective. Neither the judge's personal development nor the public interest is well served if judges are unduly isolated from the communities they serve. Legal standards frequently call for the application of the reasonable person test. Judicial fact-finding, an important part of a judge's work, calls for the evaluation of evidence in light of common sense and experience. Therefore, judges should, to the extent consistent with their special role, remain closely in touch with the public. These issues are discussed more fully in the "Impartiality" chapter, particularly section C thereof.

5. A judge's conduct, both in and out of court, is bound to be the subject of public scrutiny and comment. Judges must therefore accept some restrictions on their activities — even activities that would not elicit adverse notice if carried out by other members of the community. Judges need to strike a delicate balance between the requirements of judicial office and the legitimate demands of the judge's personal life, development and family.

6. In addition to judges' observing high standards of conduct personally they should also encourage and support their judicial colleagues to do the same as questionable conduct by one judge reflects on the judiciary as a whole.

### **QUESTION**

Judge X is now before a hearing of the judicial council. The allegation is that the jaywalking was inconsistent with the conduct required of a judge. You are defending Judge X. Having regard to the rules and principles above, explain your case for why the rules and principles were not broken by the jaywalking.

NOTE: This is not a question about the judicial council or the rules that govern hearings.

## QUESTION #2

### FACTS

You are a defence lawyer. You act for Bad Person (B.P.) You have acted for B.P. for some years and though you have had some successes, B.P. has accumulated a criminal record for offences of violence and property related offences (theft and damage to property)

B.P. has now been charged with assault causing bodily harm. In recent months B.P. has become more erratic and you have told yourself you won't be taking any more of B.P.'s cases. However, when B.P. called and pleaded with you, and offered to pay the money he owes, you agreed to meet with him to "maybe" take his case.

You met B.P. in the lobby of your building. He seemed angry and maybe even on drugs. While on the elevator up to your office, you said to B.P. "what's this thing all about?". B.P. began to talk about his case and said the person he is charged with assaulting "deserved it" and when B.P. sees that person, that person will "get it again, only worse."

You became exasperated with B.P. for talking in the elevator in the presence of others and you became mad at yourself for even considering taking another of B.P.'s cases. To stop him from talking you said, "B.P., please shut the F\_\_k up." While in your office, B.P. discussed the case and you told him the case looks difficult to win. B.P.'s anger increased. If convicted, he was facing jail. He said if he had to go away (to jail), then the person who accused him of the assault "would also be going away."

You decided you had had enough of B.P. and said you would not take the case. As he stormed out of your office, B.P. said “you are just like him (the person who accused B.P. of the assault). You better be careful. People sometimes get hurt.” You are worried about B.P.’s remarks. You know him to mouth off but this time it seemed a little different. You think he might hurt someone. You also concerned he might hurt you.

**QUESTION (each of these is worth 10 points)**

- a. Are you permitted to tell anyone about B.P.’s remarks while on the elevator?  
Explain.
- b. Are you permitted to tell anyone about B.P.’s remarks while in your office?  
Explain.
- c. For the purpose of whether you can tell anyone, are the remarks that B.P. made while in the elevator different from those made while in your office?  
Explain.
- d. Is the fact that B.P. had been a client, but that you did not accept this case, relevant? Explain
- e. You have some concern that if you tell someone about B.P., that your own conduct in relation to B.P. might come under scrutiny. Do you have anything to worry about?

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END OF EXAMINATION

Enjoy your vacation.