**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE**

**SECOND YEAR EXAMINATIONS, 2017**

**ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION**

**(TUESDAY, MAY 16, 2017)**

**Instructions to Students**

1. Time: **3½ hours**
2. Answer **FIVE** questions.
3. 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**.
4. It is unnecessary to transcribe the questions you attempt.
5. Answers should be written in black or dark blue ink. Erasable pens are not allowed.
6. The Canons/Code of Ethics for your jurisdiction is provided. **Please do not write on it.**

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

**QUESTION 1**

Jan Saganash, counsel for the prosecution, had been cross-examining a witness in a criminal trial for over three hours when Justice Hunter indicated that he was going to adjourn the matter. Saganash asked whether he could be permitted to ask the witness one final question and was allowed to do so. However, after noticing that the judge was about to leave the bench, Saganash inquired whether the answer to his last question was recorded.

At this point, Justice Hunter admonished him as follows. “Mr. Saganash, you are not in charge of my court. What you are saying is that I deliberately did not record the answer given and I take great umbrage at that.”

Saganash then responded: “Surely you are confused because I never said or intended anything to that effect.” In a menacing tone, Saganash continued: “A couple years ago, Justice Kase made a similar allegation against me and the rest is history. Coincidentally, Kase is dead now and I have moved on.”

At this point, Justice Hunter shouted: “Mr. Saganash, your behaviour is insulting, threatening and calculated to lower the authority of this Court. Bailiff, get him out of my sight and lock him up for 5 days.” Justice Hunter then walked out of the courtroom.

During the course of the day, counsel for the defence, Max Millian, had repeatedly interrupted the court by objecting to almost every question posed by Saganash. This conduct did not go unnoticed by Justice Hunter who had chided Millian for being “disruptive”. When Justice Hunter departed from the courtroom, Millian sent out the following WhatsApp broadcast to his Bar Association group:

“Wimpy judge has left the building. Lunatic bully has him shaking in his boots.”

The next day, when court resumed, Justice Hunter calmly said to Millian: “What you say and do in this court is being held against you. Let your junior defend you because you have scandalized this court, my friend.”

When Millian did not respond, Justice Hunter ordered Millian to pay the court $10,000 and told the bailiff to escort “that disrespectful lawyer” out of the courtroom immediately.

Saganash and Millian wish to appeal these orders and seek your advice.

Advise Saganash and Millian.

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**QUESTION 2**

Last month, Tim, an attorney-at-law, competed in the annual national triathlon. The event was highly publicized and attracted hundreds of participants, thousands of spectators and an even larger TV audience. In all the events, Tim’s athletic gear had the words **“#bestlawyerbyfar”** in bold print.

In the latest issue of the home and garden magazine, *Exquisite Properties*, there was a full page feature of Tim’s law firm. In the article, Tim spoke about his expertise in conveyancing, whilst he highlighted the several types of property transactions that he handles. There were a number of photos of Tim in his office either sitting at his desk, reading law reports or conversing with clients. The article contained details about how to contact Tim, including his phone numbers, email and office addresses.

Tim’s wife, Kate, is a real estate broker with Luxury Homes. Tim has given Kate a stack of his business cards and has asked her to hand them out to her clients. Kate has duly complied with Tim’s request.

Simone, the chair of the disciplinary body in your jurisdiction, has some concerns about the propriety of Tim’s conduct and seeks your advice.

Advise Simone.

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**QUESTION 3**

Caleb, a prominent businessman, instructed Alex, attorney-at law, to commence defamation proceedings against *Tattle-tale,* a weekly tabloid. Since both Caleb and *Tattle-tale* preferred to avoid a trial, Caleb agreed for Alex to meet with *Tattle-tale’s* attorney-at-law, Barney, to see whether they could come to an agreement.

The attorneys, who had been best friends since law school, were able to resolve the matter in record time and a settlement was reached. Alex was anxious to complete the matter and, without discussing either the terms of the settlement or the quantum with Caleb, he proceeded to sign the settlement on behalf of Caleb.

Last week Caleb received a copy of the formal settlement from Alex. It revealed that Alex settled the matter for the paltry sum of US $8,000. Along with the agreement, Caleb received the following bill from Alex:



**EQUITY LAW**

**10 Justice Court**

**My Town**

**INVOICE**

Caleb Cables Account No. 678

P.O. Box 123 Statement date: May 7th, 2017

My Town

**Re: Legal Services to Caleb Cables**

**Date Professional Services Hours $US**

3-13-17 Taking instructions 1 300

3-29-17 Research and preparation of Opinion 6 1,800

4-15-17 Negotiation of settlement 4 1,200

1-5-17 Preparation of Settlement Agreement 1 300

**Other Charges**

3-21-17 Consultation with I.M. Great QC/SC 3 hours x $800 2,400

 6,000

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With Compliments

Alex Ander

Equity Law

Caleb is distressed and seeks your advice. He tells you that he would never have agreed to the amount involved in the settlement. Further, he states that he had agreed to pay Alex at the rate of US $250 per hour and did not know that Alex would need to consult another counsel.

Advise Caleb.

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**QUESTION 4**

Josephine, the chair of the disciplinary body in your jurisdiction, seeks your advice on whether disciplinary action should be taken against the following attorneys-at-law for professional misconduct. She also wishes to know what, if any, sanction should be imposed on them.

1. **Anika:** Anika is a contestant on the hugely popular TV show, “*Dance Off”*. On the show, Anika’s dance routine involves her ‘twerking’ in a revealing costume. The songs selected by Anika are almost invariably ones that contain expletives and lewd lyrics.

(ii) **Sal:** Sal was arrested and charged with carrying a concealed weapon when a briefcase filled with knives was found in his possession. At the time, Sal insisted that he was *en route* to the cooking competition, “*Diced”*, in which he was a competitor, and that the knives were chef implements. Just before the trial, the knives went missing and the prosecutor decided not to proceed with the case. Nonetheless, to date, there has been no proof that Sal was, in fact, a contestant on “*Diced”.*

1. **Sophie:** In February, Sophie had given an undertaking to the vendor’s attorney-at-law, in a conveyancing matter, that she would hand over the proceeds of the sale within three days of receipt from her client, the purchaser. When Sophie received the funds, which comprised cash and cheques, she locked them in her desk drawer, with the intent of having the funds delivered the next day. However, that night, Hurricane Mathieu, a freak storm, wreaked havoc in the region and Sophie’s office was flooded. All the contents, including the monies, were destroyed. The vendor’s attorney-at-law requested urgent delivery of the funds but, to date, Sophie has been unable to fulfil the request.

Advise Josephine.

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**QUESTION 5**

Tess is a partner in the law firm, TBT, attorneys-at-law. TBT was retained by Bob da Builder (“BdB”) to secure environmental permits to build a medical complex. Tess’ partner, Alice, had conduct of the matter. In 2016, the medical complex was completed and each unit was rented by BdB to a medical practitioner.

A number of the shareholders in BdB are medical practitioners. Amongst the shareholders is Dr Chap Swee who recently completed a specialization in cosmetic surgery. Dr Swee is also the tenant of a unit in the medical complex.

Swee’s practice is not as busy as he had hoped it would be. As a result, he has fallen behind in his rent payments and BdB is now seeking to evict him for non-payment. Swee has instructed Tess to represent him in the eviction matter.

Meanwhile, Swee has also become delinquent with mortgage payments to Nation Finance (“NF”), in relation to his family residence. NF is threatening to sell Swee’s house, in order to recover the outstanding loan. Swee has instructed Alice, who is a family friend, with respect to NF’s proposed action against him.

Alice is aware of Swee’s financial hardship and is sympathetic. She has offered to lend Swee $250,000 to prevent his home from being sold. Swee is deeply appreciative of Alice’s gesture and wishes to assign the equivalent value of his shares in BdB to Alice, on condition that the shares are reassigned to him when he repays her.

The other partners in TBT are concerned about Tess and Alice’s dealings with Dr Swee and seek your advice.

Advise them.

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**QUESTION 6**

Martha is frustrated with her husband, Stuart, and wishes to terminate her marriage. Whilst browsing on the internet, she used the search term “speedy divorce” and came across a website for Nancee Persad, attorney-at-Law. There was a link on the home page with the words: “For divorce click here”. When Martha clicked on the link there was another link with the words: “Retain me”.

Martha clicked on the latter link and a form was generated requiring her to input her bio-data, personal contact information and details about her marriage. She completed the form and submitted it via the website. She was then directed to the *Terms and Conditions of Retainer* page on which she clicked, “I Agree”. A few moments later, she received an “Auto-reply” email from Nancee’s firm. The email contained the following message: “Thank you for your submission. We will review and revert to you within a reasonable time.” However, Martha did not receive any further communication from Nancee.

Three months after submitting the information, Martha fell madly in love with Daniel. She wished to get married to him on an upcoming Dreamy Cruise. Consequently, in order to ensure that everything was on stream for the dissolution of her marriage to Stuart, Martha called Nancee’s office. However, she was unable to obtain any update as she reached Nancee’s voicemail. Nancee’s recorded greeting simply requested the caller to leave a message after the tone, followed by an assurance that she would be in contact shortly.

After waiting two weeks without receiving a response, Martha called Nancee’s office again. This time, Nancee’s assistant advised her that Nancee was out of the jurisdiction. In desperation, Martha went to the Supreme/High Court registry to check on her divorce file. She was shocked when she was told that no application for the dissolution of her marriage had been filed.

Martha was outraged since plans for the cruise and the onboard wedding had been finalized. In fact, she had already incurred significant expenditure for the special occasion. In exasperation, she posted a message on Nancee’s website threatening to take action against her for gross negligence.

Nancee is concerned about this post and seeks your advice. She tells you that although she had seen the form that Martha had submitted, she did not think that she was obligated to handle the matter.

Advise Nancee.

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**QUESTION 7**

During a trial for shooting with intent, Soh Able, defence counsel, objected to a line of questioning by the prosecutor, Mee Willing. Justice Hyde overruled the objection but Able continued to object in a loud voice. The judge repeatedly told Able to sit down but he remained on his feet, still objecting.

Willing then rose and said: “My learned friend talks too much, even his wife complains. He also lies and cheats and really is a dishonour to his profession.”

Able retorted: “You better strike that, my lord. I will say what I want to say, where I want to say it and how I want to say it”.

After this comment, there ensued a heated exchange between both counsel, each trying to outdo the other, both in the volume of their speech as well as the acidity of their insults. During the argument, Able accused Willing of falsifying evidence in the case. He then produced a statement from a witness which supported the defence’s case but which Willing had failed to adduce.

Willing then pulled out his mobile phone on which he had secretly recorded a conversation that took place between Able and the clerk, earlier that day. During the conversation, Able was heard telling the clerk that he would be “rewarded if he misplaced some of the exhibits”. When the clerk declined, Able then told him “let’s pretend this conversation never happened.”

At this point, Justice Hyde stood up and shouted: “Mr Able and Mr Willing, shut up and sit down. This case is adjourned.” He then dismissed the jury and left the courtroom.

Justice Hyde reported the incident to Jekkell, the chair of the disciplinary body in your jurisdiction. Jekkell is concerned about the conduct of Able and Willing, along with their respective allegations. He seeks your advice on whether disciplinary proceedings should be brought against both attorneys-at-law and what, if any, sanction should be imposed.

Advise Jekkell.

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**QUESTION 8**

Nikki, an attorney-at-law, had been retained by Usha, a politician, to handle the establishment of a number of offshore companies and offshore trusts in St. Lucy, an offshore financial centre. Although Usha had attained a certain degree of notoriety for accepting secret commissions from various lobby groups, he had never been charged with an offence.

In order to set up the offshore companies and trusts, Usha gave Nikki US $10 million to be deposited to Nikki’s clients’ account. Nikki was instructed by Usha to have the funds sent by wire transfer to an offshore bank in St Lucy, in which he held an account. Although she felt uncomfortable about the transactions, Nikki duly complied with the instructions. She also decided not to ask Usha any questions about the funds and never made a report about the transaction to the relevant authorities.

Two days ago, Nikki was served with a disclosure order, pursuant to the anti-money laundering legislation. The disclosure order was in relation to her client, Usha, and the documents listed in the order included the incorporation documents for the offshore companies, the trust instrument and the instructions from Usha.

At the time the retainer was executed, Usha told Nikki, in no uncertain terms, that she must never reveal any information about him without his express permission. However, when Nikki contacted Usha about the disclosure order, Usha told her to stop bothering him since he no longer cared about the offshore companies and trusts in St Lucy. Nikki duly complied with the disclosure order and handed over all the documents sought.

Nikki is now concerned about what has transpired and seeks your advice in relation to the following:

1. whether she could incur any liability for conducting the transactions requested by Usha; and
2. whether her compliance with the disclosure order violated any duties owed by her to Usha.

Advise Nikki.

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**END OF PAPER**