COUNCIL OF LEGAL EDUCATION

**NORMAN MANLEY LAW SCHOOL**

### LEGAL EDUCATION CERTIFICATE

**SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2014**

## **ETHICS, RIGHTS & OBLIGATIONS OF THE LEGAL PROFESSION**

**(AUGUST 7, 2014)**

# Instructions to Students

(a) Time: **3 ½ hours**

1. Answer **FIVE** questions.
2. In answering any question, a candidate may reply by reference to the law of any Commonwealth Caribbean territory, **but must state at the beginning of the answer the name of the relevant territory**.
3. It is unnecessary to transcribe the questions you attempt.
4. Answers should be written in black or dark blue ink.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

**QUESTION 1**

Willem Shakepear and Roberta Browning were recently admitted to practice in your jurisdiction and have established a firm S, B & Associates (“SBA”). They were concerned that in light of the large number of law graduates they might not attract a large enough clientele without some innovative tactics.

As such, Willem, who is a certified aerobics instructor, decided to host a weekly fitness show on a popular sports channel. At the end of each show, Willem has a 5-minute segment entitled, “The Law and You” in which he talks about common legal issues and encourages persons to “always seek legal advice”. The closing credits for the show refer to Willem as the host of the show and also list his legal qualifications.

Meanwhile, Browning has deposited a stack of business cards at the local police station and informs the constables that her firm is available to represent accused persons who are in need of counsel.

Whilst at the police station, Browning was approached by a detainee, Hamlette, who was charged with fraud. Hamlette asked her to represent him in his bail application and in the trial. After his release on bail, Hamlette attended the law offices of SBA and presented Browning with a cheque for $10 million. Hamlette asked Browning to keep the funds in her clients’ account and told her to “use some of it for fees and return the rest when all this madness is over.”

Willem and Browning recently attended a continuing legal professional development seminar and, having heard some of the papers presented there, they are concerned about their actions. Both partners now seek your advice on the propriety of their behaviour and whether they may incur any liability.

Advise Willem and Browning.

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**QUESTION 2**

Milly Syrus, Attorney-at-law, was representing the accused in a fraud case. Due to the sensitive nature of the trial, Justice Ray urged counsel not to disclose the names of the witnesses to the public.

That evening, Syrus conducted an interview with the Blah Blah newspaper in which she referred to some of the key witnesses by name. She also embarked on a tirade about how “the wheels of justice are rusty and bent” since “that imbecile of a judge takes forever to take his notes and insists on interrupting defence counsel in every case.”

The news report came to the attention of Justice Ray who was infuriated at what he described as “the insolence of defence counsel”. At the resumption of the trial, Syrus arrived over two hours late, due to a flat tyre en route to the court. On entering the courtroom, Syrus felt tired and frustrated and when asked by Justice Ray the reason for her tardiness she shouted, “why you don’t mind your own business?”

Justice Ray immediately summoned Syrus to approach the bench and hissed to her the following: “I am fed up with your behaviour. Go and spend a week in jail to reflect on the folly of your ways.”

Syrus is distressed and wishes to appeal the matter.

Advise Syrus.

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**QUESTION 3**

Natty, a record distributor, has found herself in severe financial difficulties as a result of the decline in CD sales. In January, she approached Pasta, an attorney-at-law who has acted for her on a number of occasions, with a view to selling her business, Pop Musiq.

Pasta, who is also a music enthusiast, offers Natty US$2 million for her business. Desperate for cash, Natty immediately accepts the offer. Pasta acted as attorney for both parties in the sale which was completed within 1 month. Natty was so relieved to have the business sold so soon that, as an expression of gratitude, she gave Pasta a t-shirt that was autographed by Bob Marley.

Last month, whilst talking to Mac, a financial analyst, Natty learns that Pasta has recently sold Pop Musiq for US$5 million. Mac also tells Natty that at the time she sold her business to Pasta, it was worth at least US$4 million because of its extensive inventory.

In September 2013, Pasta was consulted by Cheeze with respect to drafting her will. Cheeze, who was quite old, told Pasta that she was extremely grateful for her kindness to her over the years and for her reliable advice. She asked Pasta to include in the will a gift of $300,000 to Pasta’s children.

Pasta was reluctant to do so but was persuaded to insert the gift to her children when Cheeze told her that she had already discussed the matter with her grandson, a young attorney-at-law, who insisted that it was “totally fine.” Pasta duly prepared the will in accordance with Cheeze’s instructions. In January 2014, Cheeze died and her daughter Cheddar is outraged about the gift to Pasta’s children.

Natty and Cheddar seek your advice with respect to the above.

Advise Natty and Cheddar.

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**QUESTION 4**

Bertie Made-off is a successful businessman. For many years, Bertie retained Alleyne Sanford, attorney-at-law, to represent him in several legal matters in which he was involved. In the course of these retainers, Bertie sent several pieces of communication to Sanford. Occasionally, Sanford would draft and execute documents, on Bertie's behalf, with regard to commercial transactions in the UK.

The police have suspected that Bertie was involved in fraud and money laundering, both in your jurisdiction and in the UK. They wrote Sanford requesting disclosure of all the documents that he has in his possession in relation to Bertie. Some of the documents that were requested were notes that Bertie had prepared for Sanford. Others related directly to the foreign commercial transactions, whilst some of the requested documents concerned pending litigation. Bertie had instructed Sanford not to allow the police access to his files and he refused to hand over any of the requested documents.

The authorities then served a search warrant on Sanford, pursuant to the anti-money laundering legislation in your jurisdiction, in relation to all the documents in his possession concerning Bertie. When Sanford contacted Bertie to see if he would permit the search of his files, Bertie dismissed Sanford by saying that he was in the midst of “closing a deal” and did not have the time to talk to him. Bertie then told Sanford that he should "just do whatever feels right". Sanford decided to comply with the warrant and handed over all the requested documents.

A few days ago, Sanford gave an interview to the local newspaper which was doing a feature on “successful fraudsters”. Sanford is quoted as saying that one of his longstanding clients is a well-known businessman who is at present being investigated by the police for fraud and money laundering.

Bertie is incensed, having learned about this newspaper report as well as the handing over of his files to the police. He has threatened to take action against Sanford.

Advise Sanford.

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**QUESTION 5**

In 2008, Premier Alarms (“PA”), one of your country’s leading security companies, had contracted to provide security services for Big Mountain Ltd. (“BML”). Due to PA’s negligence, thieves broke into the BML offices and stole all the company’s valuables. However, Sam, who is BML’s CEO, has only recently decided to bring an action against PA, when he realised that the time for doing so would soon elapse.

One month ago, Sam consulted Guy Goode, a litigation specialist, and told him about the break-in. Guy made notes whilst listening to Sam and, at the end of the meeting, he said that he did not think that Sam had a good case. Nonetheless, he said that he would consider the case and get back to him, particularly concerning his own availability, in light of the imminent expiration of the limitation period.

The following day, Sam emailed Guy, attaching to the message a document that he had referred to in the interview. Guy replied by email stating that the document was helpful. After an exchange of emails over the next few days, Guy finally stated that he would further assess the matter in order to determine the likelihood of a successful lawsuit.

Guy then contacted Big Mann QC/SC, who specializes in negligence claims. In a written opinion to Guy, Mann stated that, in his view, Sam had a reasonably good chance of a successful action against PA. Mann also submitted to Guy his bill for the opinion.

Since the limitation period would soon expire, Guy wrote to PA on the matter, in which he alluded to the possibility of a claim being made against them. Seven days later, PA’s attorneys wrote to Guy making an offer to settle. Guy accepted the offer on Sam’s behalf and then sent Sam an email notifying him of the settlement amount. He also attached to the email a bill for the work that he had completed to date and the bill that was submitted by Mann.

Sam is outraged about the manner in which the matter was dealt with by Guy and Mann. He states that he has no intention of paying any bill for legal services that was submitted to him and has sought your advice.

Advise Sam.

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**QUESTION 6**

In 2012 Egypt had instructed Jonathan, Drew & Associates, Attorneys-at-Law (“JDA”), who are specialists in estate planning, to prepare her will. In that will she gave her entire estate to her only child, Tuten.

At the time of these instructions, Egypt was known to be suffering from a form of schizophrenia which caused her to have lapses in her memory and cognitive skills. Nonetheless, JDA accepted her instructions to prepare the will. Egypt explained to JDA that this will was intended to replace a previous will, executed in 2007, in which she purported to leave all of her property to her favourite animal charity, Cat Kingdom.

In July 2010, Egypt had instructed JDA to create an *inter vivos* trust for the benefit of her niece, Asia. In January 2010, an amendment to the Trusts Act stipulated that every trust instrument must contain an appointment of a Protector in order to be valid.

Egypt died in 2013. In proceedings to have the 2012 will admitted to probate, the court held that this will was invalid as Egypt had lacked testamentary capacity at the time she executed it. However, the 2007 will was admitted to probate and, despite Tuten’s objections, Cat Kingdom inherited the entire estate.

Tuten now wishes to bring an action against JDA on the basis that the firm breached their duty of care to him by failing to ensure both that Egypt had testamentary capacity at the time she executed the 2012 will and that she knew and approved of the contents of that will.

JDA had also omitted to have Egypt appoint a Protector under the trust and, as a result, the trust failed.

Both Tuten and Asia seek your advice on what, if any, action they could take against JDA.

Advise Tuten and Asia.

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**QUESTION 7**

Maxwell Homes, Attorney-at-law, specialises in civil litigation and conveyancing matters. Amongst his clients is Foleger, a successful entrepeneur, whom Homes has represented in three separate cases. One case was completed three weeks ago and a judgment in Foleger’s favour was awarded. The other two cases were concluded last week and are pending judgment. Despite several telephone calls and emails to Foleger, requesting payment, Homes has not been paid for these three cases. He now wishes to institute proceedings against Foleger to recover his fees.

Homes has also advised Foleger that he will no longer be representing him in a current matter concerning planning permission, which is still at the interim stage, since he does not agree with Foleger’s instructions. He has further advised Foleger that under no circumstances would he hand over the files to any other attorney that Foleger may retain, until his fees for all of these matters have been paid in full.

Meanwhile, Homes has been approached by Wallen Ford to represent him in a personal injury claim against Jah Bloom, arising from a motor vehicle accident last month. Ford has indicated that he cannot afford to pay the legal fees involved and wonders whether Homes would be willing to represent him on a “no win, no fee” basis. Homes considers this suggestion but since he thinks that this may turn out to be a long and complex matter he indicates to Ford that he will only accept this arrangement if he would receive 55% of Ford’s award.

Homes is concerned about any difficulties that may arise in relation to these issues with Foleger and Ford, respectively, and seeks your advice.

Advise Homes.

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**QUESTION 8**

Dem Teef is charged with larceny. He is accused of stealing several items of jewellery from the Goodview Hotel and then selling them to a number of jewellery stores as part of a ‘cash for gold’ scheme. Bona Fide, his attorney-at-law, visits him, while he is in custody, to take instructions. Teef tells Fide that he was not in the area during the time when these thefts were alleged to have occurred. After disclosure from the prosecution, Fide discovers that the only substantial evidence that the prosecution has is a statement made by Teef to his alleged accomplice, Rich Mann, that he is “sitting pretty since doing the job on Goodview”.

Before Fide attends the first day of the trial, Teef tells Fide to collect a package from his (Teef’s) mother’s home. Fide collected the package and, in it, Fide finds a DVD and a journal. The DVD contains CCTV footage of Teef entering and leaving the Goodview on the night in question and it also shows Teef, on his way out, stuffing some pouches into his pockets. The journal contains his reflections on the theft along with his grandiose plans for the future.

Two weeks ago, Fide went to court in relation to a civil matter for which he had been retained. Whilst there, he gave an undertaking on behalf of his client, Poorman, that he would file and serve certain documents within seven days. Yesterday, when the matter resumed, it was discovered that Fide had not done as he had undertaken.

Fide is concerned about how he should proceed in relation to Teef and about his potential liability in relation to the undertaking. He has consulted you.

Advise Fide.

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