

LAW SOCIETY OF BRITISH COLUMBIA
SAMPLE QUALIFICATION EXAMINATION

PART II

NOTE

1. This examination represents approximately one-half of a typical 100-mark, three-hour Qualification Examination. It is marked out of 50 and could be completed in 1 1/2 hours. The regular exams are printed on one side of a page only. In the regular exams, each of the three sections is worth 30 marks. One section is worth 10 marks.
2. The questions and answers are based on the law as of January 2016.
3. This sample examination may be circulated. All other Qualification Examinations are confidential and can only be reviewed at PLTC by students who fail their examination.

INSTRUCTIONS

1. You have 1 1/2 hours to complete this examination.
2. Part II separately identifies Civil (15 marks), Family (15 marks), Criminal Procedure (15 marks) and Practice Management (5 marks). Ethics questions are mixed throughout this examination and not identified separately.
3. The following instructions apply to the different types of questions you will answer.
 - (a) **Multiple Choice**
Select one answer only. Choose the best answer, even where a technical argument exists for the correctness of other answers. No marks will be awarded if none or more than one is selected. No explanation or reference for your answer need to be given.
 - (b) **Short Answer**
Answer in the space provided. Continue an answer on the back of a page if necessary. Point form answers are acceptable if they communicate the answer clearly. Citations or references for your answer are not required unless specifically requested.

CIVIL (15 MARKS)

(2) 1. Three days ago, Lawyer Able filed and served a Notice of Civil Claim setting out a concise statement of the material facts and the relief required in the action. Yesterday, he sent a registered letter to the defendant, a B.C. business owner, stating “please file your Response to Civil Claim in compliance with the Rules”. The defendant is now deciding about the wisdom and timing of filing a Response. Which of the following is most accurate?

- (a) The defendant must file a demand for particulars within 14 days of being served.
- (b) The defendant must apply to the court without delay for an extension of time to file a Response.
- (c) The plaintiff’s lawyer must serve a List of Documents before a Response is required.
- (d) The plaintiff’s lawyer may take default judgment 21 days after service of the Notice of Civil Claim if no Response is filed.

(2) 2. In a B.C. Supreme Court Chambers application, an Affidavit contains the following paragraph:

“I am informed by Mr. Waters that Ms. Johns told him that the courier delivery on April 30th, YR–1 was two hours late.”

Discuss the use of this paragraph to prove the truth of the late delivery.

- (2) 3. Archie Brown was driving his car eastbound on a street in Richmond, B.C. He collided head-on with a westbound car owned and operated by Carl Ryan, a visitor from Seattle. Brown suffered serious injuries. Bryant returned to Seattle two weeks later. Brown has Ryan's address in Seattle.

Brown retains a lawyer to sue Ryan in B.C. Supreme Court. How must the lawyer proceed to ensure Ryan is validly served in Seattle?

4. A civil action has settled before pleadings are closed. The terms of settlement have been confirmed by exchange of lawyers' letters.
- (1) (a) What two further steps does a defendant's lawyer customarily take to protect the defendant's interest?

- (2) (b) The settlement included a term that the defendant would "pay the plaintiff's costs and disbursements". From past experience with the defendant's lawyer, the plaintiff's lawyer expects a dispute over these. What step(s) should the plaintiff's lawyer take to finalize the amount of the costs and disbursements?

- (2) 5. Deborah Debtor borrowed \$5,000 from Christine Creditor on May 30, YR-4 at 5% simple interest. Deborah agreed to make monthly payments of \$100 beginning on June 30, YR-4. Deborah stopped paying on June 30, YR-2. Last year in YR-1 on June 30, Deborah sent Christine a note promising that she will recommence payments when she is able. Today is September 12, YR 0. Christine is tired of waiting. She wants her money. Advise Christine.

- (2) 6. When suing a former client in Small Claims Court for unpaid legal fees, which method of serving the Notice of Claim requires the Registrar's permission:
- (a) If the client is an adult, service by registered mail to the client's spouse.
 - (b) If the client is a B.C. company, service by leaving a copy with a director of the company.
 - (c) If the client is an adult, service by registered mail to the client.
 - (d) If the client is 18 years old, service by leaving a copy with the client's mother.

- (2) 7. Explain the circumstances under which the B.C. Supreme Court may defer the sale of a judgment debtor's interest in land after that interest has been found liable to be sold.

FAMILY (15 MARKS)

- (3) 1. Todd King and Mei Ona began living together in November YR-4. They never married. Their son, Hiro, was born in December YR-3. They separated permanently on August 15, YR-2. Hiro continued to live with Ona. King is working full time and earns considerably more than Ona. Advise Ona about her entitlement, if any, to support from King for herself and Hiro, and any applicable time limits.

- (3) 2. James and Mary separated four years ago. They have settled their financial affairs and are satisfied with the arrangements. They have continued to live close to one another so that the children can spend equal time with each of them. They have child support arrangements in place that have worked well. James plans to remarry and now wants a divorce. James discussed this with Mary. Mary has no reason to oppose a divorce nor any desire or need to revisit their settlement. She will not defend the divorce proceedings. James would like the divorce to proceed quickly, without any complications, and has retained you. He has asked you whether there is anything in particular that could delay the divorce. Advise James.

- (4) 3. Anna and Rob Gilmour separated a week ago after ten years of marriage. They have not spoken since. The children are residing with Anna. Anna is not sure why Rob left. Anna suspects that Rob is having an affair with a woman at his workplace. Anna has heard from a friend that Rob is feeling miserable. Anna wants to move swiftly and strongly to shock Rob into ending the affair and coming home. She has instructed Lawyer Barber to commence divorce and family proceedings immediately and bring on an application, without notice, for interim custody of the children. Discuss what Barber must do before following any of his client's instructions.

- (4) 4. Julia Jones has asked for your advice concerning her recent separation. She has not been employed outside the home since she began living with Allan Smith almost ten years ago. Her spouse is a sales representative. He overspends and gambles. Mr. Smith left their jointly owned home two months ago and is living with a friend in a rented apartment. Since then, they have been attending counseling. Your client is hopeful that the counselling will eventually result in reconciliation. Your client has almost depleted her savings and has no income. If your client commences a family law proceeding, state four interim measures of relief, appropriate to the circumstances, which are available to your client from the court. Give reasons for each.

- (1) 5. Tom and Grace are married. Tom wants to divorce Grace. Grace agrees with Tom to give evidence that he engaged in adulterous conduct, even though he hasn't. If the court learns of this agreement will it grant the divorce? Explain.

CRIMINAL PROCEDURE (15 MARKS)

- (2) 1. The accused in a criminal trial relates to her lawyer a version of the events of the case different than that of a witness for the prosecution. The lawyer intends to call her client to relate her version of these events. In order to argue later about the crown witness's lack of credibility, the defence lawyer must:
- (a) find a contrary statement in the transcript of the preliminary inquiry and use it to impeach the witness;
 - (b) ask the judge to declare the witness a hostile witness, so that she or he can be cross-examined;
 - (c) put the defence's version of the disputed facts to the witness in cross-examination;
 - (d) seek a voir dire to determine whether the rule in Hodge's Case applies.
- (4) 2. You are defence counsel. One week before trial you notice that the information is seriously defective. The client took your advice and pleaded not guilty on his last appearance.

Explain what you can do now, the factor(s) which will determine your success and any restrictions on your intended course(s) of action.

- (2) 3. Explain whether counsel is obliged to advise the court when she has been retained by the client for a preliminary hearing only, but not the trial.

- (3) 4. You act for a client who has been charged with falsifying an employment record. Following the close of evidence, Crown counsel makes submissions on the law regarding the onus on the Crown to establish an intent to deceive. Crown counsel fails to mention a recent decision of the B.C. Court of Appeal which is relevant to the issue and clearly adverse to your client's position. Explain your obligation(s), if any, to (a) inform Crown counsel and (b) inform the judge of this decision.

- (4) 5. While on a visit to Vancouver, Dib Jones, a resident of Cardiff, Wales is arrested, detained and charged with the indictable offence of sexual assault with a weapon.

Explain what Jones must do at the bail hearing in order to be released.

PRACTICE MANAGEMENT (5 MARKS)

- (2) 1. Therese Cite is employed as a legal assistant by Lawyer Carl Cullen. Cullen is a sole practitioner specializing in litigation. He is often out of the office in court. Cullen has authorized Therese to sign all her routine outgoing mail with her usual signature, followed by her typed name and “Max Cullen and Co.” She is not to give any “legal advice”. Advise Cullen of two reasons why this policy is a problem.

2. Black and White is a two-lawyer firm in Anywhere, B.C. Last Wednesday, the firm’s only employee, a legal secretary, noticed an entry in the bring forward system for a personal injury file. The entry indicated that it was two years, less a day, from the date of the motor vehicle accident. Unfortunately, Lawyer Black was away on holidays and Lawyer White was out of town in trial. Despite valiant efforts, the secretary was unable to reach either lawyer. She brought the matter to their attention this morning.

- (2) (a) What four things should Black and White do now?

- (1) (b) What should Black and White do to ensure this problem does not arise again?

50 MARKS