

LAW SOCIETY OF BRITISH COLUMBIA
SAMPLE QUALIFICATION EXAMINATION

PART II

ANSWER GUIDE

CIVIL (15 MARKS)

- (2) 1. (d) (2 marks). The following explanation is not required for full marks.

A response must be filed and served within 21 days. A plaintiff can then take default judgment if the response is not filed. [Explanations are given for information only; they are not required for student to receive full marks ON MULTIPLE CHOICE QUESTIONS.]

Answer (a) is incorrect. There is no time limit for when a defendant can request particulars.

Answer (b) is incorrect. There is no need to seek an extension to file a response yet.

Answer (c) is incorrect. The plaintiff does not need to serve a list of documents until 35 days after the close of pleadings.

See PM Civil ss. 1.12-.13 and 4.02, and *Supreme Court Civil Rules 3-3(3) and 3-8(1)*. [References are given for information only; they are not required ON ANY QUESTION for student to receive full marks.]

- (2) 2. This paragraph is not admissible (1/2 mark) because:

- It is double hearsay (i.e., twice removed from deponent) (1/2 mark)
- It is tendered for the truth of its content (1/2 mark) and
- The deponent does not swear that he/she believes it. (1/2 mark)

See PM Civil ss. 3.03.5(b) and 3.03.6(e).

- (2) 3. Waters must be served personally (1 mark). Because Waters resides outside BC, Akintola's lawyer must endorse the notice of civil claim with a statement that the action is based on a tort committed in BC (1 mark).

See *Supreme Court Civil Rule 4-5(1), Court Jurisdiction and Proceedings Transfer Act s. 10(g), and PM Civil s. 1.12.3.*

Give alternative 1/2 mark for reference to Rule 4-5(1) without stating the grounds.

- (1) 4. (a) Obtain a consent dismissal order (1/2 mark) and a release (1/2 mark) from the plaintiff.

See *Supreme Court Civil Rule 8-3(1) and PM Civil s. 4.07.5.*

(Give alternative 1/2 mark for Notice of Discontinuance.)

Note: Adjourning the trial is not an answer, because there can be no trial date before pleadings are closed.

- (2) (b) First prepare and send the bill of costs to the defendant's lawyer (1/2 mark). Try to settle the amount (1/2 mark). If the amount is disputed, have the bill of costs assessed before the Registrar (1 mark).

See *Supreme Court Civil Rule 14-1(21), Appendix B and PM Civil s. 7.02.2.*

- (2) 5. The limitation period for a debt action is two years, which would have expired on June 29, YR 0 (1/2 mark). However, time has been extended due to Deborah's acknowledgment of the debt (1/2 mark). Advise Sandra to send a demand letter (1/2 mark). Failing a satisfactory reply, Sandra can sue Deborah, in Small Claims Court, for the balance owing (1/2 mark).

See *PM Civil ss. 9.04.1 and 9.04.2(a) and the *Limitation Act s. 24(1).**

- (2) 6. (a) (2 marks). The following explanation is not required for full marks.

Answers (b), (c) and (d) are all provided for in the Rules as permitting service in the manner provided and make no mention of needing anyone's permission: (a) is an alternative method of service and, therefore, falls within Rule 18.

See *PM Civil s. 9.04.5 and *Small Claims Rules 2(2), (3), (6), 16(2)(e), 18(2) and 18(8).**

- (2) 7. The court may defer the sale when the premises situated on the land (or interest in it) are the "home of the debtor" (1 mark), subject to the

performance by the judgment debtor of terms and conditions of payment or otherwise as the court imposes (1 mark).

See *Court Order Enforcement Act* ss. 96(1) and (2) and PM Civil s. 9.09.3.

OR

The court has authority to stay the execution of an order on payment terms (1/2 mark) and for as long as it thinks fit (1/2 mark).

See *Supreme Court Civil Rule* 13-2(31).

FAMILY (15 MARKS)

- (3) 1. (a) Because Ona has a child with Rothstein (even though she has lived with him for less than two years), she is a “spouse” (as defined in the *FLA*) and is entitled to support IF she commences a proceeding for an order for spousal support before August 15, YR 0 (i.e. there is a two year limitation to apply). Ona also has an obligation to become self-supporting (1½ marks).
- (b) Because Hiro is the natural child of Rothstein, he is a “child” (as defined in the *FLA*). Rothstein therefore has an obligation to support him as long as he is under 19 years of age, or over 19 but unable, because of illness, disability or other cause to withdraw from his parents’ charge (or obtain the necessaries of life) (1½ marks).

See *Family Law Act* ss. 1 and 3 – definitions of “child”, and “spouse” and ss. 147, 160, and 197, and PM Family ss. 2.10(2)(b) and 2.11 (Introduction), 2.11.2(b), 2.11.3 and 2.11.4(b).

- (3) 2. Although James and Melissa have agreed to the child support arrangements, the court needs to be satisfied that reasonable arrangements have been made for support of the children (1 mark) that comply with the child support guidelines (1 mark). The affidavit must comply with the court’s requirement for financial disclosure (1 mark).

See PM Family ss. 7.01 and 7.02, and the *Divorce Act* s. 11(1)(b).

NOTE: No more than an alternative ½ mark may be given for comments about restricting your retainer or other professional responsibility concerns as the question asks specifically to advise the client about what might complicate the undefended divorce proceedings, not for concerns the lawyer might have about acting.

- (4) 3. Tanaka must advise the Kamala that he cannot bring on an application without notice because there is no urgency in the facts which would justify an application without notice (1 mark).

Tanaka must satisfy his duty to discuss the advisability of negotiating or mediating a settlement of the custody issue (1 mark) and must explore the possibility of reconciliation or counselling (1/2 mark) before commencing divorce proceedings.

Tanaka must assess whether family violence is present and, if so, the extent of its impact on the client's safety and capacity to negotiate a fair settlement (1 mark). Tanaka must also advise the client re different dispute resolution processes (1/2 mark).

See *Divorce Act* ss. 9(1) and (2), *Family Law Act* s. 8, and PM Family ss. 1.04 and 3.03.

(4) 4. 1/2 mark each for the following forms of relief and 1/2 mark for each reason:

- obtain and file a certificate of pending litigation on the family residence (1/2 mark) to protect your client's interest in the house (1/2 mark).

See PM Family s. 3.04.8 and *Land Title Act* s. 215(6).

- non-final order restraining the disposition, alienation, or encumbering of assets (1/2 mark) because Mr. Saunders gambles and overspends (1/2 mark).

See PM Family s. 3.04.8 and *Family Law Act* s. 91.

- non-final order for your client (1/2 mark) for her support because she has no income and hasn't worked outside the home in ten years (1/2 mark).

See *Family Law Act* ss. 149 and 216, and PM Family s. 3.04.2.

- non-final order for the children (1/2 mark) for their support because Mr. Saunders has an obligation to support his children (1/2 mark).

See *Family Law Act* ss. 165 and 216, and PM Family s. 3.04.2.

- non-final order requiring Mr. Saunders to maintain expenses relating to the family residence (1/2 mark) such as mortgage or utilities, etc. (1/2 mark).

See *Family Law Act* s. 226 and PM Family s. 3.04.7.

NO MARKS for the following:

- protection or restricting communications order, as your client doesn't need it;
- *Land (Spouse Protection) Act* entry, because the question says relief "from the court";
- Exclusive occupancy, as this is unnecessary and unlikely to be ordered given that it reflects the status quo and is not a problem.

- (1) 5. No, the agreement is collusion (or connivance or a conspiracy). (1 mark)
No mark for "No" alone.

See *Divorce Act* s. 11(1)(a) and (c) and (4), definition of collusion and PM Family s. 2.06.

CRIMINAL PROCEDURE (15 MARKS)

- (2) 1. (c). **See PM Criminal Procedure s. 4.13.**

- (4) 2. You can bring a motion to quash (1 mark), but because a plea has been entered you will need leave of the court (1 mark). If your motion results in the information being amended, you can apply for an adjournment (1 mark). The success of your application to quash will depend upon the degree to which the defence is prejudiced (1 mark).

See PM Criminal Procedure s. 3.05 and, *Criminal Code* ss. 601(1) and (5).

- (2) 3. Yes, a failure to promptly advise the court that counsel is acting in a limited capacity implies that the lawyer is prepared to see the matter through to the conclusion of the case and may mislead the court (2 marks). No marks for 'Yes' alone.

See PM Criminal Procedure s. 2.01.

- (3) 4. It is part of your duty as an officer of the court to tell the court of all relevant and binding legal precedents (2 marks). You have no obligation to inform opposing counsel, although you may choose to do so out of courtesy. (1 mark) No marks for 'Yes' or 'No' alone.

See PM Professionalism: Ethics s. 6.08(i) and BC Code 5.1-2(i).

(4) 5. Because Collins is not ordinarily resident in Canada (1 mark), this is a reverse onus situation (1 mark). Collins must show cause why his detention in custody is not justified by convincing the judge that he will:

- return to court for trial (1 mark);
- 1 mark for either:
 - that detention is not necessary for the protection of the public; **or**
 - that detention is not necessary in order to maintain confidence in the administration of justice.

See *Criminal Code* ss. 515(6)(b) and 515(10) (a), (b) and (c) and PM *Criminal Procedure* s. 2.05.2.

PRACTICE MANAGEMENT (5 MARKS)

(2) 1. All non-lawyers using firm letterhead must state their position or designation, i.e. legal assistant (1 mark). (Also, use of title “Max Hunter and Co.” for a one-lawyer firm could imply that Therese is one.) It is prohibited to “hold out” a non-lawyer as one (1 mark).

See BC Code 6.1-3, and PM Professionalism: PM s. 1.03.1.

(2) 2. (a) Baker and Mah should notify their insurer (1/2 mark). Advise their client that they missed the limitation period (1/2 mark) and that the client should get independent legal advice (1/2 mark). They should also file the Notice of Civil Claim immediately (1/2 mark).

See PM Professionalism: Ethics ss. 5.05.1 and .3.

(1) (b) Baker and Mah should enter several reminders into its bring forward system well before the actual limitation expiry date (1 mark).

See PM Professionalism: PM s. 4.04.2.

50 MARKS