

**THIS EXAMINATION CONSISTS OF 5 PAGES
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**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION – APRIL 2022

**LAW 468
Ethics and Professionalism**

**Section 5
Professor Lisa Martz**

TOTAL MARKS: 120

TIME ALLOWED: 3 HOURS (including reading time)

- NOTE:**
- 1. This is an open book examination. Candidates may refer to their CAN, their own notes, printed copies of all or parts of the *Code of Professional Conduct for British Columbia*, the *Law Society Rules*, the *Legal Profession Act*, S.B.C. 1998, c. 9, and the course textbook: *Lawyers' Ethics and Professional Regulation*, 3rd ed. or 4th ed. (Woolley, Devlin et al.).**
 - 2. This exam consists of 3 parts: in Part 1, you must analyze 5 of 6 fact patterns; in Part 2 you must answer 1 short essay question; in Part 3 you must answer 1 of 2 short essay questions.**

THIS EXAMINATION REQUIRES YOU TO ANSWER 7 QUESTIONS IN TOTAL.

Part 1 : FACT PATTERNS

Answer 5 of the following 6 questions. Do not answer all 6 questions in this part. The recommended time for reading through all of the questions is 10 minutes. The recommended time for answering the 5 questions you choose is 22 minutes each. Each answer in this part is worth 18 marks.

- 1A.** You are business lawyer and your nephew calls you one day and asks you to meet him for coffee. He's been doing construction work since he graduated from high school, but he doesn't make enough money to pay for his own place so he is living in your sister's basement. When you meet, he explains that he's been given an opportunity to start working for, and buying into, a friend's cannabis business and he wants your legal advice about this. He tells you that his friend had a grow-op for years before cannabis became legal and that he has a lot of connections, including with the Hell's Angels, so they can be sure to have a good supply of product to sell, no matter what. You agree to help him. As it turns out, this includes acting as his criminal defence counsel when he gets arrested while at a party at a Hell's Angel's clubhouse. A few months later, you and your nephew are at a family BBQ to celebrate your sister's birthday. She tells you how happy she is to see her son excited about something for the first time in a long time. He starts telling everyone about the business opportunity and you explain to everyone what your advice to him has been.

Discuss any ethical issues raised by these facts and how you would have dealt with them if you were the lawyer in this scenario.

- 1B.** You are a criminal defence lawyer. Your client was the warehouse manager for a medical supply company that has been extremely busy during the pandemic because of the increased demand for the personal protective equipment (PPE) it sells. She has been charged with theft for stealing PPE from his employer and selling it online. However, she is adamant that if there was any theft going on at the warehouse, she had nothing to do with it. You find her credible and explain to her that a successful defence requires only raising a reasonable doubt, and that if she is willing to testify that she is innocent, that should be good enough. You tell her that you estimate that her total legal fees will be no more than \$10,000 maximum.

The disclosure that you receive from the Crown includes a lot of digital data drawn from the employer's inventory management software. You don't know how to deal with this, so you hire an accountant to analyze the data and explain it to you. It seems clear that a lot of inventory did go missing but your client is adamant she is being framed by her employer and that she has no problem testifying to say this. She gets very upset every time you try to talk to her about the Crown's case, accusing you of not believing in her innocence, so you never tell her about your work with the accountant on the inventory information. The trial is scheduled for four days. About a month before the trial starts, you send the client a bill for \$9,000 for your work on her case to that point, including what the accountant charged you.

If the facts in the above scenario came to the attention of the Law Society of BC, what, if anything, do you think might be of concern to them and why?

- 1C.** You are working at a law firm that acts for a lot of companies in the forestry industry. As a result, you know quite a lot about the regulatory regime that applies to logging in BC. You are approached by two friends from law school who are doing public interest work: one works for an environmental advocacy group and the other works for a First Nation. They want to retain you to assist in their efforts to lobby the provincial government to stop old-growth logging on Vancouver Island. They also want you to represent some of the anti-logging protestors who have been arrested at Fairy Creek and convince you that you should do this pro bono.

You're excited to have the opportunity to do some work that you find more meaningful, compared to the other files you have. You also figure that the firm's logging company clients are going to have to adapt to public and shareholder demands that they be good corporate citizens anyway. However, you decide that you won't mention this new retainer to these clients nor to any other lawyers in your office. To keep the file from coming to the attention of any other lawyers at the firm, you don't send a retainer letter to your friends and open the file in their personal names rather than the names of their organizations. You also make sure that the description of your legal services on the bills that you send them are very general, just saying things like "attending to necessary matters". You keep no notes or other records about your advice to the Fairy Creek protestors who call you about once or twice per month.

Have you taken any ethical risks in this scenario and if so, how do you think you might have avoided them?

- 1D.** You are acting for a realtor who is being sued for negligence by former clients because the house he helped them buy turned out to be in a high flood risk area. They can't get insurance and their position is that the house is worth much less than they paid for it. The examination for discovery of your client is coming up and you meet with him to prepare him for questioning by the plaintiffs' lawyer. He tells you that he feels really badly about what happened and that he wishes that he'd done more research about the property. He says that another realtor in his office often calls city hall to check on properties his clients are looking at but it's not something he's ever done. You tell him that if he says any of this on his examination for discovery, he's going to lose the case.

During the examination for discovery, the plaintiffs' lawyer keeps asking your client whether he feels like he did a good job for the plaintiffs. You can see your client is getting upset, and since you are worried that he is going to blurt out an apology that is going to hurt his case, you repeatedly object to this line of questioning. The plaintiff's lawyer starts yelling at you and telling you to stay out of his way when he is conducting the examination. You yell right back. Over lunch with your client during the noon break, you tell him that you think the plaintiff's lawyer is an idiot and that he may have a drug problem. The examination for discovery resumes in the afternoon without incident, but late that night you get an angry email from the plaintiffs' lawyer telling you that he "will not allow you and your client to jerk him around on this file" and that you had better "smarten up" and come up with a "f—ing amazing" settlement offer or he is going to report you to the Law Society and your client to the regulator for realtors.

What should you do? Are you comfortable that your conduct would withstand scrutiny by the Law Society?

- 1E.** You are a family lawyer and meet with a man named John who tells you that his marriage is on shaky ground. John tells you about his and his spouse's respective incomes, assets and how long they've been together, and asks you to explain the steps involved in separation and divorce and what the likely division of assets, support obligations and timeline would be. You give him some summary advice and he tells you that he is going to think things through and get back to you. A few months later, you pass John on the street while you are walking to lunch with a friend who is a personal trainer and you say hello to John as you walk by. You mention to your friend that the man was a potential client but that he never retained you.

The next time you have lunch with your friend, they mention in passing that they have realized that the man you passed on the street the last time you got together is married to someone they know. Later that year, you go on a run with your friend's running group and end up running with a man named Jeff who asks you what you do for a living. After you tell Jeff you are a family lawyer, he starts to ask you some basic family law questions and you realize from what he says about his own circumstances that he must be married to John. He asks if he can make an appointment to come and see you at your office and you say yes. The next day, you call your personal trainer friend and get them to give you their undertaking that they will not tell Jeff that you ever met with John.

Do you agree with this plan? Explain why or why not.

- 1F.** You act for a family that owns a farm in the Fraser Valley. Over the years, you have helped them with a wide range of legal matters and become a trusted advisor. The patriarch of the family comes to you for help with estate planning and tells you that he would like to include a gift for you in his will, as an acknowledgement of the role you have played in his family's success. In particular, he wants to gift you some of his shares in the company that owns the farm. That way, he can take comfort in knowing that you will be in a position to keep an eye on the business when his children take over the running of the farm after he is gone. You tell him that it has been an honour to help him and thank him for his generosity. You prepare the will according to his instructions.

When he passes away several years later, his children are unhappy to find out about the gift their father left to you in his will. They argue that he was not mentally competent when it was prepared. Their mother, who is the executor under the will, asks you to represent her in defending against their claim and upholding her husband's wishes and you agree to do so. There is no doubt in your mind that her husband knew what he was doing when he instructed you about his will and you swear an affidavit that says that. During your submissions at the hearing of the children's claim challenging the will, the judge makes a number of disparaging comments about the credibility of people in the cultural community to which the family belongs, including saying to you that "he doesn't know what's wrong with these people".

Discuss any ethical issues you see arising from the above and how you think they should be handled.

Part 2: SHORT ESSAY

Please answer the following question. The recommended time for answering this question is 30 minutes and it is worth 15 marks.

2. What does it mean to be an 'officer of the court'? In your answer, provide some examples of what this means in practice.

Part 3: SHORT ESSAY

Please answer only one of the following questions. The recommended time for answering this question is 30 minutes and it is worth 15 marks.

- 3A. In your view, what is the Law Society of BC's most important function? Please explain why.

OR

- 3B. While there is now more discussion about the mental health of law students and lawyers than there was in the past, law students and lawyers continue to suffer higher rates of anxiety, depression and substance abuse issues than many others. Why do you think that is and what do you think can be done about it?

END OF EXAMINATION