

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2008

ETHICS, RIGHTS & OBLIGATIONS OF THE LEGAL PROFESSION

(FRIDAY, MAY 16, 2008)

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

- (a) At about 2:00 a.m. one morning Peter Black, attorney-at-law, is rudely awakened by the shrill ringing of his telephone. The caller turns out to be his neighbour, Annette White, who has been having matrimonial problems and has had a particularly ugly fight with her husband the previous evening. The essence of her call is that she has now determined that she wishes to file for divorce but is also concerned for her safety. In fact she is calling Peter from her mother's house, having earlier fled from her husband's wrath.

On arrival at his office later that morning, Peter prepares and files an application in court seeking protection and occupation orders under the relevant legislation. He advises Annette of the steps he has taken and she expresses gratitude for his prompt action. In due course, the orders are served on her husband Donald White, who tells the process server that his time has been wasted. It appears that Annette has reconciled with her husband. She has told her husband that while she had called Peter to find out what her options were, she had not instructed him to take any action on her behalf. Donald has contacted his attorney to deal with the matter in light of what Annette has told him.

Advise Peter on the legal implications of Annette's present stance in the matter.

- (b) In an unconnected matter, Peter has been retained to act for Banovia Trust Company Limited (a company for which he regularly does mortgage work) which is the sole executor in the estate of Benjamin Frank. According to the terms of his retainer he is expected to prove the Will and thereafter to act in the administration of the estate. Mr. Frank was a very wealthy man, with interests in several companies and properties across

the world. He died leaving several children to whom he has left different assets. Two of the children are minors and are the beneficiaries of trusts set up by him under his Will.

The personnel at the Trust Company with whom Peter has to deal in relation to the matter are difficult and testy, often subjecting him to severe cross-examination in response to requests for cash disbursements which he is called upon to make. However the work is lucrative and the company is a good mortgage client.

On obtaining probate of the Will, Peter billed the Trust Company for services rendered up to that point. The company has responded by expressing dismay at his sending them a bill when “the matter is by no means complete”. Peter is very annoyed and has indicated to them that their position is unreasonable and that until the bill is paid he will not be taking any further steps in the administration of the Frank estate nor will he be releasing to them titles which he is holding for them in connection with their mortgage work.

Advise Peter on his rights and obligations in this matter.

QUESTION 2

- (a) You appear for the prosecution in a matter in which Alton is charged with the murder of his girlfriend, Barbara. You intend to rely primarily on a statement given by Alton to the police after the killing. In that statement he confesses to having killed Barbara and states that he did so in a fit of

rage, after having been told by her that she had lost interest in him and was in fact seeing his best friend, Dwight.

During the course of your preparation for the trial, you discover upon interviewing the investigating officer, that Alton had in fact given an earlier statement in which he denied killing Barbara and asserted that she had in fact been murdered by Dwight who was known by all, he said, to have a “foul temper”. Dwight is also himself on your list of witnesses for the prosecution, having given a statement to the effect that he was aware that Alton had been “insanely jealous” of Barbara’s developing new relationship with him.

Having assessed the matter fully, you have come to the view that Alton’s earlier statement is not helpful to the prosecution’s case and you therefore do not propose to tender it in evidence at the trial.

Do you owe a duty to the defence in these circumstances and, if so, what is that duty?

- (b) You appear for the defence at Jacob’s trial for murder. Jacob’s defence is one of alibi, supported by the testimony of his girlfriend to the effect that at the time of the alleged offence he was nowhere near the scene of the crime, they having been together at the Tobago Jazz Festival.

During the course of his summing up, the trial judge tells the jury that it is for the defence to satisfy them beyond doubt of the truthfulness of Jacob’s alibi and he also omits to caution them on the issue of identification along Turnbull lines.

At the end of the summing up, the trial judge asks both you and counsel for the prosecution whether there is anything that he has omitted or

anything further that you would wish him to tell the jury. Counsel for the prosecution reminds the judge of the need for a Turnbull direction on identification, which he duly gives in adequate terms, save that nothing further is said about the burden and standard of proof in respect of the alibi.

As counsel for the defence, how should you respond to the judge's further question, directed again at both counsel, "Counsel, is there anything else that I should tell the jury?"

QUESTION 3

- (a) Between 1970 and 1999 Jeremy Mordent, attorney-at-law and partner in the firm of Mordent, Blake and Jones, acted for Phyllis Moneyful in a myriad of matters ranging from the purchase of various properties, to the dismissal of members of her household staff. He had also counselled her about preparing a Will and had in fact prepared one for her in about 1998. Pursuant to that Will, various properties had been left to members of her extended family with one nephew, Jimmy Hasselbank being her residuary legatee.

It has been some five years since Mr. Mordent last heard from Miss Moneyful but recently she attended on him for the purpose of revising her Will. It seems that her nephew Jimmy has "fallen in with bad company" and has in fact been such a drain on her resources that she considers that he has already received his inheritance and wishes to strike him from the Will.

Miss Moneyful, who is now quite elderly, tells Mr. Mordent that she is extremely grateful for his kindnesses to her over all these years and for his reliable counsel and advice. She therefore includes in the revised Will a gift to his children of some \$300,000. Mr. Mordent is at first reluctant to accept such generosity but is persuaded to accept when Miss Moneyful tells him that she has already discussed the matter with her niece, a young attorney-at-law, who agreed that it was the least she could do. He proceeds to prepare the Will in accordance with Miss Moneyful's instructions.

Miss Moneyful has now died and the matter of her estate is being handled by you. Advise the executors on the propriety of the gift to Mr. Mordent's children and whether it may be challenged.

- (b) Manchester Cement Limited has been the client of J.A. Young, attorney-at-law, for some ten years. It has been customary for the company to give to Mr. Young a gift at Christmas. In some years the gift might consist of grocery vouchers and a ham while in others a piece of crystal or artwork. Mr. Young is building his dream home in the hills overlooking the city and happens to mention the fact to the Managing Director of Manchester Cement. The following week he is shocked to visit the construction site and to be told by the Contractor that a large shipment of cement had been delivered to the site by Manchester Cement. On calling the company about it, he is told by the Managing Director that it is the company's gift to him for his years of service and that any additional supplies needed will be provided free of cost.

Mr. Young tells his family of his good fortune and his daughter, a recent graduate of law school, who now works with him, is also aware of the several Christmas gifts given to him over the years. She vaguely recalls learning something in school in relation to matters such as this which

causes her some disquiet, but cannot remember exactly what. She meets you over lunch and mentions the matter to you.

Does she have any cause for concern and why?

QUESTION 4

At his trial for fraud in the Supreme/High Court, Carlos is represented by Peter Pritchard, Q.C., a leading silk at the criminal bar, known for a quick mind and a smooth tongue. Presiding at the trial is Mr. Justice Wenger, a judge with a reputation for a short temper. During Mr. Pritchard's cross examination of Inspector Sherlock, the chief investigating officer, the following exchange takes place:

Mr. Pritchard: "Now officer, I gather that your investigation of this matter took you far and wide?"

The Judge: "Come, come, Mr. Pritchard, that's a hopelessly vague question – you are Queen's Counsel and should know better than that!"

Mr. Pritchard: "Is your Lordship ruling that my question is out of order?"

The Judge; "You can call it what you like. Will you just rephrase the question so that we can get on?!"

Mr. Pritchard: "Your Lordship pleases. Inspector, do you understand what is meant by the expression 'far and wide'?"

The Judge: [to the witness who has begun to nod in response] "Don't answer that question. Mr. Pritchard, are you trying to flout my ruling? Look, don't try my patience today!"

Mr. Pritchard: "Milud, happily for you it is not your lordship's patience that is on trial, for I doubt very much that it could be guaranteed a fair hearing in this court today."

The Judge: “Mr. Pritchard, you have always tended to be incredibly rude, but you have outdone yourself today. I am citing you for contempt and I am asking you now to show cause why you should not be committed to prison immediately.”

Mr. Pritchard: “Your Lordship pleases. May I assume that even in these circumstances, I am entitled to counsel? I will need a short adjournment to enable me to retain counsel.”

The Judge: “You should have thought about that before behaving so insufferably towards the court. I am not adjourning and you must show cause now.”

At this point, Mr. Pritchard politely declines to take any further part in the proceedings, telling the judge to “do his duty”, whereupon the judge promptly finds him guilty of “serious contempt” and fines him \$100,000 or two weeks imprisonment in default.

When his longtime law partner, Ms. Judy Hubbard, Q.C. hears of the incident she immediately calls a press conference to publicize what has happened. In the course of it she remarks angrily that this is yet another example of the highhandedness and corruption in the system of which the Bar Association has been complaining for years. It has now come to Ms. Hubbard’s attention that the DPP’s advice has been sought as to whether any proceedings can be brought against her.

Advise both Mr. Pritchard and Ms. Hubbard.

QUESTION 5

Joe is an attorney-at-law in private practice as a sole practitioner. He does a wide range of work, including criminal and civil litigation, some conveyancing and the odd commercial matter. He prides himself on having gained the confidence of the commercial community in ten short years and often boasts that throughout the length and breadth of the jurisdiction it is well known that his word is his bond.

Agnes is a friend and client of Joe's, for whom he has done several different bits of work over the years. When she was purchasing the house in which she lives some years ago, Joe had acted for her. That transaction had been facilitated by a loan from the Roseau Building Society (RBS), which holds a first mortgage over the property and as a result has custody of the title to the property.

A few months ago, Agnes advised Joe that her business was in some financial difficulty and that she intended to borrow some money from the Roseau Commercial Bank (RCB), which was willing to take a second mortgage on her home. All she required of Joe, she told him, was that he borrow the title on the "usual undertaking" from RBS to enable RCB to register its mortgage and thereupon to return it to RBS. Acting on these instructions, Joe duly wrote to RBS in the following terms:

"I represent Agnes. On her behalf I hereby request that you send me on loan her title registered at Volume/Block 41 Folio/Parcel 26 of the Register Book of Titles/Land Register to facilitate the registration thereon of a second mortgage in favour of RCB (to which I am instructed that you have consented) on my undertaking to return the Certificate of Title/Land Certificate to you upon completion of that transaction and not otherwise to part or deal with it in any manner prejudicial to your interests."

On the strength of this undertaking, the Certificate of Title/Land Certificate was duly sent to Joe by RBS. In due course, Joe is instructed by RCB to register its second mortgage on the title, which he does. On the return of the title from the Titles Office/Registry, it is placed on Agnes' file in Joe's office pending his return from Philadelphia where he has gone to watch his son participate for his school in the annual Penn Relays. Before his return, Agnes attends his office and persuades his assistant to "lend" her the title for a few days to enable her to do another transaction upon her promise to return the document to Joe's office within a few days. By the time Joe gets back into his office, Agnes has disappeared and the title is never returned to him.

RBS now writes to Joe calling upon him to honour his undertaking, to which he responds that he cannot comply because he "has been the victim of a dishonest client and an inexperienced secretary", but that he is "still looking for Agnes". Agnes' loan at RBS has in the meantime fallen into arrears.

Advise RBS as to the courses of action available to it and which one(s) it should take.

QUESTION 6

Your firm is one of the largest in your jurisdiction, comprising some 16 partners and 10 associates. For many years the firm acted for the Alabama Power Company ("Alabama"), which was the majority shareholder in the local electricity supply provider, Caribbean Public Service Company Limited ("CPS"). CPS, as its subsidiary, was also represented by your firm. Alabama sold out its majority shareholding to the St. Louis Power Supply Co. ("St. Louis") and your firm

ceased to represent Alabama which no longer had a presence in the region. The firm has continued to represent CPS. As a consequence of matters discovered since the St. Louis takeover, CPS now wishes to file action against Alabama for breach of a management contract which it had with CPS. St. Louis also wishes to file action against Alabama for misrepresentation and breaches of warranty in the share sale transaction. Alabama now seeks an injunction against your firm to prevent it acting on behalf of either CPS or St. Louis.

Advise your firm on the steps which it can take to facilitate its continued representation of both CPS and Alabama in these circumstances and discuss the factors which affect their effectiveness.

QUESTION 7

- (a) “Legal professional privilege is thus much more than an ordinary rule of evidence, limited in its application to the facts of a particular case. It is a fundamental condition on which the administration of justice as a whole rests.” (per Lord Taylor CJ in R. v. Derby Magistrates’ Court, ex p. B [1995] 4 All ER 526, 540-1)

With reference to decided cases, comment on the limits, if any, of the scope of legal professional privilege.

- (b) “I do not say that Rondel v. Worsley was wrongly decided at the time. The world was different then. But, as Lord Reid said then, public policy is not immutable and your lordships must consider the arguments afresh.” (per Lord Hoffman in Arthur J S Hall v. Simons [2000] 3 All ER 673, 704)

Comment on the status of the decision in Hall v. Simons in your jurisdiction. What, in your view, are the requirements of public policy with regard to the liability of advocates in suits for the negligent conduct of a case in court in your jurisdiction?

QUESTION 8

J.B. & Co. is consulted by a client who instructs them to bring an action against the Government and also against the minister responsible for national security personally to recover damages for assault, false imprisonment and malicious prosecution.

The client's instructions are that on the night in question he was having a drink with friends in a downtown bar. According to him a police patrol arrived on the scene and all of the patrons in the bar were herded into a police vehicle and taken to the CID Headquarters, where they were manhandled, beaten and, after an overnight stay at Headquarters, charged with loitering, disorderly conduct and resisting arrest. However after several court appearances, the magistrate was told that the three police officers who were on patrol that night had since left the force and could not be found as a result of which the prosecution was not in a position to proceed. The charges against J.B.'s client and his friends were therefore all dismissed.

J.B.'s client insists that on the night in question the minister himself, a flamboyant character, was personally present in the police patrol vehicle directing operations as part of the Government's latest crime fighting initiative and that it was the minister who had in fact given the order for the arrest of himself and his friends. According to the client the minister had described them as "a bunch of drunken

slackers who obviously need somewhere to cool out tonight". J.B. questions the client very carefully on this allegation as he doubts the minister himself would have been personally present on such a patrol, but the client stoutly maintains that the minister was indeed there, pointing out that the minister was also dressed that night in his trademark trench coat and boots. J.B. accordingly takes a signed statement from the client and two of his friends, who support his account in all material respects, and files a claim form and particulars/statement of claim on his behalf. The Government's defence denies the allegations of assault etc. and asserts reasonable and/or probable cause for the arrest and charge, while the minister's defence is a complete denial that he was present on the patrol on the night in question.

The matter goes through all the interlocutory stages and is in due course set down for trial at which point J.B. reminds the client by letter of the trial date and invites him to come in for a pre-trial conference together with his witnesses. They miss two pre-arranged appointments and finally, the week before the trial date, J.B. discovers that the client and his witnesses have all migrated and are not likely to return for the trial. On the date of the trial J.B. advises the court of these developments and the action is, at the insistence of counsel for the Government and the minister, struck out with costs against the claimant. An application for a wasted costs order is subsequently made against J.B. on behalf of the minister.

You are asked by J.B. to represent him and to resist the application. What will your submissions be?
