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THIS EXAMINATION CONSISTS OF FOUR (4) PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER:
THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – APRIL 12, 2017

LAW 469
Civil Procedure

Section 002
Professors Goulden and Berger

TOTAL MARKS: 100
TIME ALLOWED: THREE (3) HOURS

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NOTE:

1. This is an open book examination. Students may refer to any written material, including computer printouts, but may not use computers, except for ExamSoft, and only for typing and not database searching.

2. Where applicable, cite relevant rules and cases.

3. Answer all questions.

THIS EXAMINATION CONSISTS OF ONE FACT PATTERN WITH THIRTEEN (13) QUESTIONS
Please answer the following questions based on the following fact pattern:

Fred Flantsone has become the CEO of Slate Rock Inc. He has promoted Barney Rabble to Executive VP and Chief Technologist. Slate develops cutting-edge technologies which it uses to extract valuable minerals from mines. Barney has been the key to innovations. He is familiar with the special technology Slate uses, as well as strategic plans for new development and deployment.

Considering Barney's importance to the company as well as his strategic and technical knowledge, Slate asked Barney to agree to a non-competition and confidentiality agreement. Barney did agree when he was promoted. Slate paid him $1 million in exchange and granted him 100,000 additional options on shares which would vest over the next three years. According to the non-competition agreement, for two years following his employment with Slate, Barney is prohibited from providing any services to a competitive business in respect of mineral extraction or mining technology, innovation or strategy. For the same duration, he is also prohibited from using or disclosing any information about Slate's technology, innovation work, strategy or plans. Since Fred and Barney were always so close, the agreement seemed only a precaution.

As it turns out, Slate wants to rely on the non-competition agreement because Barney has resigned from Slate to take a job with Texarock Mining. Texarock is a major competitor to Slate. Slate had been working on plans specifically to improve quarry technology which would make Texarock vulnerable in the market.

After Barney's resignation, a review of his e-mail system revealed that he had sent a copy of Slate's new key technological plan to his personal e-mail account and deleted the file from the Slate computer system. Thus, Barney has the only copy of the plan.

15 1. Discuss and describe an application you could bring on behalf of Slate to stop Barney from breaching the non-competition and confidentiality agreement. Discuss the process pursuant to which you would bring the application, as well as the materials required, and any special considerations that should be identified. Discuss the judicial considerations with respect to the legal issues on the application. Finally, describe what sort of relief Slate would seek and related special issues.

12 2. Please prepare an affidavit in support of the application in question 1.

10 3. Discuss and describe an application you could bring to obtain evidence from Barney and Texarock to establish that Barney has the technological plan and/or whether he has shared the plans with Texarock, as well as to recover the plans from Barney and Texarock. Include the judicial considerations that would apply to such an application. What special considerations and professional responsibility issues would also arise with this application?
4. In preparing an affidavit for the applications referenced in question 3, please provide an example of:
   
   (a) hearsay evidence;
   
   (b) direct evidence as a substitute to your answer given in (a) above;
   
   (c) two ethical and professional conduct issues in respect of affidavits.

5. The following are documents in Slate's possession. Specify whether or not each of the following should be included in Slate's list of documents, why or why not, and if so, which part of the list.
   
   (a) Barney's non-competition agreement.
   
   (b) The e-mail from Slate's lawyer to Fred attaching the draft non-competition agreement and advising on its enforceability.
   
   (c) An e-mail between Fred and Barney discussing the dates on which the share options are exercisable.
   
   (d) Fred's e-mail to you about the discovery of Barney's e-mail to his personal account and the deletion of the technical file.
   
   (e) Barney's employment agreement.

6. Slate has informed you that it wishes to proceed by way of summary trial. Discuss and describe the factors that could make a summary trial inappropriate for this matter.

7. Discuss and describe three reasonable methods of introducing evidence at a full trial of an action between Slate and Barney, aside from the oral testimony of a witness.

8. Fred has a good friend named Wilma Smith who is an expert in the subject cutting-edge technologies. Discuss and describe the process by which Fred could introduce evidence that Wilma Smith may be able to provide at a full trial for this matter, as well as any issues that may arise in that process.

9. Fred obtains a Court Order that Barney produce certain documents in a lawsuit Fred previously commenced against Barney, but Barney refuses to produce the documents. Discuss and describe two options that Fred has in response to such refusal.

10. Discuss and describe the two types of main proceedings you could bring on behalf of Fred, with the pros and cons of each. Please identify which proceeding Fred should use in the circumstances of this case.

11. Discuss and describe the steps that would be followed by both sides, and the issues that may arise, if Barney wished to conduct an examination for discovery of Slate.
12. Discuss and describe the two levels of costs that could be awarded to Fred if he was awarded costs at the conclusion of the proceedings.

13. At some point after the proceedings have been commenced, Slate is being unreasonable in terms of discussing settlement. Discuss and describe two options you could use on behalf of the other side (opposite to Slate) to encourage settlement by Slate.

END OF EXAMINATION