

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2009

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(FRIDAY, MAY 22, 2009)

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

Billy was charged with murder. The offence was allegedly committed during a robbery of a Texaco gas station along Bradshaw Boulevard in the middle of town at 10:00 p.m. on a Friday night in August 2008. He gave sworn evidence in his defence and stated that he was at home on the night in question. In fact, he said, he did not even know where Bradshaw Boulevard was, having only recently moved to the capital town from the country. The prosecution naturally challenged the truthfulness of Billy's evidence and during his cross examination by counsel for the Crown/Prosecution, he was asked the following questions:

- Q. *You say you have never been to this Texaco gas station?***
- A. *No.***
- Q. *So I take it you don't know Club Ecstasy, the night club which is right next door to the gas station on Bradshaw Boulevard?***
- A. *Never heard of it sir.***
- Q. *You see that fat policeman sitting in court over by the door there?***
- A. *Yes sir.***
- Q. *You know him, right?***
- A. *Never seen him before today, sir.***
- Q. *Suppose I tell you that he works as a security guard at Club Ecstasy every Friday night, what would you say to that?***
- A. *I couldn't say anything about that sir. I am telling you I don't know him and I don't know this place you call Ecstasy. You giving me news now.***
- Q. *All right, here is some more news: I suggest to you that that same fat policeman over there saw you at Club Ecstasy almost every night last summer. What you say to that?***
- A. *More news to me sir.***

Q. In fact I suggest to you that you are not a man to stay at home on a Friday night at all. In fact, I myself used to see you out on the town all the while last summer. Now, what do you say to that, Mr. Goody-Goody?

At this point, just as Billy's counsel was about to make an objection, Crown/Prosecuting Counsel indicated that he would move on to another topic, which he did. This exchange elicited no reaction or comment from the trial judge, neither did he say anything to the jury about it in his summing up.

Billy is convicted and seeks your advice on whether there is any point in his appealing on the ground of what he describes as the "bad behaviour" of Crown/Prosecuting Counsel.

Advise Billy.

QUESTION 2

- (i) Grannum & Co is a small firm of attorneys-at-law with a thriving conveyancing practice. Jason, who has been a client of the firm for many years, is desirous of selling his house and is introduced by a friend to Dave, a prospective purchaser. In due course, Jason and Dave agree on a price and terms of payment and Jason gives instructions to Grannum & Co to act for him in the sale and to do whatever is necessary to complete the transaction. At Jason's suggestion, Dave approaches Grannum & Co to act on his behalf as well, which they agree to do. Before the transaction is completed, it is discovered that there is a breach by Jason of a restrictive covenant/agreement on his title, as a result of which Dave's prospective mortgagee declines to go ahead unless the breach is rectified or the

restrictive covenant/agreement modified. Jason refuses to do either and instructs Grannum & Co to give Dave an ultimatum requiring him to complete the purchase within 7 days, failing which his deposit will be forfeited and the sale cancelled. The firm duly complies with these instructions by serving the required notice. Dave is unable to complete without the mortgage loan and in due course the sale is cancelled and his deposit forfeited.

Dave is very upset at how things have turned out and seeks your advice as to his recourse, if any, against Grannum & Co, who, he insists, owed him a duty as his attorneys-at-law not to take Jason's side against him when problems arose.

Advise Dave.

- (ii) Would it make any difference to your answer to (i) above if you were told that Jason and Dave had in fact been represented by different partners in Grannum & Co?

Give reasons for your answer.

QUESTION 3

Daniel, Edson & Co is a small firm of attorneys-at-law, specialising in conveyancing and succession and some limited commercial work. Alister, a British national, has been a very good client of the firm over the last few years, having acquired through them a number of properties in the resort area for investment purposes. Sammy Edson, one of

the firm's senior partners, has been mainly responsible for taking care of Alister's business from time to time.

In the late afternoon of June 25, 2008, while Sammy is in England attending the Wimbledon tennis championships, members of the Police Special Crime Task Force ("PSCTF") arrive at the offices of the firm armed with a search warrant. This warrant was issued by a magistrate pursuant to legislation governing mutual assistance in criminal matters between Commonwealth countries.

Sammy's daughter, Jasmine, who was admitted to practice in 2007, is the only attorney-at-law in the office at the time and is told by the officer in charge of the police party that they are investigating all aspects of Alister's business activities in the Caribbean, pursuant to a request from the British Government, which is considering laying charges against him. The officers demand access to all of the firm's files relating to Alister's affairs and assure Jasmine that the files will all be handed over intact to the Director of Public Prosecutions/Attorney General herself, who will make a determination as to whether they should be turned over to the British Government.

Jasmine, who is at a complete loss as to what to do, cannot find her father (it is, in any event, now close to midnight in England) and frantically seeks your advice over the telephone. Even as she is doing this, she tells you, the police officers are in the general office area searching filing cabinets and inspecting documents relating, not only to Alister's, but to other clients' affairs.

Advise Jasmine what position she should take with the police, giving reasons for your answer.

QUESTION 4

Sally retained Joshua, an attorney-at-law, to bring proceedings against Santiago & Company Ltd, her former employer, for wrongful dismissal and libel. Joshua told Sally that his fees would be based on an hourly billing rate of the equivalent of “about US\$100 - 125”, but assured her that she was not to worry too much about this, as he was very sympathetic to her case and fully intended to be fair to her. However, they entered into no formal fee agreement.

In due course, Joshua filed the claim in the Supreme/High Court. It was defended and he therefore proceeded to take all necessary steps to prepare the action for trial, including interviewing prospective witnesses, preparing witness statements, conducting legal research and the like. As part of the exercise, he also travelled to Barbados and visited the Cave Hill campus of the University of the West Indies for two days to undertake further research in the law library. In addition, he sought and received an opinion from eminent senior counsel in Trinidad & Tobago on the damages aspect of the claim.

Three months before the date fixed for trial of the action, Joshua and Sally had a serious disagreement as to trial strategy, resulting in their mutually agreeing that he would withdraw from representing her and that she would seek other counsel. As agreed, Joshua immediately rendered his bill for professional services in the following terms:

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|--------------|--|---------------------|
| (i) | Cost of travel to and accommodation in Barbados for the purpose of legal research | US\$1,500.00 |
| (ii) | Fee paid for the opinion on damages of Senior Counsel in Trinidad & Tobago | US\$2,000.00 |
| (iii) | Professional fees for receiving your instructions, filing action, research and general care and conduct | |

of the matter to date – 30 hours at the agreed rate of

US\$125.00 per hour

US\$3,750.00

Total

US\$7,250.00

Sally is very upset about this bill, which she considers to be exorbitant, and seeks your advice as to what she should do. Specifically, she instructs you that, in the first place, she had no prior discussion with Joshua about his going on a “joyride” at her expense to Barbados or about his consulting counsel in Trinidad & Tobago (“What about the many senior counsel in this country?”, she asks). Secondly, she does not think that Joshua’s own fee is fair and reasonable, particularly as she had no agreement with him on an hourly rate. And, thirdly, Joshua still has her files and she needs to recover them in order to instruct other counsel in time for the trial.

Advise Sally.

QUESTION 5

Ray is a building contractor. Over the last 15 years he has built several small apartment complexes in the city and a couple of years ago conceived what he described as his “dream scheme”. Each apartment will feature central air conditioning, a sunken living room, a Jacuzzi and all imaginable modern conveniences. There will also be, for general use of residents, a swimming pool, two tennis courts, a squash court and a fully equipped gym.

Cassandra was Ray’s long-time attorney-at-law and friend. She had acted for him on all of his previous projects. At his request, she gave him an estimate of her projected fees,

in connection with the new scheme, to obtain titles, prepare agreements for sale, have carriage of sale of all the apartments and to advise generally on any legal matter that might arise during construction. Her estimate came to just about 2% of the total project cost, which was in Ray's view, given that this was going to be a multi-million dollar project, "outrageously high".

So Cassandra suggested an alternative: in lieu of a fee, she would accept two furnished apartments (of her choice) at the completion of the project (subject to Ray putting her in funds to meet duties and taxes and all other usual disbursements). Although he had never seen anything like this done before, Ray readily agreed to this proposal and the project proceeded on this basis, with Cassandra acting as usual as his super-efficient legal adviser and business confidante.

Construction was completed in record time and the demand for the finished apartments far exceeded even Ray's most optimistic expectations. He is now in the process of giving possession to purchasers and meets with his accountant to go over and finalise the project accounts. It is pointed out to him by the accountant that the value to Cassandra of the two apartments chosen by her pursuant to the fee agreement (one, a penthouse facing south with a view of the sea and the other, a corner apartment on the northeastern side of the building with a mountain view) will be two and a half times the amount of the original fee estimate (or 5% of the total project cost, which has escalated considerably).

Startled by the outcome of what he now considers to be a very bad deal, Ray decides to seek some advice as to whether Cassandra can compel the transfer of the apartments to her pursuant to the agreement.

Advise Ray.

QUESTION 6

- (i) You are consulted by a colleague, Jenna, who has been acting for the purchaser in a conveyancing transaction. Jenna's client is a returning English resident, who plans to return to live in the Caribbean when he reaches retirement age next year.

According to Jenna, everything went quite smoothly with the transaction, up to the point when the vendor's attorney-at-law sent her a statement to close showing a final balance due from her client of \$2,524,500. The vendor's attorney-at-law requested that Jenna either send her a cheque for this sum or give her professional undertaking to pay same upon completion. Jenna forwarded the statement to her client, asking him to put her in funds to enable her to give the required undertaking and the client quickly sent her a banker's draft for £50,000, which at the then prevailing rate of exchange of \$50.49 = £1 amounted to exactly the amount required.

As a result, Jenna duly gave her undertaking to the vendor's attorney-at-law to pay the balance purchase price of \$2,524,500 in exchange for title registered in her client's name as proprietor. However, she decided not to convert the pound amount until the funds were actually needed and lodged it to her foreign exchange account.

Three weeks later, the vendor's attorney-at-law sent her the title registered in her client's name and called upon her to fulfil her undertaking by sending her the balance purchase price. Jenna then instructed her banker to sell the £50,000 and to lodge the proceeds to her clients' trust account to enable her to draw her 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 \$45.21 = £1, with the result that the £50,000 was now equivalent to \$2,260,500, that is, \$264,000 short of the amount of her undertaking.

In a panic, Jenna immediately sent an email to the client in England asking him to send the difference (now another £5,839.41 more). In a swift response, the client retorted that he had no intention of sending her any more money and told her to do what she had to do and to send him his title, which he looked forward to receiving as soon as possible.

Advise Jenna.

- (ii) Would it make a difference to your answer to (i) above if Jenna, on her client's specific instructions, had retained the £50,000 in foreign currency pending completion? Give reasons.
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QUESTION 7

- (a) John, who is a senior attorney-at-law practising in your jurisdiction, is a lover of carnival, particularly the Trinidad & Tobago variety. He tries to go each year and, as he loves to tell everyone, including his despairing wife (who has never been permitted to accompany him), he loves "to get on bad, bad, bad". But this year in Port-of-Spain, he overdid it, even by his own standards, and on Ash Wednesday morning he was found by a police officer in a drunken stupor on the steps of the Hall of Justice, in the full view of staff and members of the public entering the building. John is sufficiently well known in the region for news of this to be picked up very quickly by the CANA news network and the disciplinary

body in your jurisdiction has now sought your advice as to whether proceedings should be brought against John for bringing the profession into disrepute.

How would you advise them?

- (b) *“Many are the cries today about the errant behaviour of attorneys-at-law. It is the duty of the courts to respond adequately and properly to the cries of the aggrieved parties whenever the occasion demands it. To do otherwise would be to abdicate one’s responsibility and to court disaster in the long run for the administration of justice and the country as a whole”.*

Forde v The Law Society and Another (1987) 40 WIR 361, 374, per Bernard CJ.

Comment on the above dictum, in the light of the disciplinary procedures in your jurisdiction. Do they in your view, both in theory and in practice, provide adequate safeguards to the public, or should the courts intervene?

QUESTION 8

During the course of a civil trial in the Supreme/High Court, a noisy quarrel developed between Mr Briggs, counsel for the claimant, and Mrs Pettit-Smith, counsel for the defendant, during the course of which each subjected the other to some terrible abuse. Mrs Pettit-Smith is reported to have shouted at Mr Briggs, “You are a dishonest fool – everybody knows that you cheated your way through law school!”, to which Mr Briggs’ reply was, “Don’t draw my tongue if you don’t want me to tell the judge how you got through law school!”. At this point the judge, Kendall J, utterly appalled at the behaviour of counsel, called upon them both to desist at once, whereupon Mrs Pettit-

Smith immediately took her seat. But Mr Briggs instead headed for the courtroom door and, just before leaving, turned back to face Mrs Pettit Smith with a parting shot: “You think I am an easy man, if this judge wasn’t here to protect you, you would really see something in here today”.

Kendall J, saying angrily that Mr Briggs had now gone much too far, immediately ordered that he be brought back before the court and, when he did arrive some 20 minutes later (having told the policeman who had been sent to fetch him that “the judge will just have to wait”), informed him that he was “wilful and disobedient” and there and then fined him \$10,000 for contempt of court.

Mr Briggs has filed an appeal on the grounds that (1) he was in no way rude to the judge and so cannot be guilty of contempt of court and (2) he had not been given a chance by the judge to say anything in his own defence.

Advise Mr Briggs on his chances of success on appeal.
