NOTE: 1. If writing by hand, candidates must fill in correctly the front of each booklet provided. Failure to do so may result in the answers not being read. Please indicate the total number of booklets used on each booklet. DOUBLE SPACE YOUR ANSWER. WRITE IN INK.

2. Candidates may take any non-electronic reference materials into the examination.

AT THE END OF THE EXAMINATION,
PLEASE RETURN THIS QUESTION PAPER TO THE INVIGILATOR.
Law 468, Section 2

Part A. (Problems) Answer 4 of the 5 problems in Part A. Each Problem is worth 20 marks and the recommended time for completion of Part A is 90 minutes. DO NOT ANSWER ALL 5 PROBLEMS.

QUESTION 1

You are a lawyer in a small law firm that occasionally does work for other lawyers. Recently, Bella Burrows, a friend and former classmate, chatted with you at a fundraising event for a charity you support. Ms. Burrows and you discussed the challenges that lawyers face in relation to their work these days.

Part way through your conversation Bella pulls you into a private area away from the reception and says the following:

“I know you sometimes provide legal advice to lawyers, and I gotta tell you, this latest case I am working on has me completely baffled. Last week I had a client come in to my office – John Johnstone - and he told me a tale like I have never heard before.

He left me with a shoebox full of materials. In it was a letter he got from a business partner threatening to disclose very questionable behaviour on John’s part, something to do with a scheme John is cooking up to defraud a bank. Exactly how this would work is a mystery, but the shoebox has a diagram of money moving here and there, and I gather that the bank gets hoodwinked somewhere along the way. Words like “bank” and “Smith’s trust account” appear on the diagram.

John is arranging to have some of his “friends” pay a visit to the business partner this weekend and make sure that the guy understands the consequences if he squeals on John. I gathered from John that these “friends” convey their message with baseball bats and brass knuckles. John anticipates that by next weekend his business partner will want out of the business and has asked for advice on buying out his business partner.

Frankly I am stumped. What should I do about all of this? I have not been a client very often, but maybe I am actually your client right now.”

How would you respond? Provide an analysis of the issues involved, including your consideration of the relevant authorities, and the steps required to be taken in light of your analysis.

QUESTION 2

Aphra is an articling student with the law firm of Beta & Co. One of the firm’s largest clients is an up-and-coming technology company called DataTech. The work done by Beta & Co. for DataTech is fairly diverse. There is some intellectual property, some employment law, commercial law, tax, and lobbying work. Most of this work was handled either by Betty Beta herself, or by two senior corporate commercial lawyers, Emily and Francine. While articling at
the firm, Aphra did not work on any files relating to DataTech. Nevertheless, she was aware that DataTech was an important client, and the name DataTech often came up in snatches of conversation overhead by the coffee machine, in the corridors or in the library. On one occasion Aphra was asked by her principal to draft an employment contract for another of the firm’s clients, GigaTech. The contract was to include clauses regarding trade secrets and confidential information. Her principal suggested that she use a DataTech employment contract as a precedent to work from.

Towards the end of her articling year, Aphra and her fellow articling students are informed by the firm’s managing partner that although they had all been exemplary articling students, and had done excellent work for the firm, none of them could be hired back due to fiscal constraints. After a nerve-wracking job search, Aphra is interviewed by Happy Inc. LLP, a law firm which has decided to expand its numbers, and is seriously interested in Aphra as a candidate. The new firm represents JusTech, a new technology research and development firm. JusTech has just hired a senior researcher from DataTech. This is regarded as a major coup. DataTech is furious, and has already indicated that it will commence an action against the researcher and JusTech over matters involving breach of contract, trade secrets, and confidential information. Happy Inc. LLP will be representing the researcher and JusTech in this matter.

What will Happy Inc. LLP need to determine during the interview process? Will Happy Inc. LLP be able to represent the researcher and JusTech if they hire Aphra? If not, why not? If so, what steps will they likely need to follow in order to be able to do so?

**QUESTION 3**

In 2008 Justine Tomasina Stephens (JTS), at the age of 21, was recruited by Jean Deafintheear and became a card carrying member of the New Liberal Democratic Conservative Party (NLDC). JTS was a whiz with technology. Shortly after she joined the Party an election was called and JTS enthusiastically threw herself into the fray. In the course of the election campaign someone from the NLDC set up 7,000 automated robocalls to voters in Gulch Centre directing them to the wrong polling location. Ultimately the NLDC candidate won the riding by a small minority.

Elections Canada conducted an investigation and, pursuant to a decision by the Director of Public Prosecutions, charged JTS under s. 281 (g) of the Elections Act for: "willfully preventing or endeavouring to prevent an elector from voting at the election". In the course of the trial, JTS denied the charge, protested that she was being scape-goated by the NLDC, and claimed that it was Jean Deafintheear who had set up the robocalls. The judge convicted JTS and sentenced her to 6 months imprisonment. After her release from prison JTS attended law school, achieved a B average, and then applied to join the Law Society of British Columbia.

Assume you are a member of the Credentials Committee. Identify all statutory or regulatory provisions that are relevant to your task. Delineate the criteria that are potentially relevant to a decision as to whether JTS should be admitted, and apply these criteria to her application. Specify any further information you may require in order to make your decision.
QUESTION 4

Greg is a very senior Crown Counsel. His new articling student James has been “shadowing” him in the first month of articles. James has several concerns. The Attorney General has announced that complaints of domestic violence should be pursued vigorously and prosecuted persistently. Greg has taken this policy direction to heart.

This week Greg was preparing for a trial of a well-known celebrity who has been charged with five counts of sexual assault. Defence counsel is a high profile lawyer in the community who has successfully defended many seemingly “hopeless” cases in the past. In investigating Count #1 the police did a thorough investigation of the complainant’s apartment the morning after receiving the call about the assault. Photographs were taken of the premises, furniture was dusted for fingerprints. None of this revealed anything incriminatory. Since there was nothing at all found, Greg did not disclose this information to defence counsel. Defence counsel thought the disclosure was a little “thin” and left 4 telephone messages and 3 emails for Greg asking him to call. Greg did not return the calls.

When interviewing one of the complainants, Greg asked how much she had been drinking on the night in question. “I don’t really remember. Two glasses of wine maybe? But actually now that I think back, it could have been close to a whole bottle.” In response Greg said, “Well, your evidence would probably be considered more reliable if it was 2 glasses than if it was nearly a bottle. Think carefully about this before the trial.” On examination-in-chief at trial this witness says she had nothing to drink on the night in question.

Has Greg done anything wrong? What should he do or what should he have done? What should James do?

QUESTION 5

Al is retained by Frank, who has been sued by George. George has retained Bill. George alleges that Frank defrauded him in a commercial transaction. George instructs Bill to get to trial as soon as possible. Frank tells Al that he denies George’s allegations. Frank tells Al that George’s lawsuit is frivolous and instructs Al to “do everything possible” to make the litigation difficult, expensive and time consuming.

When Bill asks Al to schedule an early trial date, Al refuses to do so. Al says he is “unavailable” (although really he probably is available) on all the dates suggested by Bill and that Bill should know better than to try to ram this trial down my throat.

Al sends Bill an appointment to examine George for discovery on 7 days strict notice under the Rules of Court and without first consulting Bill as to his and George’s availability. However, Al forgets to include travel expenses (“conduct money”) for George as required by the Rules. As it turns out, both Bill and George are available on the date chosen by Al. Nevertheless, Bill writes
to Al, saying, “How dare you unilaterally schedule a discovery of my client without first consulting me! Your appointment will be destroyed, just as your despicable client will be when we get to trial!” Bill’s letter is copied to Al’s managing partner. Bill says nothing about the fact that Al omitted conduct money.

Enraged, Al applies to strike out George’s action on the basis that George failed to attend the discovery. Al submits that George is thumbing his nose at the court process and that his action must be dismissed to teach him that such egregious conduct will not be tolerated. When Bill makes his submission, he simply points out that Al omitted conduct money, meaning that the appointment was invalid and that Al’s application must be dismissed. The Judge agrees with Bill and awards costs against Al personally for wasting the court’s time.

Al and Bill leave the courtroom and enter the corridor, where other lawyers and members of the public are present. Bill turns to Al and says, “You are a disgrace to lawyers everywhere. Not only are you an asshole - you are an incompetent asshole!”

Discuss the conduct of Al and Bill, in terms of the Code of Professional Conduct. Did Al and/or Bill breach, or come close to breaching, any rules relating to:

- Duties as an advocate?
- Courtesy?
- Sharp practice?

Part B (Reflective Essay) Answer 1 of the 2 questions in Part B. Your answer is worth 20 marks and the recommended time for completion of Part B is 30 minutes. DO NOT ANSWER BOTH QUESTIONS.

1. Systemic obstacles in the legal profession account for the flight of women from practice. Identify and describe two barriers for women in the profession. For each, discuss one possible remedy and evaluate the likelihood of its success to retain women.

OR

2. Discuss whether self-regulation of the legal profession is in the public interest, in particular whether self-regulation is effective in achieving the goals of ensuring that lawyers are professional and ethical and all members of the public have access to justice. Address whether and how self-regulation may be modified or replaced with another system of lawyer regulation to achieve these goals.

END OF EXAMINATION