

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, JULY 2020**

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

TUESDAY, JULY 14, 2020

Instructions to Students

- (a) Duration: **24 hours**
- (b) Students shall enter their Examination ID Number **only**, **not their names**, on the cover page, the Academic Integrity Statement and on every separate page of the examination script.
- (c) The examination should be answered on letter-sized (8.5 x 11) paper only.
- (d) The examination should be submitted in Arial font 12 line spacing 1.5.
- (e) Students should clearly indicate the names of any cases with the citation and legislative provision/s (section number and Act) on which they rely to support their arguments. Consider using italics and/or bold text to make references prominent. (For example, *Rylands v Fletcher* [1868] UK HL1; **s.69 Real Property Act**). Sufficient detail is required to allow the examiners to understand the source of law that is being cited.
- (f) Footnotes, endnotes and bibliography are not required.
- (g) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (h) In answering the question, a candidate may reply in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **but must state at the beginning of the answer the name of the relevant territory.**
- (i) Each Student **must** ensure that their Anonymous ID in TWEN is changed to their four digit Examination ID Number, prior to submitting their examination script.
- (j) The examination script, with the cover page and Academic Integrity Statement saved in **ONE PDF DOCUMENT**, must be submitted in **ELECTRONIC** format via the **Year II JULY 2020 EXAMINATIONS**,

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION
DROP BOX on TWEN by Wednesday, July 15, 2020, NOT LATER THAN
9:00 a.m. (Jamaica) 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).

- (k) To upload the examination script which has been saved as one pdf document which includes the cover page and Academic Integrity Statement, you must follow these steps:
- Go to ***www.lawschool.westlaw.com***.
 - Log in using your username and password credentials and select the **TWEN** button.
 - Click on the link for “**Assignments and Quizzes**” located on the left-hand side of the navigation screen.
 - Select the relevant examination and the examination drop box as follows:
 - Year II students with Examination ID numbers between 2100-2162 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box A Year II - 2100-2162***”.
 - Year II students with Examination ID numbers between 2163-2232 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box B Year II - 2163-2232***”.
 - Year II students with Examination ID numbers between 2235-2311 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box C Year II - 2235-2311***”.

Answer both (a) and (b)

(a) Don Draper is an attorney-at-law in private practice as a sole practitioner. He does a wide range of work, including criminal and civil litigation, some conveyancing and the odd commercial matter. He prides himself on having gained the confidence of the commercial community in 20 years of practice and often boasts that throughout the length and breadth of the jurisdiction it is well known that his word is his bond.

Draper, wishing to generate more business for his practice, agreed with the real estate agents at Palatial Homes, a Real Estate Agency, that they would, in return for a fee, refer all conveyancing work to him. Palatial Homes, in furtherance of this arrangement, displayed a photograph of Draper handing the keys to a homeowner of a house in the most exclusive area in your jurisdiction under the caption “***The Best, the most efficient and reasonable Conveyancer in the country, bar none.***”

Lola Larad retained Draper to bring proceedings for wrongful dismissal and libel against San Bernardino & Company Limited, her former employer. Draper told Lola that his fees would be based on an hourly billing rate of “about US\$100 - \$125”. He assured her that she was not to worry too much about this, as he was very sympathetic to her case and fully intended to be fair to her. However, they had no formal fee agreement.

Later, on a reference from Palatial Homes, Lola instructed Draper to represent her in the sale of a property to Phillip Nylund for Thirty-Five Million Dollars (\$35,000,000). Draper suggested that he represent both Lola and Phillip in the sale and purchase transaction, stating that it would be cheaper and faster. Draper told Lola that it was not necessary to execute an engagement letter. His fee would be two percent (2%) of the sale/purchase price. He expects her to pay him an advance of Fifty Thousand Dollars (\$50,000) on account of fees. On the exchange of contracts, Phillip duly paid the customary ten percent (10%) deposit to Draper as attorney-at-law with carriage of sale. Draper in turn instructs his broker to invest the deposit in a short-term high-yield instrument in his personal name. Draper deposited the Fifty Thousand Dollars (\$50,000) in his personal account.

In relation to the wrongful dismissal and libel matter, Draper filed the claim in the Supreme/High Court. It was defended and he proceeded to take all necessary steps to prepare the action for trial, including interviewing prospective witnesses, preparing witness statements, and conducting legal research. As part of the exercise, he also travelled to Barbados and visited the Cave Hill campus of the University of the West Indies for two days to undertake further research in the law library. In addition, he sought and received an opinion from eminent Senior Counsel in Trinidad & Tobago on the damages aspect of the claim.

In relation to the sale of the property, Lola further instructed Draper that she was having financial difficulty and she needed money urgently to pay the workmen who were repairing the property. She indicated her intention to borrow Four Million Five Hundred Thousand Dollars (\$4,500,000) from the We CARE Bank (WCB). All she required of Draper, she told him, was that he issue an undertaking to WCB in exchange for it disbursing the bridging loan to her as soon as practicable.

Draper, acting on Lola’s instruction gave an undertaking to WCB in the following terms:

“I represent Lola Larad who has agreed to sell the property described at caption to Phillip Nylund for Thirty Five Million Dollars (\$35,000,000). The sale is expected to be completed three months from the date of this letter.

“I undertake to pay to you Four Million Five Hundred Thousand Dollars (\$4,500,000.00) and any additional interest that may be due at the time, out of the proceeds of sale of the subject property.

I further undertake that in the event the sale falls through, I will forward to you the Certificate of Title/Land Certificate to the subject property.

This is my solemn and irrevocable undertaking”.

On the strength of this undertaking, WCB disbursed the Four Million Five Hundred Thousand (\$4,500,000) to Lola.

Three months before the date fixed for trial of the wrongful dismissal and libel action, Draper and Lola had a serious disagreement as to trial strategy, resulting in their mutually agreeing that he would withdraw from representing her and that she would seek other counsel. As agreed, Draper immediately rendered his bill for professional services in the following terms:

<i>(i) Cost of travel to and accommodation in Barbados for the purpose of legal research</i>	<i>US\$1,500.00</i>
<i>(ii) Fee paid for the opinion on damages of Senior Counsel in Trinidad & Tobago</i>	<i>US\$2000.00</i>
<i>(iii) Professional fees for receiving your instructions, filing action, research and general care and conduct of the matter to date – 30 hours at the agreed rate of US\$125.00 per hour</i>	<i><u>US\$3,750.00</u></i>
<i>Total</i>	<i><u>US\$7,250.00</u></i>

Lola is very upset about this bill, which she considers to be exorbitant. Specifically, she says that, in the first place, she had no prior discussion with Draper about his going on a “joyride” at her expense to Barbados or about his consulting counsel in Trinidad & Tobago (“What about the many Senior/Queen’s Counsel in this country?”, she asks). Secondly, she does not think that Draper’s own fee is fair and reasonable, particularly as she had no agreement with him on an hourly rate. Thirdly, Draper still has her files and she needs to recover them in order to instruct other counsel in time for the trial.

Further, Lola has failed to repay the WCB loan and it is in arrears. It has been six months since Draper gave his undertaking and he has not responded to any of WCB’s several written demands concerning the fulfilment of it. Finally, after several attempts, WCB’s credit manager was able to speak with Draper who remarked that the Bank should stop writing and calling him as the sale was never completed, that Lola borrowed the title and never returned it to him.

Despite repeated requests by Lola to Draper to account for the deposit and by Phillip for the return of the deposit since the sale was not completed, Draper has failed to do so because the terms of the investment required a month's notice for encashment. Three months after receiving the proceeds of the investment from his broker, Draper sent a personal cheque to Phillip and a letter to Lola confirming the refund of the deposit.

Required:

- (i) Discuss the ethical issues that arise between Lola and Draper in respect of the wrongful dismissal and libel matter.
 - (ii) Assess, giving reasons, whether WCB can enforce the undertaking given by Draper, setting out any course(s) of action available to it and recommending which one(s) it should take.
 - (iii) What ethical issues arise in relation to Draper's handling of the sale and purchase transaction? Could any of these issues give rise to disciplinary proceedings against him and, if so, what are they and what are the likely sanction(s) that could be imposed?
- (b)** In October 2018, Roland Blum retained Draper to apply for a patent for an invention that he had created. Draper, who had little knowledge of intellectual property law, still agreed to do the relevant work. He placed Roland's file on his desk.

In January 2019, Draper was also retained by Roland to represent him on a charge of drug trafficking since Draper was known for representing persons who had been charged with money laundering and drug related offences. Draper prepared his usual retainer letter which Roland signed and returned with the required retainer fee of One Hundred Thousand Dollars (\$100,000), Roland also gave Draper several documents to keep for him. Some of these documents related to his defence on the charge.

In the course of their investigations into the charge against Roland, the police obtained a warrant to search Draper's law offices. The police officers removed all of Roland's files including a legal opinion prepared by Draper on the ingredients of the offence of drug trafficking. They also removed Draper's employees' files, his personal and client accounts files including the bank statements from the office cabinets. During the course of this operation, Peggy Kolstad, Draper's assistant, called him on his cell phone and told him what was happening. Draper immediately returned to his office and ordered the police officers to leave on the basis that all of the documents in his office were protected by legal professional privilege. The officers left without the documents but said they would return the next day.

Draper has also just been served with a production and inspection order pursuant to the anti-money laundering legislation. The order seeks to give the investigators access to documents held by Draper in relation to Roland's real estate holdings. While sorting through papers on his desk, Draper discovered the file relating to Roland's patent. He made a mental note to attend to it after the trial of the drug trafficking offence.

During the course of the criminal trial in the Circuit/High Court, a heated argument developed between Draper, and Colin Sweeny, counsel for the prosecution. Sweeny is reported to have hurled accusations at Draper alleging various acts of dishonesty including that he is known to represent men who engage in activities which tarnish the good reputation of the country. Draper meanwhile accused Sweeny of engaging in the withholding of evidence and coercing witnesses to appear for the prosecution.

The judge, Placid J, was utterly appalled by the behaviour of counsel, and called upon them both to desist at once. At this point, Sweeny immediately took his seat. However, Draper headed for the courtroom door and, just before leaving, turned back to Sweeny and hissed: *"You're lucky Placid is here to protect you today or I would really deal with you"*.

Placid J thinks that Draper has now gone much too far and immediately orders him to be brought back before the court. However, Draper does not return to the courtroom until 30 minutes later. In fact, when the policeman went to fetch him he is reported to have said *"That weakling Placid will just have to wait"*.

When he eventually returns Placid J informs Draper that he has been "insolent and disrespectful" and immediately sentences him to a fine of US\$1500 or three days imprisonment for contempt of court.

Later, at the continuation of the criminal trial, when the judge, Placid J., was summing-up, he repeatedly made the remark that it was the duty of the prosecution to show that it was *"more probable than not"* that the defendant had been trafficking the drugs. Neither Draper nor Sweeny, made an attempt to rectify the judge's comments.

After the trial, Roland discovered that another person recently applied for a patent on a similar invention and that his claim is now worthless. Roland is incensed and threatens to "sue" Draper.

Draper has asked for your urgent advice on:

- (i) whether he was correct in asserting privilege in respect of the documents the police attempted to seize;

- (ii) how to respond to the production and inspection order;
- (iii) his chances of success on appeal of the sentence handed down by Placid J, giving reasons;
- (iv) the propriety of his conduct during the criminal trial; and
- (v) his liability, if any to Roland in respect of the patent application.

Note:

In answering **(a)** and **(b)** your response should not exceed **4000 WORDS**.

END OF PAPER