THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – APRIL 2016
LAW 468.002: ETHICS AND PROFESSIONALISM

Adjunct Professors Cuttler and Mackoff

TOTAL MARKS: 100

TIME ALLOWED: 2 HOURS
and 15 minutes reading time

NOTES: 1. This is an open book examination.

2. Answer 3 of the 5 questions in Part A (Fact based questions) and 1 of the 2 issues in Part B (Issues).
PART A. FACT BASED QUESTIONS (Total: 75 marks)

Answer 3 of the following 5 questions (25 marks per question)

Indicate which questions you are answering.

Question 1

Billy is a litigation lawyer at Jones LLP. Billy is acting for Dana in defense of a claim by Cheatem Corp with which occurred in December 2014. Cheatem alleges that Dana misused and stole confidential information. Dana denies the allegation and seems to have a reasonable defence.

During the course of document disclosure, Dana provides hundreds of emails to Billy. Following many hours of review, on March 18, 2016 Billy finds few documents that appear to be relevant. However, he notices 2 emails which are interesting.

The first email is dated February 8, 2016. It seems to have nothing to do with the litigation for which he has been retained. In the email, Dana appears to tell someone named “Frankie” that “I will eliminate you if you don’t pay me by April 30”.

The second email is dated November 30, 2014. In it, Dana tells Frankie that “they will never figure out how I managed to get the info”.

Billy asks Dana about these emails. Dana says that they were included “by mistake” and that “they have nothing to do” with Cheatem’s lawsuit. Dana demands that Billy destroy the emails and says that Billy “better not tell anyone about them.”

Discuss the ethical issues that arise in these circumstances. What would you advise Billy to do if s/he asked you for advice?

Question 2

a. George is a sole practitioner. He is consulted by Bob. Bob asks George if he will act for Bob, his wife, Sally and his mother, Trudy. Bob says they want to sue the insurer of the home they live in for water damage caused by a “broken toilet”. Bob says that he will give instructions for his wife and mother.

Discuss what steps George should take before taking this case.

b. George commences the action. The insurer defends the claim by Bob, Sally and Trudy and alleges that Trudy negligently caused the water damage. George wants to speak with Trudy to get her response to this allegation, but Bob tells him that Trudy has left the country for an extended trip to Patagonia, and she can't be
reached for several months. Bob tells George that he knows “what happened” so George doesn’t need to speak with Trudy. Bob then tells George “what happened”.

What would you advise George to do if he asked you for advice? Does it matter “what happened”? 

Question 3

a. Suzy and Mike are lawyers on opposite sides of a commercial dispute that is in trial. During the trial, they go for lunch to a restaurant to discuss settlement. Suzy cautions Mike that their discussions must be “without prejudice” and Mike agrees. After several glasses of wine, Suzy tells Mike that his client, Sam, is a “crook”, that she will be “dropping a bomb” on Sam and that Sam “better agree to her settlement terms if he doesn’t want trouble with the authorities”. Mike, who has also had a few glasses, responds by saying Sam doesn’t care, he is someone that Suzy “better not mess with” and that he (Mike) has made sure that Sam is “judgment proof”. Mike then asks Suzy if she would like to go out with him “to have some fun” after court.

Discuss the ethical issues that arise in these circumstances. What would you advise Suzy if she asked you for advice? What would you advise Mike if he asked you for advice?

b. At lunch, the food and the service are terrible, the server is rude and the meal is so late and Suzy and Mike have to rush back to court. As they are leaving Mike says, in a loud voice so that staff and patrons of the restaurant can hear “This place is so bad it should be burned to the ground”.

When they return to court, Suzy sees Sam outside the courtroom. Suzy walks up Sam client and says “You are in big trouble. I know you have hidden your money, but I will find it, you despicable worm”

Discuss the ethical issues that arise in these circumstances.

Question 4

a. You have been in practice for 5 years and on occasion former classmates have sought you out for your sound, rational advice which is always imparted in
measured tones. Jim Stewart with whom you attended UBC Law runs into you at a party and after some pleasantries pulls you over to a quiet corner. He advises you that his firm’s best client’s president, Fred Huff, approached him and informed him confidentially that the CFO of the client told Fred that he was aware of Fred’s plans to defraud their bank and that the CFO intended to provide that information to the audit committee and to the police. Fred informed Jim that he was going to “take care” of the CFO so that there will be no need to worry about his threats. Your friend asks for your advice but ends the conversation saying “I realize that we are just speaking as friends.”

What ethical issues arise in this context both in terms of Jim’s duties and your duties?

b. Jim called you a couple of weeks later to inform you that while Fred was still talking about “taking care” of the CFO, he had managed to break into the CFO’s office, remove all of the physical evidence and then broke into the client’s server to scan for and delete any notes the CFO might have made.

What conflicts if any, does Jim find himself in? If there are conflicts how should he go about dealing with them?

Question 5

a. Elliot has built a successful legal aid criminal defence practice. He has done so by frequently garnering as much press as possible. He has also set up his own YouTube channel where he discusses areas of the law where he is trying to build a practice. His latest production is called “The Thin Blue Line” and is geared toward law enforcement personnel. Elliot has also gotten himself invited to speak with police forces and has a “stump” speech where he tells his audience that he knows that most of these charges are false and that they would be well advised to get someone who believes in them rather than some lawyers that do this work and treat the clients “just like any other scumbag accused.”

About 3 months into his marketing efforts he lands his first police file. He meets with Officer Joe Hill who is on paid leave pending an investigation into a shooting which resulted in the death of a citizen. Elliot tells Joe Hill that the best thing would be to go on the offensive and get Joe’s “side of the story” out there. Elliot calls press conferences and makes a video where he declares Hill innocent and states that the evidence is crystal clear that while Hill shot the man it was a case of self defence. He further stated that the “police are under attack” and that rather than vilify Officer Hill the public would eventually see him as a hero.
A few weeks after the press conference and release of his YouTube production, an individual came forward with a video taken on an iphone. The video shows the deceased, who was carrying a machete, obey the police warning to drop the weapon and get on his belly. It further shows Officer Hill aim at the deceased and shoot at him twice, striking him once in the back and once in the leg. Officer Hill is charged with second degree murder.

Following the announcement of charges Elliot called a press conference to announce his withdrawal as Hill's lawyer based upon the discovery of the video. He refuses to state why he has withdrawn but invites the press to come to their own conclusions and referring to the need to maintain his own integrity.

What ethical issues arise from Elliot's conduct?

PART B. POLICY (Total: 25 marks)

Discuss 1 of the following 2 issues (25 marks per question).

Indicate which issue you are discussing.

Issue 1

Discuss whether justice demands a new approach to sexual assault trials from an ethical perspective. What, if any, established ethical duties upon lawyers would you recommend modifying and why? What, if any, recommendations would you make to address public concerns that sexual assault trials do not deter offenders but rather the victims of sexual assault. If you would not make any recommendations for change, explain why.

Issue 2

A considerable amount of time was spent in this class discussing the LSBC's approach to the issues of good character, repute and fitness found in s. 19 of the Legal Profession Act. Please consider the approach taken by the Law Society and either defend it as it exists or present arguments why the approach ought to be changed.

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END OF EXAMINATION