

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2011

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(TUESDAY, AUGUST 2, 2011)

**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**

Forest Bump was charged with armed robbery. Two weeks before the trial, he retained Will Smyth as his counsel.

At the trial, during the case for the prosecution, Justice Nosey said to George Looney, counsel for the prosecution, "Have a seat whilst I put a few questions to your witness. You're young and need some direction". The judge then proceeded to ask the witness a series of questions. He also frequently interrupted Will's cross-examination, stating that he considered those questions misleading.

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

Forest was convicted and wishes to appeal.

Advise Forest.

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## **QUESTION 2**

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

- (a) In January 2005, Charles retained Dickens, attorney-at-law, to institute legal proceedings against TaxiCo Ltd. Charles had suffered injury when his vehicle was

involved in a head-on collision with one of TaxiCo's cars. Charles provided Dickens with all the information necessary for filing a claim.

Last week, Charles telephoned Dickens to find out how the matter was progressing. Dickens informed Charles that he had been so busy that he had not filed the action and could not do so now since the limitation period had expired.

Charles wishes to sue Dickens and has sought your advice.

Advise Charles.

- (b) In June 2008, Billy Shakespeare, attorney-at-law, prepared Rob Browning's will. On Rob's instructions, the will contained a clause devising an apartment building to Rob's niece, Elizabeth. In September 2008, when the will was being executed, Billy asked Elizabeth's husband, Barrett, to attest the will and he did so.

In July 2008, the Succession Act of your jurisdiction was amended to provide as follows:

*"Where any disposition of property by will is made in favour of a person who attested the signing of the will, or the spouse of such person, that disposition shall be null and void."*

Rob died last month. Elizabeth has been informed that she cannot inherit the apartment building.

Elizabeth has sought your advice as to whether she has any recourse against Billy.

Advise Elizabeth.

### QUESTION 3

Johnny Mack, attorney-at-law, was scheduled to attend the hearing of an application before Justice Reff. Justice Reff had a personal emergency to attend to and adjourned the hearing for two days.

Mack was extremely annoyed at what he described to the court reporter for ChitChat, the daily newspaper, as the “inconsiderate waste of the court’s time.” At the resumed hearing Mack, in open court, said to the judge:

*“Whilst I appreciate that emergencies may occur, I am disturbed by the number of cases that you have been adjourning. How do you expect the business of the court to be completed? Please get it together. We do not need any further blemishes on our legal system which is regarded by many as being corrupt.”*

Justice Reff immediately cited Mack for contempt of court and summarily sentenced him to three days imprisonment. Justice Reff refused Mack’s request for an adjournment, stating that Mack could use the time in prison to think about his misdeed so that he would not repeat it.

Mack has retained you to appeal this matter.

Advise Mack.

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#### **QUESTION 4**

Bubu Bandon is a partner in the law firm Bandon, Mann & Co. which employs 15 attorneys-at-law. The firm has been retained by Ree-Anna to pursue several legal matters on her behalf. They include some matters with regard to commercial transactions and others in relation to litigation. Ree-Anna wanted to ensure that when she commenced her actions that she would win. As such, she gave Bandon full instructions, and all her information, in writing.

About a week later, Kris Brawn came in to the firm. He had a long chat with Beeny Mann, the other partner in the firm. Mann agreed to accept a retainer to represent him in several matters involving Ree-Anna. This retainer was in relation to the non-contentious matters that Ree-Anna had spoken to Bandon about, but did not involve the contentious matters.

The two partners of the firm met in their Friday meeting. They do not foresee any problems by acting for both parties, since they believe that the firm is large enough and the work could be spread among the several attorneys-at-law.

You are an associate in the firm and the partners have sent you the above information for your advice as to any possible conflict that may arise from their intended actions and how any such conflict could be avoided.

Advise Bandon and Mann.

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## QUESTION 5

Dave Cameron is an attorney-at-law with the firm of Cameron, Haig & Co. Four weeks ago, Tony Bear came in to speak to Cameron about several legal matters. Bear spoke to Cameron for about 30 minutes and at the end of the conversation, Cameron told him that if they were to proceed it would cost Bear \$150,000.

Bear left certain documents with Cameron and went home promising to return. In the interim, Cameron commenced litigation on Bear's behalf. He served the documents on the defendants who in turn had to retain counsel. This cost the defendants several thousand dollars.

Last week, when Bear came back to the office, he was informed of what Cameron had done and became quite upset.

Bear told Cameron that he had not agreed to the litigation and, further, that he wanted to have his documents immediately returned. Cameron is of the view that he had been retained and properly instructed. He has refused to hand over the documents until he is paid his full fee of \$150,000.

Bear has now retained you to represent him and pursue the various legal matters on his behalf. He also wants you to recover his documents from Cameron but is unsure if he is liable to pay Cameron the requested fees.

Advise Bear.

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## **QUESTION 6**

Candy Apple, attorney-at-law, has been acting for Genevieve, the purchaser in a conveyancing transaction. Her client is a returning resident from the UK, who now plans to live in your jurisdiction when she reaches retirement age next year.

According to Candy, the vendor's attorney-at-law sent her a statement to close showing a final balance due from her client of \$2,500,000. The vendor's attorney-at-law requested that Candy either send her a cheque for this sum or give her professional undertaking to pay the amount due on completion.

Candy forwarded the statement to Genevieve, asking her to put Candy in funds to enable her to give the required undertaking. Genevieve sent her a banker's draft for £50,000, which at the prevailing rate of exchange on that date (\$50 = £1) amounted to exactly the amount required.

As a result, Candy duly gave her undertaking to the vendor's attorney-at-law to pay the balance purchase price of \$2,500,000 in exchange for the title registered in her client's name as proprietor. However, she decided not to convert the pounds sterling until the funds were actually needed and, instead, lodged it to her personal foreign currency account.

Three weeks later, the vendor's attorney-at-law sent her the title duly registered in her client's name and requested her to fulfill her undertaking by sending the balance purchase price. Candy instructed her banker to sell the £50,000 and to lodge the proceeds to her clients' account to enable her to draw the cheque. At this point, she was advised by her banker that over the three week period the exchange rate of the dollar had (unusually) appreciated against the pound to \$40 = £1, with the result that

the £50,000 was now equivalent to \$2,000,000; that is, \$500,000 short of the amount of her undertaking.

Candy did not have that amount available and, in a panic, sent an email to Genevieve asking her to send the difference in the amount due. However, Genevieve quickly responded that she had no intention of sending any more money and told Candy that if she did not receive her title within 2 weeks, she would be taking action against her.

Advise Candy.

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### **QUESTION 7**

Between 1980 and 2005 Bill Bush, attorney-at-law, acted for Hillary Carter in a number of matters including the purchase of various properties.

It was over five years since Bush had heard from Mrs. Carter but, in November 2010, she consulted him about drafting her will. Mrs. Carter, who was now quite elderly, told Bush that she was extremely grateful for his kindness to her over the years and for his reliable advice. She gave him a large box of gourmet chocolate truffles and two first class airline tickets to Paris for himself and his wife. She also asked him to include in the will a gift to his children of \$500,000.

Bush happily accepted the truffles and the airline tickets but was reluctant to include the proposed gift under the will. However, he was persuaded to insert the devise to his children when Mrs. Carter told him that she had already discussed the matter with her grandson, a young attorney-at-law, who insisted that it was the least she could do. Bush



duly prepared the will in accordance with Mrs. Carter's instructions. In January 2011, Hillary Carter died.

Bush now feels uneasy about all the gifts that she gave to him and his family and seeks your advice.

Advise Bush.

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### **QUESTION 8**

"Legal professional privilege is a fundamental human right long established in the common law. It is a necessary corollary of the right of any person to obtain skilled advice about the law. Such advice cannot be effectively obtained unless the client is able to put all the facts before the adviser without fear that they may afterwards be disclosed and used to his prejudice." *per* Lord Hoffman in *Morgan Grenfell v. Special Commissioner of Income Tax* [2002] HRLR 42

Discuss the above statement with special reference to the scope of legal professional privilege.

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