

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2010

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(FRIDAY, MAY 21, 2010)

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

Dougy Pinden, attorney-at-law, has a thriving practice with clients from all around the Caribbean. He specialises mostly in civil litigation and conveyancing matters. Amongst his clients is Freddy Aga, a business tycoon, whom Pinden has represented in four separate contract cases, all of which have been concluded and are pending judgment. Despite several telephone calls and emails to Aga, advising him about his bill and requesting payment, Pinden has still not been paid. He now wishes to institute proceedings against Aga to recover his fees.

Pinden has also advised Aga that he will no longer be representing him in his current tax matter, which is still at the interlocutory stage, and further that he would not hand over the files to any other attorney that Aga may retain, until all his fees are paid in full.

Meanwhile, Pinden has been approached by Pat Mann to represent him in a personal injury claim against BJ Golden, arising from a motor vehicle accident last month. Mann has indicated, however, that he cannot afford to pay the legal fees involved and wonders whether Pinden would be willing to represent him on a “no win, no fee” basis. Pinden thinks that this may turn out to be a lengthy and difficult matter and is inclined to accept this arrangement only if he would receive 50% of the award.

Advise Pinden.

QUESTION 2

In January 2010, Mae’s husband Tom was diagnosed with terminal cancer. Tom retained Audley, an attorney-at-law and fellow art collector, to draft his will and to deal

with various matters pertaining to his several businesses, including the purchase of a factory from George Gale, a businessman with a reputation for sharp practices.

George had also been a client of Audley's firm for many years and, in fact, at the time Audley was retained by Tom, Audley was in the process of finalizing another transaction for George. Audley was therefore able to complete the purchase in record time and George was able to secure his asking price, which was an amount 15% above the market value of the property. Audley also successfully completed all of the other matters for which Tom had retained him. Audley's fees were paid in full.

Tom then gave Audley a fruit basket to show his appreciation for the effort that Audley had expended on his matters. He also made an *inter vivos* gift of an acre of land to Audley's wife, Winnie, who was a farmer.

Tom died last month. By his will Tom left his entire estate to his wife Mae, other than a Picasso painting which he bequeathed to Audley.

Mae seeks your opinion as to whether the sale of the factory to George and the various gifts to Audley and Winnie may be set aside.

Advise Mae.

QUESTION 3

Justice Caesar is presiding in the High/Supreme Court over a murder trial. The trial spanned some three weeks. During the course of the trial, Justice Caesar allowed into

evidence several confessions made by the accused, which ought not to have been admitted, despite the objection of Brash Talkey, attorney-at-law for the accused. After all of the evidence was led by the prosecution, the accused elected not to call any evidence and both attorneys gave their closing speeches. Justice Caesar adjourned the trial to the following day for his summing up.

Later that afternoon Brash Talkey, who is also the popular host of the afternoon radio talk show, **Know Your Rights**, began a discussion on the Witness Protection Bill presently being debated in Parliament. His callers began talking about his trial. Talkey accused the prosecution of manufacturing evidence and said that the DPP/AG should face disciplinary charges for forcing criminals to give evidence against his client. His tirade continued for 15 minutes in which he accused Justice Caesar of –

“... completely bungling simple evidential matters to the prejudice of the accused. The society is paranoid about crime and any accused that stands accused of murder will never get a fair crack at the whip in these courts. Never mind my client is a man of impeccable character and a pastor of the well known church - Highway to Heaven.”

The next morning, at the resumption of the hearing, Justice Caesar stated: “Mr Talkey, I heard your show yesterday and I will adjourn this hearing for you to obtain representation to assist me on whether I should punish you for contempt of court.”

As Justice Caesar rose to leave, Talkey’s law partner Andy Chattie QC stood up, shook his fist at Justice Caesar and muttered, “Everybody knows you and the [DPP] [AG] are old drinking buddies. You will get what’s coming to you!”

Justice Caesar is visibly shaken but shouts, “Mr. Chattie I find you in gross contempt and fine you \$50,000 or 1 week imprisonment in default.” Justice Caesar immediately stormed out of the courtroom.

Advise Chattie and Talkey.

QUESTION 4

Jenny Smith, the Chairperson of the disciplinary body in your jurisdiction, seeks your advice on whether disciplinary proceedings should be instituted against the following attorneys-at-law -

- (i) Gary Walker – His profile on Facebook reveals that amongst his “mutual friends” is Thomas Wrong, a notorious gangster. There are also photos on his Facebook Wall showing him at some well known hangouts for Wrong and his Bad Man gang.
- (ii) Jeri Kurl – A self-proclaimed “party girl”, Kurl has been seen on a number of occasions at various beach parties, reportedly “clad in a skimpy bikini, dancing hard ‘til the break of dawn, and always with a bottle in her hand.”
- (iii) Roxi Brown – Last month Brown was convicted for tax evasion. She has also been charged with money laundering but it is likely that this prosecution will fail since Vasi, a key witness, is reluctant to testify and has now left the jurisdiction.

Advise Jenny Smith.

QUESTION 5

In 2005 Dr. Grady, one of your country's foremost surgeons, had operated on Cara's husband Tim, a popular radio talk show host. The surgery has left Tim in a permanently comatose state. This matter has garnered the attention of the news media for years. However Tim's wife, Cara, has only recently decided to bring an action against Dr. Grady when she realised that the time for doing so would soon elapse.

A month ago Cara consulted Ned Dole, a litigation attorney-at-law. She told Ned about Tim's condition. After hearing her, Ned stated that he did not wish to deal with such a high-profile matter.

Cara left Ned and went to see Alex, another litigation attorney-at-law. Alex made notes whilst listening to Cara and, at the end of the meeting, he said that he did not think that Cara had a good case. Nonetheless, he said that he would consider the case and get back to her, particularly concerning his own availability, in light of the imminent limitation period.

The following day Cara emailed Alex, attaching to the message a document that she had referred to in the initial interview. Alex replied by email stating that the document was helpful. After an exchange of emails over the next few days, Alex finally stated that he would further assess the matter in order to determine the likelihood of a successful lawsuit.

Alex then contacted Sid Cush QC, who specialized in medical malpractice. In a written opinion to Alex, Cush stated that, in his view, Cara had a reasonably good chance of a successful action against Dr. Grady. Cush also submitted his bill to Alex.

Since the limitation period would soon expire, Alex wrote Dr. Grady on the matter, in which he alluded to the possibility of a lawsuit being brought against him. Ten days later, Dr. Grady's attorneys wrote to Alex making an offer to settle. Alex accepted the offer on Cara's behalf and then sent her an email notifying her of the settlement amount. He also attached to the email a bill for the work that he had completed to date and the bill that was submitted by Cush.

Cara is completely disappointed in the manner in which her matter was handled by all three of the attorneys involved and states that she has no intention of paying any bill that was submitted to her.

Advise Cara.

QUESTION 6

Vlad Impaler is charged with murder. He is accused of chopping five women into pieces and disposing of their body parts in a swamp. Shining Knight, his attorney-at-law, visits him in prison to take instructions. Vlad tells Knight that he was never in the area during the time when these acts were alleged to have occurred. After disclosure from the prosecution, Knight discovers that the only substantial evidence that the prosecution has is a statement from Chris Innocent. According to this statement, Vlad told Chris while they were in a bar that "those five girls had it coming to them, they were pests in my life." Chris has since been charged for the rape and murder of another woman, Ellie Bell.

However, before Knight attends the first day of the hearing Vlad tells him to recover a box from his aunt's home. In it Knight finds a video and a diary. The video contains footage of Vlad disemboweling his victims. The diary contains his reflections on the murders and it also mentions his rape and murder of Ellie Bell.

Advise Knight on how he should proceed.

QUESTION 7

Arnold was retained by Roy, a real estate developer, in relation to the sale of lots in a subdivision. Karen, a prospective purchaser, told Roy that she was interested in purchasing Lot #1 for the purpose of building a crematorium, but wanted to be assured that the property was suitable for that purpose. Roy asked Arnold for his opinion with respect to land user and zoning.

Arnold researched the requisite building codes and zoning laws and concluded that the land would be suitable for the building of a crematorium. Arnold was, however, aware of certain issues relating to the suitability of the soil on Lot #1 for the business of a crematorium, but he made no mention of this in the opinion that he gave to Roy.

Roy shared the contents of the opinion with Karen. On that basis, Karen purchased Lot #1. Shortly afterwards she paid \$5,000 for a crematorium licence. As a result of an environmental impact assessment, which was required by statute, Karen discovered that the soil on Lot #1 failed percolation tests and therefore could not support the construction of a crematorium. Karen is distressed at the turn of events and, since Roy has left the jurisdiction, she now wishes to sue Arnold.

Arnold's former secretary, Sade, is also contemplating a lawsuit against him. One month ago, as Arnold was rushing out of his office for a meeting, Sade told Arnold that she intended to purchase Lot # 3 from Roy for a nursery school. Sade had previously received legal advice on land purchases from Arnold and knew of the opinion that Arnold had given Roy. She asked Arnold whether the land would be "alright" for that purpose. Arnold replied, "For sure." As it turned out, there were zoning prohibitions against the construction of a nursery school which Sade only discovered subsequent to her purchase of Lot # 3.

Advise Sade and Karen who both wish to sue Arnold.

QUESTION 8

Max is an attorney-at-law who has a diverse practice with a rather varied clientele. He requires advice in respect of the following situations:

- (a) He has been retained by Roger in the latter's pending divorce case. At a recent Bar Association retreat, during the cocktail hour, Max was heard chatting freely about Roger's married life and the rather scandalous reasons for the demise of his client's marriage. Roger is deeply embarrassed after learning about Max's indiscreet remarks and wishes to take action against him.
- (b) He has just been served with a production and inspection order pursuant to the anti-money laundering legislation. The order seeks to give the investigators access to documents held by Max in relation to his client Ruby, for whom he acted in the acquisition of a beach villa. Amongst the documents listed for

inspection are: the agreement for sale, receipts for the purchase money as well as the instructions taken from the client.

- (c) He was served with a search order in respect of the files and any other material he had in his possession in relation to his client Louise. Max has been representing Louise in litigation involving one of her charitable organisations. Louise has been linked to a number of terrorist cells and the search warrant forms the basis of a request by the USA under the mutual assistance laws. In fact, last week, in exercising this order the police “invaded” Max’s office and seized all the documents bearing Louise’s name, despite Max’s vociferous pleas for the police to follow “the proper guidelines” when searching a law office.

Advise Max.
