

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2006**

ETHICS, RIGHTS & OBLIGATIONS OF THE LEGAL PROFESSION

(FRIDAY, MAY 19, 2006)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Freddie Jonas, an attorney-at-law, was known for representing persons who had been charged with money laundering and drug related offences. Freddie was retained by Jimmy Knowles to represent him on a charge of drug trafficking. Freddie prepared his usual retainer letter which Jimmy signed and returned with the required deposit of \$75,000. Jimmy also gave Freddie several documents to keep for him. Some of these documents related to his defence on the charge.

In the course of their investigations into the charges against Jimmy, the police obtained a warrant to search Freddie's law offices. The police officers removed all of Jimmy's files including a legal opinion prepared by Freddie on the ingredients of the offence of drug trafficking. They also removed Freddie's employees' files, his personal and client accounts files including the bank statements from the office cabinets. During the course of this operation, Lakeisha Bell, Freddie's assistant, called him on his cell phone and told him what was happening. Freddie immediately returned to his office and ordered the police officers to leave on the basis that all of the documents in his office were protected by legal professional privilege. The officers agreed to leave but promised to return the next day.

Advise Freddie, who has asked you for your urgent assistance in the matter.

QUESTION 2

- (a) "It may be that a solicitor [attorney-at-law] who tries to act for both parties puts himself in such a position that he must be liable to one or other whatever he does"

Scrutton L.J. in Moody v. Cox and Hatt [1917] 2 Ch 71 at 91

Discuss the above statement and explain and illustrate by referring to decided cases and other sources.

- (b) Your firm (a 20 partner firm and the largest in the region) acted for Gellox Corp, a multinational oil company, for several years, before the company decided to pull out of the region in 2004. While Gellox continues to have substantial worldwide business interests, the closing down of the Caribbean operations has brought an end to your firm's relationship with the company and your firm in fact suffered a significant loss of fee revenues in 2005 as a result. Gellox's main competitor worldwide is Bushco, which has expressed a recent interest in starting business in the region, in large part to fill the vacuum created by the departure of Gellox. Your firm has been approached by Bushco, which is interested in retaining the firm, but is very concerned by the past relationship with Gellox.

What assurances can you give to Bushco in these circumstances as to how its business will be handled and how effective would you expect whatever measures are taken to be in practice?

QUESTION 3

- (a) Mr. Yacomb instructed Smithers & Co, a firm of attorneys-at-law, to prepare his Will in which his wife was to be his sole beneficiary. The matter was delegated by the partner in charge of that department to young Kirkland, an associate attorney-at-law of the firm who was instructed to send the Will to Mr.Yacomb's home for execution. Kirkland did not warn the client that his wife should not attest the Will as a witness, or of the

consequence of her doing so. Mr. Yacomb's signature was witnessed by his wife and returned to the firm for safe keeping.

Mr. Yacomb died and the gift to his wife failed because of the improper attestation of the Will.

Advise Mrs. Yacomb.

- (b) Joanna, an attorney-at-law, has been instructed by Davinia, a long-standing friend and client, to prepare her Will.

In the instructions, Davinia wishes to make a gift of a substantial amount to Joanna as a token of her regard and appreciation for her past services and many acts of friendship over the years.

Advise Joanna.

QUESTION 4

Madam Justice Cross has had the reputation of being an irascible judge who never suffers fools gladly, and is known for her summary way of "getting to the root of the matter". This often involves taking over the examination or cross-examination of a witness from Counsel so as to "arrive at the truth of the matter".

Marvin, a recently admitted attorney-at-law appearing for the defence in only his second criminal trial, was completely thrown off balance in the case he was presenting by the behaviour of the learned judge, and soon found himself floundering in his presentation of the case. His predicament drew a sarcastic

comment from the judge about the quality of lawyers being let loose on the public by the Law School.

This remark provoked Marvin to stammer that if her Ladyship would only allow him to get on with his case, his client might get a fair trial.

To this the judge retorted: "Are you saying that your client is not now getting a fair trial? Be very careful of your answer now."

Marvin realized that he hadn't chosen his words wisely, but made matters worse by saying that because of the constant interruptions by her Ladyship, he was not able to carry out any proper defence of his client.

The judge then said: "In other words, you are saying that I am not acting judicially, are you not?" Whereupon, Marvin, utterly confused, turned his back to the judge and muttered to a colleague in the bench behind him, "What the hell do I do now?"

The judge, now thoroughly enraged, continued "Mr. Marvin, you are not only incompetent as an advocate, but you are also rude and in contempt of court, and I so find. What do you have to say for yourself now?"

Marvin replied: "My Lady, I wish to ask for an adjournment to consult Counsel."

"Your application is refused. You must pay a fine of \$10,000 or in default you will do five days in prison."

Marvin wishes to appeal and seeks your advice.

Advise Marvin.

QUESTION 5

Jasper, an experienced businessman, embarked upon a number of highly speculative transactions. He orally retained Bernard, an attorney-at-law, to prepare various agreements and to represent him in a number of actions which had been filed against him. Having successfully dealt with some of the matters, Bernard presented a number of bills of costs to Jasper, who refused to pay any of the bills on the ground that Bernard was not entitled to payment until all the matters had been completed. Bernard immediately terminated the retainer and brought an action to recover the sums claimed in the bills. Jasper has just consulted you.

Advise Jasper on all relevant matters.

QUESTION 6

- (a) In delivering the opinion of the Privy Council in the case of Attorney General of the Gambia v N'jie [1961] 2 ALL E.R. 504, Lord Denning noted that with respect to exercise of the court's disciplinary jurisdiction that:

“In the colonies, the judges have retained the power in their own hands, at any rate where the profession is fused.”

In the light of Lord Denning's observation, write a legal opinion as to the position today regarding the taking of disciplinary proceedings against attorneys-at-law in your jurisdiction. What powers, if any, do the judges now exercise?

- (b) Discuss the importance of lawyers' undertakings in professional practice and the world of commerce. What are the ethical obligations that flow from the giving of an undertaking?
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QUESTION 7

- (a) You are appearing at the trial for a man charged with murder, and your instructions at first are that your client was not the person who did the act as he was elsewhere at the material time.

As the case progresses, however, it becomes abundantly clear to you that those instructions cannot be correct, and you take "fresh instructions" from your client, who now admits to you that it was he who did the act, but he wishes you to proceed with the case along the lines previously discussed.

- (i) How should you now proceed?
- (ii) What should you do if your client refuses to accept your advice as to your future conduct of the case?
- (b) In the course of his closing address to the jury on behalf of the prosecution, Garth QC/SC says of two defence witnesses who have come from the U.S.A., and of defence counsel, who is a leading silk from London:

"These white people want to come into our black people country and tell us what to do. But colonial days done.

Send them back where they come from and send the accused straight to the gallows where he belongs!”

The accused is convicted and seeks your advice on whether the conduct of counsel for the prosecution can provide grounds of appeal.

Advise the accused.

QUESTION 8

Newman was the unsuccessful claimant/plaintiff in a suit for negligence arising out of a motor vehicle accident in which he was severely injured. He was represented by Forceful, an attorney-at-law. His appeal to the Court of Appeal has recently been dismissed. In the course of the hearing in the Court of Appeal, the judges were severely critical of Forceful’s general conduct of the case, in particular, the drafting of the statement of claim/particulars of claim and his cross-examination of the defendant at the trial.

Newman is naturally very upset and has retained Fairman with a view to taking proceedings against Forceful. Fairman in turn has requested you to write an opinion.

A perusal of copies of the correspondence, statements, statements of case/pleadings, notes of evidence and judgments in the matter leads you to come to the following conclusions –

- (i) that although the pre-suit advice and the procedures adopted by Forceful were not wrong, you would have handled the matter in a different manner;

- (ii) the statements of case/pleadings were, however, very badly drawn by Forceful;
- (iii) Forceful's actual conduct of the trial showed clear signs of lack of preparation and attention to detail.

Advise Fairman what proceedings, if any, can be taken against Forceful.
