

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2013

ETHICS, RIGHTS & OBLIGATIONS OF THE LEGAL PROFESSION

(THURSDAY, AUGUST 8, 2013)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

On April 1, 2012, Earl Gray consulted Lipton T. Baggs, attorney-at-law, with respect to a defamation suit against Earl and also in relation to another matter concerning the registration of a trust.

Two days later, Earl delivered to Lipton the relevant documents in the defamation matter. Lipton immediately acknowledged service in the defamation matter since the period for acknowledging service would have expired the following day.

Lipton began his research on the matter and, without consulting Earl, Lipton asked Brooke Bond, Queen's/Senior Counsel, to prepare a legal opinion on the issue of damages. Brooke prepared the opinion and returned it to Lipton along with a bill of costs.

Four weeks later, Lipton, without Earl's prior consent, negotiated a settlement of the defamation matter. He drafted a consent order and sent a copy of it to the claimant's attorney-at-law.

Lipton submitted a bill of costs to Earl for the work that he had completed, including the consent order. He also submitted the bill for the legal opinion from Brooke. Since Lipton had done no work on the trust matter he did not bill Earl for anything in that regard.

Earl is resisting paying the bills. He says that he did not formally retain Lipton and, further, that Queen's/Senior Counsel should not have been involved "in such a straightforward matter". In addition, Earl was adamant that he would never have permitted the matter to have been settled. Earl also insists that Lipton has to complete the trust matter before he pays the bills.

Advise Lipton.

QUESTION 2

Charley is charged with theft. He is accused of stealing 20 computers from Malibu Company where he worked as a security guard. Alan, his attorney-at-law, visits him in prison to take instructions. Charley tells Alan that he was on leave and was nowhere near the company's premises during the time when these thefts were alleged to have occurred.

After disclosure from the prosecution, Alan discovers that the only substantial evidence that the prosecution has is a statement from Jake. According to that statement, Charley told Jake that "those computers are hot stuff" and that he had already "got rid of them for good money."

On the day before the hearing commences, Charley looks remorseful and tells Alan to go to his (Charley's) girlfriend's home to collect a box that has "some key information." In the box, Alan finds a DVD and an address book. The DVD contains footage from the CCTV at Malibu Company which showed Charley removing 20 computers and placing them in the back of a van. The address book contains the contact details of persons described as "Buyers" as well as the amounts paid for specific items that were stolen.

Alan hides the DVD and address book and continues the defence of his client, Charley, who is eventually acquitted. Rose, counsel for the prosecution, later discovers that Alan had the DVD and address book in his possession and wishes to know what action, if any, may be taken against him.

Advise Rose.

QUESTION 3

In 2011, Pepi retained Kola, an attorney-at-law and fellow antique car collector, to draft his will and to deal with various matters pertaining to his several businesses. This included the purchase of a vintage car garage from Coka, a dealer with a reputation for sharp practices.

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

Pepi then gave Kola a set of car mats to show his appreciation for the time and effort that Kola had expended on his matters. He also made an *inter vivos* gift of a Model T Ford car to Kola's wife, Chubbie.

Pepi died last month and under his will Pepi left his entire estate to his wife Bigga, other than a gold and diamond key ring which he bequeathed to Kola.

Bigga seeks your opinion as to whether the sale of the garage to Coka and the gifts to Kola and Chubbie may be set aside.

Advise Bigga.

QUESTION 4

On March 1, 2011, Jeff Mann, attorney-at-law, wrote the following letter to Toni Baz, attorney-at-law. Toni is the attorney for Asha Alley, the owner of the below-captioned premises.

“Dear Counsel,

Re: Undertaking concerning premises at 27 Eugene Drive, Queenstown

I hereby formally undertake that Mr. Norman Wooding, his servants, guests, visitors and or agents will quit, give up possession and vacate the premises at 27 Eugene Drive, Queenstown on Thursday, May 1, 2011 by 7:30 pm in the evening of that day.

Further, I hereby formally undertake to pay to you the sum of United States Forty Three Thousand Dollars (US\$43,000) on Thursday, May 1, 2011 in full and final settlement of Mr. Wooding’s indebtedness to you for rent in arrears, outstanding, due and payable to you.

I also formally undertake to pay to you the costs for any repairs to be carried out to restore the premises to the condition it was in at the time of the commencement of the lease as well as for the restoration of any fixtures and furniture damaged during Mr. Wooding’s occupation of the premises.

This is my solemn and irrevocable undertaking.

Yours faithfully,

Jeff Mann

Attorney-at-Law”

More than two years have elapsed since this letter was sent and to date Jeff has failed to pay any part of the sum owed on his undertaking. Mr. Wooding also remained in occupation of the premises until the time of his arrest one month ago. Toni is frustrated at the failure of Jeff to honour the terms of the letter dated March 1, 2011.

In his defence, Jeff claims to have suffered a mild stroke on April 25, 2011 and to have been hospitalized for several weeks. Jeff also claims that despite several requests to Asha to put him in funds to meet the payments, Asha failed to do so.

Advise Toni on any action she may take against Jeff.

QUESTION 5

DJ Patt, attorney-at-law, had a busy practice and he spent a great deal of time consulting with his clients.

In October 2012, Tricia retained DJ to apply for a patent for an invention that she had created. DJ, who had little knowledge of intellectual property law, still agreed to do the relevant work. He placed Tricia's file on his desk where it remained untouched for 7 months.

Tricia has now discovered that another person has recently applied for a patent on a similar invention and that her claim is now worthless. Tricia is incensed and has retained you to advise her as to her options in relation to DJ.

Last week, Ann Drew retained you to advise her as to any action that she could take against DJ. One year ago, DJ had been instructed by Ann's grandfather, Eddy, to prepare his will in which he purported to leave his entire estate to Ann.

DJ prepared the will which was witnessed by Ann's mother and brother. However, two months before the will was executed, the Probate Act was amended to make null and void any gift under a will in circumstances where a witness to the will was a sibling of a beneficiary under the will.

Eddy has died and Ann has learned that she will not be entitled to receive the property that was left to her under the will. She wishes to take action against DJ as a result of her disappointment.

Advise Tricia and Ann.

QUESTION 6

Anwar is an attorney-at-law who is also the host of a popular radio talk show. Two weeks ago, he dedicated his radio show to "the sentencing process". In the course of the show he made the following comment:

"Those who dispense justice must do so not in a dim-witted haze but must act precisely, clearly and fairly. The extreme severity or unbridled leniency that we find in sentencing by some judges cannot continue to be the order of the day."

Anwar was so pleased by the positive response to that radio show that he wrote an entire column on the same topic in the national newspaper's Sunday edition. In the column, Anwar

asserted that *"the inability of an incompetent judiciary, more concerned with salaries than anything else, has resulted in a harsh and uncompromising sentencing regime."*

Anwar was scheduled to appear before Justice Fairer in a high-profile criminal matter. Fairer had heard the radio show and read the newspaper column. Fairer was livid as last month he had granted an injunction which prohibited Anwar from publishing any articles in the newspaper for 6 months.

When Anwar appeared before Justice Fairer yesterday, for the jury to be empanelled in the criminal case, Justice Fairer suspended the trial and, without more, said to Anwar, "You are fined \$1,000 for rudeness and hard-headedness."

Anwar has retained you to advise him in relation to the issues that arise.

Advise Anwar.

QUESTION 7

April consulted May, attorney-at-law, in relation to an illness that she suffered following her consumption of juice manufactured by the Best Juice Company (BJC). The juice was found to have contained significant amounts of lead which resulted in April suffering kidney damage and having to receive medical attention, including several hospitalizations. April had instructed May to initiate legal proceedings against the BJC.

May had assured April that it was "an open and shut case" and said that she was sure she could get "at least a million dollars" in damages. May also said that she was so confident that she

would win the case that she was “willing to take no fees if we lose the case and 50 per cent when we win.” At no time did May present a retainer for April to sign.

May was in fact successful in recovering an award in April’s favour, but the amount was only \$200,000. May informed April of the results and sent her a bill of costs for the \$100,000.

April is displeased with the results in the BJC matter and wishes to retain June to appeal on quantum. She tells June that she has not paid May and does not intend to do so until after the appeal.

In order to assume conduct of the matter, June requests May to hand over April’s files but May refuses to do so until her fees are settled.

Both May and June are unsure how to proceed and seek your advice.

Advise May and June.

QUESTION 8

Ivory Towers, the chairman of the disciplinary body, has received complaints against the following attorneys-at-law:

- (i) Julia Iglesias – Julia is a committed contributor to her favourite charity. Since last year, she has had great difficulty meeting the amount that she had pledged to contribute. As such, for the past few months, every week Julia would withdraw \$200 from her clients’

account, in order to make her contributions. Julia had always intended to replace the amount withdrawn “when things get better” but to date has not done so.

- (ii) Freid Liberty - Liberty considers himself as much a journalist as an attorney-at-law. He has a weekly TV show called "*Right On*" and he also writes a column in the daily newspaper entitled "*Write on*". At the end of his TV show, Liberty says: "This is Freid Liberty, your rights lawyer. If you have been wronged, I can make it right. Call me now for a free consultation." Words to this effect also appear at the end of his newspaper column. In both instances, Liberty’s contact details are provided.

- (iii) Neida Job - Job, a recent law graduate, is unable to find employment as an attorney-at-law. Five months ago, he received an offer to work as a bartender in an upscale cocktail bar that caters exclusively to senior members of law firms and financial institutions in the downtown area. Job considers himself somewhat of a performing artiste and part of his act involves him donning his legal robes and improvising legal submissions to the ‘court’ while he mixes his cocktails.

Ivory seeks your advice on whether disciplinary proceedings should be instituted against Iglesias, Liberty and Job and what, if any, sanctions should be imposed.

Advise Ivory.

END OF PAPER