

# FINAL DRAFT

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 2007

## ETHICS, RIGHTS & OBLIGATIONS OF THE LEGAL PROFESSION

(FRIDAY, MAY 18, 2007)

### Instructions to Students

- (a) Time: **3 ½ hours**
- (b) Answer **FIVE** questions.
- (c) 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.**
- (d) It is unnecessary to transcribe the questions you attempt.
- (e) Answers should be written in ink.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **QUESTION 1**

**Answer both parts (a) and (b).**

- (a) Rolando Drummond, attorney-at-law, represents the defendant George Brenett. The matter has been adjourned on several occasions. On the last occasion Brenett was present but Drummond failed to appear. The matter was further adjourned and the presiding judge instructed Brenett to advise Drummond to be present on the adjourned date. On the adjourned date, Brenett attended but Drummond again failed to appear.

The presiding judge thereupon instructed Brenett to inform his attorney-at-law to attend before him the next day. Despite being duly informed by his client of the judge's instructions, Drummond again failed to attend court. The presiding judge thereupon issued a bench warrant for Drummond's arrest and for him to be brought before the court.

Drummond was arrested and brought before the judge later that day. The judge then informed Drummond that he was in contempt of court and, without more, sentenced him to seven days imprisonment. Drummond wishes to appeal the judge's order and seeks your advice.

Advise Drummond.

- (b) You appear for the defence on a charge for murder. Your client has pleaded not guilty, but during the course of the trial tells you that what the prosecution witnesses have been saying is substantially true. However, he wishes you to continue to act on his behalf.

What is your duty in these circumstances?

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## **QUESTION 2**

**Answer both parts (a) and (b).**

- (a) On October 5, 2005, Peter retains Maria, an attorney-at-law, to represent him in a number of legal matters, all of which will involve Maria in the management of his business affairs.

Maria successfully resolves some of these matters for Peter and submits a bill of costs covering her fees and expenses for the transactions which have been completed. Peter refuses to pay anything on the bill, insisting that Maria is not entitled to payment until all the transactions for which she has been retained are completed. Thereupon Maria terminates the retainer and sues for her costs.

Peter now consults you in the matter and instructs you to obtain from Maria all the documents and other papers in her possession which relate to his matters.

Advise Peter on his liability to Maria for her costs and how best the matter of her holding on to his papers may be resolved.

- (b) Xavier, an attorney-at-law, has been retained by Fabian to collect \$1,000,000 which Lex owed him and which should have been repaid on January 31, 2007. The agreed fee basis is that Xavier will retain 30% of whatever he succeeds in collecting on Fabian's behalf from Lex.

Xavier writes a demand letter to Lex for the \$1,000,000, plus the cost of the letter of \$5,000.

Seven days later, Lex paid the full amount claimed to Xavier, together with the costs of \$5,000, whereupon Xavier then paid over to Fabian \$700,000 having deducted the agreed fee of \$300,000.

Fabian feels that the amount deducted by Xavier was exorbitant and that Xavier was only entitled to the \$5,000 which he received for his costs. He seeks your advice.

Advise Fabian.

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### **QUESTION 3**

**Answer both parts (a) and (b).**

- (a) “The importance of undertakings in the world of commerce and conveyancing cannot be overemphasized. The practice of attorneys-at-law giving undertakings relating to certificates of title has been of long standing and the whole business, especially of conveyancing, would be brought to a halt if parties whether they be attorneys-at-law or financial institutions could no longer rely on the word of a member of an honourable profession” (per Carey JA, in Morris v General Legal Council (1985) 22 JLR 1, 7).

Describe and discuss the methods of enforcement of professional undertakings.

- (b) Describe and discuss the disciplinary process with regard to attorneys-at-law in your jurisdiction. Does this process provide adequate safeguards for the protection of the public?
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#### **QUESTION 4**

Carmen, an attorney-at-law, who has always represented Jasper, a widower aged 85, is consulted by Jasper for the purpose of making a new Will.

Jasper instructs Carmen to include in the Will a bequest of \$250,000 to his “devoted niece, Patrice”, as well as a bequest of \$50,000 to her, Carmen, “my loyal and unfailing adviser over these many years”.

The Will is prepared in accordance with Jasper’s instructions. Due to Jasper’s failing health, the Will is sent to him at his home for it to be executed.

Carmen sends written instructions with respect to the formal requirements for execution of a Will but neglects to mention that a gift to an attesting witness, or spouse of a witness, is null and void. The Will is signed by Jasper and witnessed by Patrice and her husband, who happened to be visiting Jasper at the time.

Jasper has recently died and you are asked by the Executor of the estate to advise –

- (i) on the validity of the gift to Patrice and whether there is any legal recourse available to her in this regard; and
- (ii) on the validity of the gift to Carmen.

Advise the Executor.

## **QUESTION 5**

**Answer both parts (a) and (b).**

- (a) “The duty of Crown Counsel is to be impartial and excludes any notion of winning or losing. He violates that duty where he uses inflammatory and vindictive language against the accused or where he expresses a personal opinion that the accused is guilty or states that the Crown investigators and experts are satisfied as to his guilt. Such language and opinions cannot help but influence the jury and colour their consideration of the evidence and amounts to a miscarriage of justice”. (Boucher v the Queen (1954) 110 CCC 263).

Discuss this statement with reference to Commonwealth Caribbean canons/codes of professional ethics and decided cases.

- (b) You appear as counsel for the defence in a criminal trial. At the end of the judge’s summing up to the jury you are asked by the judge whether there is anything that he has omitted or that you would like him to add before leaving the case to the jury. You cannot recall having heard the judge tell the jury anything about the standard of proof and upon checking your notes you confirm that he did not in fact do so.

How should you respond to the judge in the circumstances?

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## **QUESTION 6**

**Answer both parts (a) and (b).**

- (a) In May 2004, Sunshine Finance Co (“Sunshine”) agreed to offer Carol and Clive a loan of US\$100,000 secured by a mortgage of the couple’s home. Although Carol was reluctant at first, she was finally persuaded by her husband to mortgage their home, of which she is joint owner. The loan money was urgently needed by Clive for the purpose of re-financing and re-stocking his automobile spares business, which had not done particularly well over the last couple years.

Mark, an attorney-at-law and an old school friend of Carol and Clive, acted for Sunshine, as well as for the couple in the mortgage transaction, and on June 10, 2004, the mortgage was duly registered and the loan proceeds disbursed.

By the middle of 2006, Clive’s business was again faltering and the payments on the loan fell into arrears.

Finally, in May 2007, Carol, who is now separated from her husband, learns that Sunshine is about to take steps to sell the house in which she still resides with the couple’s two young children, to satisfy the mortgage loan. She is most distressed about this and consults you.

Advise Carol.

- (b) Your firm acts for the leading newspaper in the country, the Daily Grinner and has done so for several years. You are the partner primarily responsible for the Grinner’s portfolio, which mainly consists of claims for libel against the newspaper and you have become known as one of the

leading libel lawyers in the country. The editor of the Daily Organiser, a new fast growing competitor of the Grinner, wishes to retain your firm's services in respect of an increasing number of libel actions being brought or threatened against it. Although the editor knows of your firm's involvement with the Grinner, he tells you that he has no problem with it and states that he is sure that you and your partners must be able to "work something out" to eliminate any actual or potential problems that may arise from your representation of both newspapers.

Advise the editor of the steps you propose to take and give him, as he asks you to do, "a frank assessment", of how effective you would expect those steps to be in practice.

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### **QUESTION 7**

Lucas is a young attorney-at-law, who has recently been admitted to practice. He is appearing before the High/Supreme Court for the first time and is representing Ninja on charges of unlawful wounding and rape.

In cross-examination of the main witness for the prosecution, Lucas started to ask certain questions of her when he was stopped by the judge, who openly accused Lucas of attempting to mislead the court by the line of questions being asked. He stated that Lucas could not have received such instructions from his client and demanded to see the client's instructions. Out of deference to the judge, Lucas handed the judge the written statement of his client which was in his file. The judge read the statement and then handed it to counsel for the prosecution who in turn read it and handed it back to Lucas.



At the end of the trial the accused was found guilty and sentenced to five years imprisonment.

The accused wishes to appeal and seeks your advice on the propriety of the actions of both Lucas and the judge described above.

Advise the accused.

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### **QUESTION 8**

In January 2007, Ms Martha Studdart visited the office of Mr Martin Jones, attorney-at-law, for advice on the best course of action to prevent continuous harassment by a former male friend, Mr Peter Stanmore. Mr Jones advised her that the most effective remedy would be to seek an injunction from the court against Mr Stanmore and that the cost of obtaining an injunction would be approximately \$75,000.

The day after Ms Studdart's visit, Mr Jones filed an application for an injunction on her behalf and a date for hearing was fixed for February 17, 2007. Mr Jones swore the necessary affidavit himself, on the grounds of his "information and belief" and the urgency of the matter.

When the matter came up for hearing Ms Studdart was not present and Mr Jones was obliged to apply for an adjournment, telling the court that he had written her advising her of the date but had received no reply. However, although it had been Mr Jones' intention to make the initial application without notice, Mr Stanmore had somehow gotten wind of it and was actively represented by an attorney-at-law at the hearing.

The matter was adjourned to another date but costs were awarded against Ms. Studdart.

On the adjourned date, Ms Studdart attended court and expressed surprise that proceedings were actually commenced. She told the court that she had sought and obtained Mr Jones' advice in the matter but that she had not instructed him to file suit. Mr Jones informed the court that he was orally instructed by Ms Studdart to commence proceedings.

- (i) Write an opinion on the course of action the court would most likely take.
  - (ii) Would it affect the action to be taken by the court if Ms Studdart informs the court that she would like Mr Jones to proceed with the matter since "everybody is now here"?
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