THIS EXAMINATION CONSISTS OF 4 PAGES (INCLUDING THIS PAGE)

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2022

LAW 588

ETHICS & PROFESSIONALISM

Section 6

Professor Russo

**TOTAL MARKS**: 100

**TIME ALLOWED:** THREE (3) HOURS

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**NOTES:**

1. This is an open book examination. You may refer to any hard-copy materials.
2. Use of a laptop is permitted only for exam writing. Use of other electronic devices is strictly prohibited.
3. Communication with other individuals during the exam is not permitted.
4. There are two parts to this exam. Both parts involve a choice of questions to answer. Do not answer more questions than required as only the required number of responses will be marked (i.e. if you answer all 7 questions in Part 1, I will only mark the first five responses). Read the questions carefully and understand what you are being asked to do before you begin your answer.
5. Assume that all the facts in these questions take place in British Columbia.

**BE SURE TO ANSWER BOTH PARTS**

 **GOOD LUCK!**

**PART 1 – PROBLEMS (15 MARKS EACH – 75 MARKS TOTAL)**

**Choose and answer only FIVE (5) of the following problems in this part.**

**In your responses, cite any code rules, policies, case law or any other relevant information to support your answer.**

1. Tedros is a patent lawyer who represents many corporations. One of his clients is a multinational pharmaceutical company, Jackson & Jackson (J&J for short). J&J has had Tedros on retainer for the past five years. For each of the last three years, between 15,000 and 20,000 people in South Braguay have been dying from a SARS virus. Throughout that time, the government of South Braguay has been negotiating with several pharmaceutical corporations, including J&J, to allow the manufacture of cheap generic drugs. There was no agreement. Recently, the South Braguay government passed a law allowing for the establishment of generic drug companies in South Braguay for the production of anti-SARS drugs. The government’s stated goal is to create a “high volume, no margin market.” J&J wants you to challenge the law as a breach of the World Trade Organization’s Agreement on Trade Related Intellectual Property (TRIPS).
What issues would you consider in deciding whether to accept this file?
Having identified these issues, indicate your decision, providing justifications for your decision.

1. Lawyers at the ABC Law firm have been retained to represent Xavier in his bid to acquire property in order to undertake a resort condominium development. Shortly afterwards, Yvonne approaches Zachary, a lawyer with ABC Law, seeking to have him represent Yvonne in an effort to acquire the same property for the purpose of pursuing an oil exploration project.
Under what circumstances, if any, may ABC Law accept Yvonne as a client?
How would you work through the analysis of this question, both in terms of the legal and ethical requirements and the dealings with the clients in question?
2. During the COVID-19 pandemic, a motion that was scheduled to be heard in person was rescheduled to be heard by video-conference. Albert was the lawyer for the applicant to move a motion at a hearing. On the morning of the hearing, Albert was having problems with his internet connection. He texted the lawyer for the responding party, Ramona, to inform her of the problem, indicating: “My internet connection is not working well today, not sure why. As such, I might be a bit slow joining the motion today. However, I’ll either fix the problem or change locations. Either way I will be there.” Ramona joined the Judge on the video conference at the scheduled motion time. Albert was absent. Ramona did not say anything about Albert’s internet problems. After five minutes of silent waiting, the Judge said: “I have a busy docket today and can’t wait any longer. I am dismissing the motion, with costs, but without prejudice to it being brought back in the future. Good day.” The Judge then left the video conference.
Should Ramona have said anything to the Judge? Was it her responsibility?
If this matter were brought before a Law Society Disciplinary Panel, what, if any penalty, should be imposed? Why/why not?

**PART 1 continued**

1. Moe and Larry are criminal defence lawyers. They often retain you for advice on legal ethics issues. You have a reputation in the legal community for being an advocate for the cause of the wrongfully convicted. Moe and Larry represent a client, Curly, who has confessed to them that he is responsible for a murder for which Shemp was convicted. Shemp is currently serving a life sentence. Moe and Larry very much want to assist Shemp. They would like you to provide them with an opinion that the rules of professional conduct in B.C. implicitly allow them to disclose Curly’s confession to Shemp, so that Shemp’s lawyer can bring an application to compel Curly to reveal the truth.
Can you provide that opinion? Why/why not?
2. Renaldo is a Crown prosecutor assigned to sexual assault prosecutions. He is very much aware that one of the current controversial issues is the proper role of Crown lawyers in preparing complainants in sexual assault cases.Renaldo thinks that Crown prosecutors are generally too passive in preparing the complainants for cross-examination and that they just present them in court as they find them. Renaldo decides to adopt a policy of conducting mock cross-examinations to prepare the complainant for the trial in the presence of a social worker. Of course, any new information obtained during these preparation sessions will be disclosed to the defense.
Is Renaldo acting ethically? Why/Why not
3. Government lawyers are also public servants. Under current law, public servants may make public disclosures of information if they have reasonable grounds to believe that the subject of the disclosure constitutes an act or omission that is a serious offence to federal or provincial law, or constitutes an imminent risk of substantial danger to life, health and safety of persons or to the environment. Deanna is a federal government lawyer who discovers that a government official was ignoring the dumping of toxic waste into a river, which was likely to cause serious damage to the surrounding ecosystem.
What would you do? Consider your duty as a public official and your ethical obligations as a lawyer.
4. Bao is in-house counsel for Acme Corporation, a large public-listed corporation that focuses on resource extraction. Acme’s mining activities in South America are conducted through a wholly owned subsidiary called Acsub (which has some overlapping officers with Acme). Acsub has contracted a company called Mineguard to protect the access road to a mining site which includes undeveloped historic territories of the local Indigenous peoples. These Indigenous peoples are bringing a claim regarding the overly aggressive actions by Mineguard. As a result of previous representations to the shareholders and public by senior officers (but not Bao) denying these claims, and these security actions coming to light, the minority shareholders begin proceedings against Acme.
What issues and considerations arise if Bao enters into joint retainers with and provides advice to directors, senior officers, employees, majority or minority shareholders in preparation for these proceedings? Consider how in-counsel should be careful in this type of situation and what steps they should take.

**PART 2 – SHORT DISCUSSION – (25 MARKS)**

**Choose and discuss only ONE (1) of the following questions:**

1. **THE GOOD CHARACTER REQUIREMENT FOR BEING A LAWYER
IN YOUR ANSWERS TO THESE QUESTIONS, CONSIDER THE *PREYRA* AND *BURGESS* CASES:**
	1. What is “good character” and how plausible is the assertion that character determines conduct?
	2. Assuming character does determine conduct, how likely is it that a law society panel will be able to accurately gauge an applicant’s character?
	3. Does the conduct which led to the character inquiry in these cases suggest that the law society is appropriately concerned with the applicant’s character?

1. **REGULATION OF LEGAL EDUCATION
IN YOUR ANSWERS TO SOME OF THESE QUESTIONS, CONSIDER THE *TRINITY WESTERN UNIVERSITY* CASE:**
	1. Should law societies determine questions of equality and human rights?
	2. Do you believe that the Supreme Court of Canada majority decision in the *Trinity Western University* case found the proper balance between freedom of religion and protection of the public interest?
	3. What are some of the advantages and disadvantages of having lawyers, as a profession, regulate themselves?
2. **ACCESS TO JUSTICE
ANSWER THESE QUESTIONS IN CONTEXT OF “LEGAL INCUBATORS”**
	1. Define the “access to justice” problem in Canada.
	2. What do you think the Law Society of BC has done to address the A2J problem? What do you think they should do?
	3. What are “legal incubators” and identify the opportunities and challenges of legal incubators in solving the A2J problem.

# END OF EXAMINATION