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**THIS EXAMINATION CONSISTS OF 4 PAGES, INCLUDING THIS PAGE
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**THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW**

FINAL EXAMINATION – DECEMBER 2018

**LAW 468
Ethics & Professionalism**

**LAW 555C.005
Topics in Common Law Theory & Practice**

**Section 5
Professor Martin**

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

NOTE:

- 1. This is an open book examination, and candidates may use any non-electronic materials.**
- 2. If you are writing your exam by hand, please write legibly on every other line and on only one side of the page.**
- 3. State clearly any facts you assume in answering the questions.**
- 4. Full citation of cases is unnecessary. You may refer to cases in short form (e.g., *Neil*).**

ANSWER ALL QUESTIONS.

THIS EXAMINATION CONSISTS OF 2 QUESTIONS.

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Question 1: 50 marks

(This question takes place entirely in British Columbia.)

Lawyer A at Firm 1 is representing the plaintiff in a personal injury action. Lawyer B at Firm 2 is representing the defendant corporation. Lawyer B receives instructions from the corporation's CEO.

The plaintiff chose Firm 1 in part because of the firm's aggressive marketing campaign and its catchy slogan: *All Lawyers are Liars – We Lie for You!*

The plaintiff is worried about going to trial and wants to settle. Lawyer A discourages him from settling, explaining that settlement negotiations are a sign of weakness. The plaintiff insists, telling Lawyer A he is willing to settle for no less than \$1 million. During negotiations between Lawyer A and Lawyer B, Lawyer A says "My client is willing to settle for no less than \$2 million". Lawyer A secretly makes a recording of the negotiations. The negotiations are unsuccessful.

In preparation for trial, Lawyer B explains the discovery process to the CEO of the defendant corporation. The CEO refuses to include documents that are clearly relevant and are not privileged. Lawyer B insists at first but eventually gives up and proceeds with the incomplete discovery.

During the trial, Lawyer C switches firms from Firm 1 to Firm 2. While at Firm 1, Lawyer C worked closely with Lawyer A on the personal injury file. Lawyer C does no work on the personal injury file at Firm 2. Firm 2 establishes ethical screens, puts Lawyer C's office as far from Lawyer B's office as possible, and assigns Lawyer C and Lawyer B different assistants. Lawyer C spends 50% of her time working with Lawyer B on other files. To replace Lawyer C, Lawyer A hires his good friend Bruce Willis. Bruce Willis is a very talented lawyer and is licensed both in BC and in Ontario, although he is currently suspended in Ontario for failure to pay his annual fees.

Lawyer A is a heavy drinker. He often appears to be intoxicated in court. In the evenings, while drinking heavily, he engages in frequent sexual harassment of his assistant.

The plaintiff is unhappy with the progress of the trial and feels the judge is treating him "unfairly". One day he says to Lawyer A, "I'll make sure that judge learns his lesson at the courthouse tomorrow." The plaintiff does not elaborate.

During the trial, Firm 2's Ottawa office is retained to sue the defendant corporation in a completely unrelated matter, and Firm 2's Halifax office is retained to represent one of the defendant corporation's competitors.

During the trial, the plaintiff reveals to Lawyer A that the plaintiff and his spouse are having difficulties in their relationship. After the trial, Lawyer A begins an affair with the plaintiff's spouse.

You are a lawyer at the Law Society. You have been asked to write an opinion based on this information. Did Lawyers A, B, and C comply with their professional obligations? Why or why

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not? Answer with reference to relevant case law and relevant provisions of the *BC Code* and the *Legal Profession Act*.

Question 2: 50 marks

(This question takes place entirely in British Columbia.)

Crown prosecutor X is prosecuting Jones in a jury trial for sexual assault. Y is defence counsel.

Before trial

Crown prosecutor X believes that a conviction is very unlikely, but feels obliged to follow a zero-discretion policy on sexual assault prosecution. Struggling with the large amount of disclosure, Crown X decides not to disclose some relevant and potentially exculpatory evidence because she thinks it will be not very useful for defence counsel.

Jones convinces defence counsel Y that Jones is not guilty. Defence counsel Y determines that the Crown has a very strong case and advises Jones to plead guilty even though Jones is not willing to admit committing the offence. Defence counsel Y negotiates a plea agreement with Crown prosecutor X in which Jones will plead guilty to simple assault and Crown prosecutor X will recommend probation.

Local journalists find out about the plea agreement. Angry politicians demand that the Attorney General resign and that Crown prosecutor X be fired. At the last minute, the head Crown prosecutor for the province cancels the plea agreement as “not being in the public interest”. The trial proceeds.

During the trial

Defence counsel Y’s trial strategy is to argue that it is much more likely that someone else committed the offence. Part way through the trial, Jones admits to defence counsel Y that he committed the offence. Defence counsel Y continues to argue at trial that it is much more likely someone else committed the offence.

Crown prosecutor X knows about a relevant binding decision from the BC Court of Appeal that favours the defence. She is surprised that defence counsel Y does not mention the case. However, Crown prosecutor X does not mention the case herself because she has an honest and reasonable belief that the case is distinguishable.

Defence counsel Y is late for court one day because he is hungover, but he tells the court it was because his car broke down.

The judge frequently falls asleep during the trial, but Crown prosecutor X and defence counsel Y each separately decide to say nothing and to save the argument about that for a potential appeal.

Defence counsel Y cross-examines the complainant using sexual assault stereotypes and myths. In response, Crown prosecutor X yells at defence counsel Y, calling him an asshole and a bastard.

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During cross-examination of Jones, Crown X is sarcastic and belittles and argues with Jones. In response, defence counsel Y yells at Crown prosecutor X, calling her an asshole and a bastard.

Crown prosecutor X believes strongly in *Boucher* and the idea that the Crown does not win or lose. In her closing statement, Crown prosecutor X says the following:

“You can trust me. I’m the Crown. I don’t win or lose. My only obligation is to see that justice is done.”

The defendant is convicted. Outside the courthouse, defence counsel Y gives the following comment to TV reporters:

“The judge was obviously biased against my client. Everyone in this city should worry that if they are ever charged with a crime, they will not get a fair trial.”

The Law Society has commenced an investigation into defence counsel Y. But he refuses to provide any information to them, citing the duty of confidentiality to the client.

You are a lawyer at the Law Society. You have been asked to write an opinion based on this information. Did Crown prosecutor X and defence counsel Y comply with their professional obligations? Why or why not? Answer with reference to relevant case law, and relevant provisions of the *BC Code* and the *Legal Profession Act*.

END OF EXAMINATION