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Conflict of Interest? You be the Judge...

Many claims are reported to our office as a result of lawyers acting for more than one interest in a transaction. See how you do in the following quiz. Answers are on the overleaf.

1. You sell a company in which you are the sole shareholder to a client. The client is well aware of this, and does not wish to be independently represented. One year later, the economy goes bad, and the client sues to set aside the transaction. You must demonstrate (select one or more of the answers below):
 - a) nothing, it is up to the client to show that the transaction was unconscionable;
 - b) that you made disclosure of all material facts within your knowledge;
 - c) that the transaction was a fair one as far as the client is concerned;
 - d) that you gave the client professional advice equal in quality to what the client would have received if the vendor had been a third party;
 - e) that having regard to the facts, independent legal advice was not necessary;
 - f) b, c, d, and e.
2. A solicitor acting for both vendor and purchaser in a real estate transaction must:
 - a) meet the standard of a good and competent real estate practitioner;
 - b) be prepared to demonstrate that the vendor and purchaser each received the best legal advice they could have afforded had they been independently represented.
3. You are asked to represent both vendor and purchaser in a very complex commercial transaction. Your best course of action is:
 - a) decline to act for both parties;
 - b) agree to act for both parties, but comply in full with the *Rules of Professional Conduct*, i.e., advise both parties, in writing, that you are acting for both; that you have recommended independent legal advice; that both parties desire you to act in any event; that information provided by one cannot be withheld from the other; and that in the event of conflict, you must cease acting for one or both.

The Judge says...

1. (f) *Milligan v. Gemini Mercury Sales Ltd.*,
(1977) 1 B.L.R. 63 (Ont. H.C.)
2. (b) *Davey v. Woolley, Hames, Dale & Dingwall*,
(1982) 35 O.R.(2d) 599 at 602 (Ont. C.A.)
3. (a) *Davey v. Woolley, Hames, Dale & Dingwall*,
(1982) 35 O.R.(2d) 599 at 602 (Ont. C.A.)

Quotation from *Davey v. Woolley, Dale*

“...the solicitor unquestionably assumes a dual role at his own risk, the onus being on him in any lawsuit that ensues to establish that the client has had “the best professional assistance which, if he had been engaged in a transaction with a third party, he could possibly have afforded”... Even on the simple real estate deal the consequences of conflict can manifest themselves in a failure to make the requisition that allegedly should have been made and would have been made if the solicitor had been motivated solely by a concern for the plaintiff.” per Wilson, J.A. at p.602.