

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SPECIAL SUPPLEMENTARY EXAMINATIONS, OCTOBER 2014

ETHICS, RIGHTS & OBLIGATIONS OF THE LEGAL PROFESSION

(THURSDAY, OCTOBER 2, 2014)

Instructions to Students

- (a) Time: **3½ 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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Dennis was driving along Slippery Road when his car skidded. Since there was no wall along the side of the road his car went over a ravine and ended up in front of the law offices of recent graduate Merida Brave, attorney-at-law. Dennis's car was seriously damaged and he suffered a broken arm. Merida had rushed outside when she heard the commotion. As Merida was assisting Dennis from his car, Dennis muttered to her "You see to it that those responsible pay for all my pain and suffering."

As he sat on the side of Slippery Road waiting for an ambulance, Dennis recounted to Merida how the accident had happened. The following day, Merida wrote to the Ministry of Roads demanding that they pay her "client, Dennis \$1, 000, 000 for the injury and damage" that they had caused. Since the Ministry did not respond within the time allotted in Merida's letter, Merida instituted proceedings against the Ministry on Dennis's behalf. Three weeks later, counsel for the Ministry wrote Merida and enclosed in the letter a cheque in the sum of \$500,000 as full and final settlement of the claim.

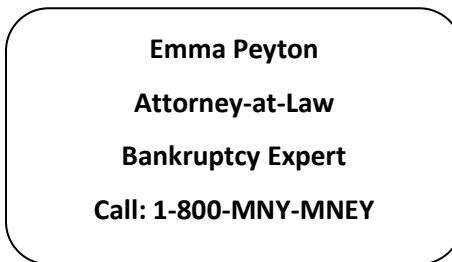
Merida thought that that amount was far more than Dennis would have received if the matter was determined in court and so she accepted the settlement on Dennis's behalf. She emailed Dennis to tell him the "good news" and that she would be sending the cheque from the Ministry along with her bill for \$250, 000.

Dennis was outraged and shouted, "How dare you! You had no business doing what you did. You are out of order. You just left law school and charging those fees. I am not going to pay you one cent for anything you've done".

Advise Merida.

QUESTION 2

Toni was enjoying a day at the beach where she freely discussed her business stresses with Bertram, the lifeguard. She was taken by surprise when he handed her, from a stack of business cards, the following card:



Later that week, Toni received in her Inbox an email from the VirtualShoppers.com. The email contained an e-flyer listing the name and qualifications of Trish Dellarosa, attorney-at-law. Ms. Dellarosa described her expertise as personal injury matters and the following words were written in bold:

**“HAD AN ACCIDENT? HURT ON THE JOB?
WE’LL GET YOU THE SETTLEMENT YOU DESERVE
WE’RE THE NUMBER ONE P.I. LAWYERS IN THE LAND”**

Toni is concerned about what she describes as the tactless behaviour of lawyers and wishes to know about the propriety of their conduct.

Advise Toni.

QUESTION 3

Snoops was charged with burglary and he retained Skoobie Doo as his counsel. At the trial, during the case for the prosecution, Justice Knows said to McGyver, counsel for the prosecution, *“Have a seat whilst I put some questions to your witness. You look like you need some direction”*. The judge then proceeded to ask the witness a number of questions. He also frequently interrupted Skoobie’s cross-examination, stating that he considered those questions irrelevant.

On several occasions during the trial, McGyver referred to Skoobie as a liar and described him as being *“a criminal, just like his client.”* Skoobie complained to the judge, who told McGyver to kindly refrain from those comments. McGyver then referred to the defendant as a liar and a thief. He told the jury that they should do their duty and convict Snoops. He then called on God to intervene and assist the jury in convicting Snoops. The judge did not attempt to stop McGyver from making these statements.

Snoops was convicted and wishes to know what action, if any, may be taken as a result of the conduct of the judge and McGyver.

Advise Snoops.

QUESTION 4

In 2012, Barbee retained Kenny, an attorney-at-law and fellow art collector, to draft her will and to deal with various matters pertaining to her many businesses. This included the purchase of an art gallery from Ryan, an art dealer with a reputation for sharp practices.

Ryan had also been a client of Kenny's firm for many years and, in fact, at the time Kenny was retained by Barbee, Kenny was in the process of finalizing another unrelated transaction for Ryan. Kenny was therefore able to complete the purchase of the gallery in a very short time and Ryan was able to secure the sale price, which was 20 percent above the market value of the gallery. Kenny also successfully completed the other matters including drafting the will for Barbee.

Barbee then gave Kenny a gift certificate for the Total Man Salon to show her appreciation for the time and effort that Kenny had expended on her matters. She also made an *inter vivos* gift of a diamond pendant to Kenny's wife, Marissa.

Barbee died last month and under her will Barbee left her entire estate to her daughter Chelsea, other than a solid gold picture frame which she bequeathed to Kenny.

Chelsea seeks your opinion as to what, if any, action she may take against Kenny in relation to the above.

Advise Chelsea.

QUESTION 5

Phink Panther, attorney-at-law, appeared before Justice Mango in Chambers on an interim application. Justice Mango refused the application. In a tone loud enough to be heard by counsel for the respondent and both clients, Panther said to Justice Mango, "Admit you're wrong, you look uncomfortable with your decision". Justice Mango said to Panther, "You're treading on thin ice".

One week later, Panther saw Justice Mango when they were both leaving the Gem Beach Resort. Panther said to him, "I'm still angry about your ruling. You have to convince me that your relationship with the respondent is not tainting your judgment." Justice Mango was visibly upset but he said nothing.

Ten minutes later, Justice Mango was handed a copy of the local newspaper which contained an article written by Panther entitled: "Justice denied". In the article Panther referred to his matter before Justice Mango and stated, "Justice can be denied where a Judge, though otherwise competent, is so wrapped up in personal affairs that he fails to comprehend issues that are simple enough for first year law students to grasp".

Justice Mango was incensed. The following day he issued a warrant for Panther's arrest. When Panther was brought before Justice Mango, the judge stated: "Your behaviour has been outrageous. You have scandalized this court. I find you guilty of contempt". Panther was immediately sentenced to one month's imprisonment. He has retained you to appeal the conviction.

Advise Panther.

QUESTION 6

Nikki had retained Jay Minaj to pursue her claim against her neighbour for nuisance. Jay terminated the retainer since Nikki insisted that he should pursue a course of action which he repeatedly advised her would fail, since such an approach lacked any merit in law.

Nikki has now retained you to pursue the matter on her behalf. The matter is scheduled to commence in two weeks. Nikki does not have any copies of the relevant documents as these are still in Jay's possession.

Nikki tells you that she has tried on several occasions to obtain her file but Jay refuses to release it until his legal fees are paid in full. Nikki is adamant that she is not going to pay Jay and wishes you to take conduct of the matter.

Advise Nikki.

QUESTION 7

ANSWER BOTH PART (a) AND PART (b):

(a) Bobs-Ann is an attorney-at-law with a very busy practice. In January, she wrote to the Big Bank requesting them to release the title for the land of her client Lolo, for the purpose of having a second mortgage endorsed on it. She gave an undertaking to the Big Bank to return the title as soon as she received it from the Titles Office/Land Registry.

Unfortunately, Bobs-Ann's bearer inadvertently delivered the title to Lolo. Big Bank has written to Bobs-Ann seeking the return of the title since Lolo is in arrears with her mortgage payments. Bobs-Ann is unable to locate Lolo as she has now left the jurisdiction.

Advise Bobs-Ann on any liability she may incur as a result of this undertaking.

- (b) Your client, May, is the granddaughter of June, deceased. May informs you that last year, June had instructed April, attorney-at-law, to alter her will. June had told April that she was terminally ill and that she intended to leave a sizeable portion of her estate to May, who had been her principal caregiver for many years.

Two weeks after June met with April, she took a turn for the worse, was admitted to hospital and died three days later. At the time of her death, the will had not been altered.

May wishes to know what, if any, action can be taken against April.

Advise May.

QUESTION 8

Serenah has represented Andy in a number of litigious matters over the last 5 years. In fact, she is currently acting for him in an action for negligence against his employer. Andy has recently instructed Serenah to create a trust for the benefit of his wife and also to set up an offshore company in The Bahamas. For the purpose of these transactions, Andy has given Serenah a cheque for the sum of \$10 million which he wants her to keep in her client's account until further advised.

Serenah is becoming concerned about these instructions, especially since Andy has only been employed as a factory worker. In fact, there were some rumours that he may have been involved in a robbery involving a large sum of money.

Last night, the police served a search warrant on Serenah, pursuant to the anti-money laundering legislation in your jurisdiction, in relation to all the documents in her possession concerning Andy. Some of the documents being sought were personal papers that Andy wanted Serenah to keep for him, others related to his instructions and the remainder of the requested documents concerned pending litigation.

When Serenah contacted Andy to see if he would permit the search of his files, he dismissed her by saying that he was in the midst of something and couldn't deal with her. Andy also told her that she should "just do what you have to do".

Advise Serenah on the following:

- (i) the possible consequences for her if she creates the trust and offshore company and the rumours about Andy are true; and
- (ii) how she should respond to the search warrant.

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