

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. 1.12–1.14 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. (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(4) and *Small Claims Rules* 2(2), (3), (6), 16(2)(e), 18(2) and 18(8).

- (2) 3. This paragraph is not admissible (.5 mark) because:

- It is double hearsay (i.e., twice removed from deponent) (.5 mark)
- It is tendered for the truth of its contents (.5 mark) and

- The deponent does not swear that he/she believes it. (.5 mark)

See *PM Civil* ss. 3.03(5)(a) and 3.03(6)(e).

- (2) 4. Carl must be served personally (1 mark). Because Carl resides outside BC, Jojo'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 .5 mark for reference to Rule 4-5(1) without stating the grounds.

- (1) 5. (a) Obtain a consent dismissal order (.5 mark) and a release (.5 mark) from the plaintiff.

See *Supreme Court Civil Rule 8-3(1) and PM Civil s. 4.07(5).*

(Give alternative .5 mark for Notice of Discontinuance.)

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

- (2) (b) First prepare and send the bill of costs to the defendant's lawyer (.5 mark). Try to settle the amount (.5 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) and Appendix B and PM Civil s. 7.02(2).*

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

See *PM Civil* ss. 9.04(1) and 9.04(2)(a) and the *Limitation Act* s. 24(1).

- (2) 7. (a) Maria should bring a notice of application under her judgment action in the British Columbia Supreme Court (1 mark).
- (b) Maria should ensure that the debtor has sufficient equity after any mortgages are paid out [Mortgage holders will get priority.]. (1 mark).

See *PM Civil* s. 9.09(3).

CRIMINAL PROCEDURE (15 MARKS)

- (2) 8. (c). **See PM Criminal Procedure s. 4.13.**
- (4) 9. a) 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).

b) The success of your application to quash will depend upon the degree to which the defence is prejudiced by the defect in the Information (1 mark).

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

- (2) 10. 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) 11. (a) You have no obligation to inform opposing counsel, although you may choose to do so out of courtesy. (1 mark)

(b) It is part of your duty as an officer of the court to tell the court of all relevant and binding legal precedents regardless of whether the case supports your client's position (2 marks).

No marks for 'Yes' or 'No' alone.

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

- (4) 12. Because Brogan is not ordinarily resident in Canada (1 mark), this is a reverse onus situation (1 mark). Brogan 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. 2.04(2).

FAMILY (15 MARKS)

(3) 13.

- Because Mei has a child with Ezra (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). Mei also has an obligation to become self-supporting (1.5 marks).
- Because Hiro is the natural child of Ezra, he is a “child” (as defined in the *FLA*). Ezra 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) (1.5 marks).

See *Family Law Act* ss. 1 and 3 – definitions of “child”, and “spouse” and ss. 147, 160, and 197, and *PM Family* ss. 4.02(1)(b), 4.02(3)(b), 4.01(4) and 4.01(5)(b).

(3) 14. Although James and Melissa have agreed to their own 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. 10.01 and 10.02, 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) 15. Abdul 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 (.5 mark) before commencing divorce proceedings.

Abdul 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). Abdul must also advise the client re different dispute resolution processes (.5 mark).

Abdul must advise 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).

See *Divorce Act* ss. 9(1) and (2), *Family Law Act* s. 8, and *PM Family* ss. 1.04 and 6.03.

- (4) 16. Marks will be allocated as follows: .5 mark for each form of relief and .5 mark for each reason:

- obtain and file a certificate of pending litigation on the family residence (.5 mark) to protect Sebastian’s interest in the house (.5 mark).

See *PM Family* s. 6.04(7) and *Land Title Act* s. 215(6).

- non-final order restraining the disposition, alienation, or encumbering of assets (.5 mark) because Julia gambles and overspends (.5 mark).

See *PM Family* s. 6.04(7) and *Family Law Act* s. 91.

- non-final order for Sebastian for spousal support (.5 mark) because he has no income and hasn’t worked outside the home in ten years (.5 mark).

See *Family Law Act* ss. 149 and 216, and *PM Family* s. 6.04(2).

- non-final order requiring Julia to maintain expenses relating to the family residence (.5 mark) such as mortgage or utilities, etc. (.5 mark).

See *Family Law Act* s. 226 and *PM Family* s. 6.04(6).

NO MARKS for the following:

- protection or restricting communications order, as there are no facts to support 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) 17. 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.

PRACTICE MANAGEMENT (5 MARKS)

- (2) 18. All non-lawyers signing correspondence must:
- disclose the fact that they are a non-lawyer (1 mark); and
 - indicate the capacity in which the person is signing, i.e. as legal assistant (1 mark).

See *BC Code 6.1-3*, and *PM Professionalism: Practice Management s. 1.03(1)*.

- (2) 19. (a) Baker and Mah should
- notify the Lawyers' Indemnity Fund (.5 mark);
 - advise their client that they missed the limitation period (.5 mark);
 - advise the client that they should get independent legal advice (.5 mark); and
 - file the notice of civil claim immediately (.5 mark).

See *PM Professionalism: Ethics ss. 5.05(1) and (3)*.

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

See *PM Professionalism: Practice Management s. 4.04(2)*.

50 MARKS