THIS EXAMINATION CONSISTS OF 5 PAGES

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THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2022

LAW 468

Ethics and Professionalism

Section 3

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* and sections of the *Legal Profession Act* (both of 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 3 parts:

1. in Part 1, you must analyze 5 of 6 fact patterns,
2. in Part 2 you must answer 1 short essay question, and
3. 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**

MARKS

 1. Answer 5 of the following 6 questions (do not answer all 6 questions):

15 (a) You are an employment lawyer acting for a business executive who was fired from his job as vice president of an advertising company. The company did not accuse the client of any wrongdoing, but rather simply told him that they wanted to go in a different strategic direction now that a new generation is leading the company. The client is outraged that he was terminated by a much younger person who he originally hired. You have explained to him that the severance package he received was in the range of what is reasonable, but the client wants to sue to claim punitive damages and, hopefully, get some bad press for the company’s new management. You know the chances of success at trial are very slim, but the client is keen to go through with it – plus he has money and immediately gave you the large retainer you asked him to pay up front as security for the legal fees he will incur if he goes to trial. You recently bought a place at Whistler with a sizeable mortgage and your oldest child has started going to a private school with high tuition fees, so the prospect of a few solid months of billings for the trial, at the high hourly rate you quoted for the client, is easing your financial worries. Knowing how hard you will be working on the trial, you book a heli-skiing holiday a few weeks before the trial starts in an area where you will be out of cell range for more than ten days. When you get back into cell coverage, you see that you have many missed calls from the client and a large number of emails from your assistant telling you that your client has been trying to reach you.

 *Is there anything that you think you should have done differently? Please explain.*

15 (b) You are a criminal defence lawyer. You make an appointment to meet with a new client who has retained you to represent them on dangerous driving charges. You have not yet received disclosure from the Crown but the client is anxious to meet you before their first court appearance. As soon as you sit down at the meeting, the client launches into an agitated description of the leadup to the car accident that led to the dangerous driving charges against them, including how much they had to drink before getting behind the wheel, why their driving was out of control, and the evidence they are confident that they and their friend who was in the car with them can give to make things sound better than they were. You try to interrupt the client’s account of what happened but they clearly want to get things off their chest and are adamant that they can tell a favourable story at trial. Eventually, you are able to explain to them that your recommended strategy will have to wait until you receive disclosure from the Crown at the client’s first appearance in court, which is scheduled for the next morning. You arrange to meet the client on a street corner near the courthouse. As the two of you walk together down the street towards the courthouse, you realize that the Crown who is handling the case is walking ahead of you with another prosecutor. You and your client overhear the Crown talking about the client’s case, mentioning their name and making fun of the reckless way they drove their car. The client gets very upset but you tell them to forget about it because the case will be decided by a judge.

 *What ethical issues, if any, do you see arising from this fact pattern?*

15 (c) You are a solicitor working as in-house counsel for a tech start up company whose business has exploded during the pandemic. A significant number of companies who can’t afford more expensive software have turned to your company’s application to manage their customer payments. Things are moving fast and the business teams you work with are all struggling to keep up, so they often don’t ask for your advice. One day, you get an email from a customer (your name and position as legal counsel are on the company website) saying that they have been hacked and that the hacker was able to access customer data, including credit card information, that the customer had collected via your company’s software. You immediately forward the email to the lead of the software development team, who is the original developer of the software, and ask them to call you asap. You follow up repeatedly when you don’t hear back. Eventually, you send them an email saying that you are thinking you should put the issue on the agenda of the next senior management team meeting so you can bring it to the attention of the CEO and possibly the board of directors. The software development lead immediately phones you and tells you that you are overreacting. They say that the software is solid and, in any event, as a low-cost product, customers don’t expect it to have a high level of security. “You get what you pay for”, they say. You suggest that they have their team do some analysis to assess the scope of the security vulnerability in the software but they refuse, saying they are too busy rolling out new add-ons to the product.

*What ethical issues, if any, should you be thinking about?*

15 (d) You are a junior partner in the litigation department of a national law firm. A solicitor at your firm comes to you saying that one of their clients is being sued and they would like you to handle the file. The lawsuit relates to the sale of the client’s business. The plaintiff purchaser alleges that one of the representations about the business made by the client in the purchase and sale contract, which was drafted by your solicitor colleague, has turned out to be false. The solicitor tells you that the client’s instructions when they were drafting the contract were to include minimal representations about the state of the business. However, the term in the contract that the plaintiff is relying on for their claim was included in the standard form purchase and sale contract that the lawyers in their department use, so they left it in. The solicitor tells you that the client is very important to them and to the firm. You meet with the client and assure them that they have a strong case. You decide that the solicitor will have to testify, and you meet with them to prepare. They are very nervous about the idea of being a witness but you give them some good phrases they can use in their testimony, such as that the plaintiff’s interpretation of the clause in the contract in issue is “inconsistent with the standards in the industry” and “does not reflect the allocation of risk negotiated by the parties”. However, as the trial approaches you get increasingly nervous about how it is going to go. The weekend before the trial is scheduled to start, you convince the client that they should settle.

*Is there anything you think you should have done differently or are you comfortable with the conduct described? Either way, please explain why.*

15 (e) Sasha is a family lawyer acting for a client who does not speak English. The client brought a friend to translate for the first few meetings with Sasha (who does not speak the client’s language), but the friend is no longer available to come to meetings. Since the client has limited financial resources, hiring a professional translator is not a good option. As the case moves forward, Sasha writes a number of long letters on the client’s behalf to Quinn, the lawyer representing the client’s spouse, who responds with equally long letters. Sasha and Quinn have a poor relationship as a result of previous files they’ve worked on, and, over time, the letters between them get nastier and even longer. Because of the language issue, Sasha doesn’t send copies of the correspondence to their client nor do they communicate with them about the progress of the file in any other way because they know the client’s objectives from the initial meetings.

 At one point, Quinn sends a letter to Sasha enclosing financial documents regarding a small business that their clients own jointly and advising that they are providing the documents to Sasha on their undertaking to ensure that Sasha’s client retains an accountant to file the tax return for the business. Sasha does not respond to the letter but forwards the letter and documents to the client. Quinn subsequently leaves a voice mail message for Sasha asking them to call them so that they can try to work through the issues between their clients in order to reach a mutually satisfactory resolution. Sasha does not phone Quinn and instead sends an email telling them to put whatever they have to say in writing.

*Are you comfortable with Sasha’s conduct? Explain why or why not.*

15 (f) Alex is a lawyer working at an environmental non-profit organization who has taken on the case of a group of people living near a mine who are concerned about possible pollution of the local river as a result of the mine’s operations. He has filed a claim alleging nuisance and negligence on behalf of his clients and arranges to conduct an examination for discovery of the manager of the mine. During the discovery, it becomes clear that the mine manager has a careless attitude about compliance with environmental laws and has not taken the necessary steps to prevent contaminated water from flowing into the river. Alex and his clients are ecstatic about getting these admissions and his clients instruct him to report this information to the Ministry of the Environment. Alex sends an email to the lawyer for the mine owner telling him about these instructions but giving him the opportunity to avoid having his client reported to the Ministry if they put forward a proposal about how the mine owner might come into compliance with the law and compensate his clients for the contamination that has already occurred. However, no settlement is reached and the lawsuit brought by Alex’s clients becomes high profile and divisive in the community. Alex becomes very stressed about the public attention. He tells the clients that he can no longer act for them and takes a leave from work. The clients complain to Alex’s supervisor, who calls a meeting of all the staff lawyers at the non-profit to review the file and consider whether there any lessons to be learned from it.

 *What ethical issues, if any, do you think Alex and his colleagues should consider?*

**Part 2: SHORT ESSAY**

MARKS

10 2. What elements go into determining whether or not a lawyer is competent?

**Part 3: SHORT ESSAY**

MARKS

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

15 (a) Do you think that a lawyer should have complete freedom to choose which clients they represent, or do you think that a lawyer’s professional obligations should limit their ability to refuse to act for clients in need of legal services? Explain why.

 OR

15 (b) Some people think that civility should not be a stand-alone ethical principle enforced by law societies. What is your view? Explain why.

**END OF EXAMINATION**