THIS EXAMINATION CONSISTS OF 5 PAGES

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2023

LAW 468

Ethics and Professionalism

Section 1

Professor Lisa Martz

**TOTAL MARKS**: 100

**TIME ALLOWED:** 3 HOURS (including reading time)

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**NOTE:** 1. This is an open book examination. You may have with you a copy of (or excerpts from) the *Code* *of Professional Conduct for British Columbia* (which may be annotated), any notes (including your CAN), and the course textbook: *Lawyers’ Ethics and Professional Regulation* (Woolley, Devlin et al.)

2. This exam consists of 2 parts:

1. in Part 1, you must analyze 4 of 5 fact patterns, and
2. in Part 2 you must answer 1 of 2 short essay questions.

THIS EXAMINATION REQUIRES YOU TO ANSWER 5 QUESTIONS IN TOTAL.

**Part 1 : FACT PATTERNS**

MARKS

1. Answer 4 of the following 5 questions (do not answer all 5 questions):

20 (a) You are the criminal defence lawyer for Logan, who has been accused of armed robbery of a jewelry store. Logan was identified by the store clerk as the robber, but you think the identification is weak and you may be able to obtain an acquittal or at least negotiate a favourable plea deal. A woman who identifies herself to your receptionist as Logan’s ex-girlfriend leaves a bag at your office. It contains the following note: “This is Logan’s. They hid it in my apartment. I don’t want anything to do with this.” You don’t open the bag but call Logan and they ask you to keep the bag at your office for now. Later that day, Logan calls you back to say that the police came to their apartment with a search warrant but didn’t find anything and that they want to take the stand to testify to their innocence.

You are unsure about Logan’s ability to pull off a credible presentation in court so you revise your defence strategy two weeks before the trial. The disclosure you get from the Crown includes the name and contact information for the store clerk who identified Logan. You studied theatre before law school and decide to use your skills for some role play. You call the store clerk using a deeper voice than your usual speaking voice and tell them that you are a friend of Logan and that “they should get the hell out of town if they know what’s good for them”. The next day you get a call from the Crown counsel on the file. They tell you that someone has been harassing a Crown witness and that you need to warn your client to make sure this stops. You yell at the Crown prosecutor and angrily accuse them of being “a racist a\*\*-hole”, as Logan is a person of colour, although you don’t have any reason to believe this is the case. You decide the case is turning out to be more than you want to deal with so you tell Logan that he is going to have to get a new lawyer.

*Do you have any concerns about your conduct in this scenario? Explain why or why not and, where applicable, what you think you should have done differently.*

20 (b) You are an associate in the litigation department of a large law firm. One of the files that you are working on is a class action where you firm is acting for a major pharmaceutical company. You have been assigned the job of reviewing the client’s documents in order to identify what should be disclosed on the client’s list of documents. As the end of the year approaches, you start to get worried that your billable hours are low and that you won’t qualify for the Christmas bonus you were counting on. You therefore get in the habit of recording a few more hours than you actually spent on document review on your time sheet every day to ensure that you hit the required hours target to get a bonus.

The class action has been brought on behalf of patients who allege that the client misrepresented the degree of risk associated with one of the medications it manufactures. As you review the client’s documents you notice references to the names of several employees who were involved in the issues that gave raise to the litigation but whose emails do not seem to have been included in the documents the client has provided for review. You contact the client’s IT manager and ask whether they have searched the emails of these employees. The IT manager responds to your inquiry in a hostile way. They tell you that all of the employees whose names you listed were terminated by the company and their email accounts deactivated. When you suggest that their emails would still be accessible on the company’s email server, the IT manager tells you to “stay in your lane”. You know the pharmaceutical company is an important client of your firm so you don’t press the issue because having good client relationships is an important factor in making partner.

*Explain what ethical issues you see arising in this scenario and what, if anything, you think you should have done differently to deal with them.*

20 (c) You are a family lawyer acting for a man whose wife alleges that he has been physically violent towards her for many years. When your client is asked questions by his wife’s lawyer at examination for discovery, he becomes very angry, even though the questions are completely appropriate. You try to keep things on track by pointing him to documents that would help him answer the questions but he continues to be angry and uncooperative. The time set aside for the examination that day ends and the wife’s lawyer says she will continue the examination the next day, as scheduled.

Your client phones you very late that night sounding intoxicated. He rambles on about the examination using profanities and makes threats of violence when talking about his wife’s lawyer. You try to calm him down but aren’t able to do so and eventually end the call. You then get a series of texts from him over the course of the night that suggest that his mental state is getting worse. In the last message, he says that he found the home address of his wife’s lawyer through an internet search and that he is parked outside of her house. You email the wife’s lawyer and tell her that your client is unwell and won’t be able to continue the examination the next day. You call your client to tell him the examination is cancelled in the hopes that this will calm him down, but he doesn’t pick up your call. You realize that you are exhausted by having to deal with him, so you send him an email telling him that he needs to settle the case for whatever his wife is asking for.

*Are you satisfied with the way that you handled this situation or do you think you should have done anything differently?*

20 (d) You meet with members of a family who you know from the religious temple you attend. They own a property in an area where there is a lot of development and have been contacted by several developers who want to buy it. They want you to represent them in negotiating the sale of their property. Your practice is mostly wills and estates but you agree to take the file on because you feel honoured that the family has come to you for help and you know they will be comfortable with you. The developers’ lawyers send you formal written offers to purchase so you arrange a meeting with the family to go over them. The day before the meeting, one of the adult children in the family calls you to say that a realtor has told him that his family would be stupid to sell their property right now. He says the realtor told him that the city will be changing the zoning for their property in the future to allow for large condominium towers and that this will dramatically increase the value of the property. He tells you that his parents are too unsophisticated to understand this and that you need to ignore their instructions to about selling the property now.

At the meeting with the whole family the next day, the son who called you doesn’t say anything about what he told you on the phone but keeps staring at you and shaking his head as you go over the developers’ offers with his parents. The parents, who are quite elderly, tell you how they bought the property when they first came to Canada and how happy it makes them feel to be able to see the property turned into money for their children in their lifetime. During the meeting, you check your phone and see that you got an email from the lawyer for the developer who is offering the highest price. It includes the following: “the key to this deal is getting it done fast before the seller realizes the potential upside from future rezoning”. You step out of the meeting to take a closer look at the email and realize it was sent by the lawyer to their developer client and that you must have been accidentally copied on it. You head back into the meeting to tell the family about it.

*Do you have any concerns about your conduct in this scenario? Explain why or why not and, where applicable, what you think you should have done differently.*

20 (e) You work in-house in the legal department of the city where you live. The mayor and other members of city council want to take action to remove encampments of homeless people living on the street in the city’s downtown. You are part of the legal team that drafted a memo advising city council on the extent of their legal authority to remove the encampments and seize personal belongings of people living there. You often go for a jog at lunch hour with a non-lawyer colleague who works in the city’s social services department who is part of the team planning for the encampment removal. When you head out the door of city hall together, they tell you that they “really need the run today!” and reveal that they are feeling uncomfortable about the plan to remove the encampments by force with the help of police. You are personally supportive of the city’s proposed action in light of the violence, public disorder and risks of fire that the encampments have created. You and your colleague debate the legal and moral issues as you wind your way through the lunch hour pedestrian traffic downtown.

Over the weekend, you get an email from the same colleague asking you to call them at home. They tell you that they have made up their mind to leak information about the city’s planned actions to a journalist and they want your advice on whether they might be able to rely on the city’s “whistleblower policy”. You give them some advice and afterwards get to thinking about other people who might be affected by the city’s actions to remove the encampments. A friend of yours owns a restaurant nearby the encampments and you know their business has been struggling since the pandemic and that “no show’s” on reservations cost them a lot of money since they pay staff and order food without making any revenue. When you see them for dinner over the weekend you mention that it might be good for them to take a holiday day on the date when you know the city will be shutting down access to the area while the encampments are removed.

*Explain what ethical issues you see arising in this scenario and what, if anything, you think you should have done differently to deal with them.*

**Part 2: SHORT ESSAY**

MARKS

2. Answer one of the following questions (do not answer both questions):

20 (a) What factors do you think a lawyer should think about in deciding whether or not to take on a client?

OR

20 (b) What do you think are the most effective steps we could take to improve access to justice in BC?

**END OF EXAMINATION**