

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 2011

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(TUESDAY, MAY 24, 2011)

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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **QUESTION 1**

Kute-Ann Smart, counsel for the prosecution in a terrorist financing case, received an anonymous package in the mail. It contained details of a complex web of financial transactions which effectively absolves the defendant of any liability for the charges against him. Since she received the package the day before the trial started, Ms. Smart thought that it may delay the proceedings if she were to disclose this information to the defence. She therefore decided not to reveal its contents.

The trial duly commenced and, during the evidence of a key witness for the defence, Ms. Smart used her iPhone to post messages on Twitter stating that she was “listening to lies in court”.

When the judge was summing-up, he repeatedly made the remark that it was the duty of the prosecution “to prove that it was more likely than not” that the defendant intentionally financed the terrorist organization. Neither Ms. Smart nor counsel for the defendant made any effort to intervene during the judge’s comments.

Advise Ms. Smart on the consequences, if any, that may flow from her actions.

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## **QUESTION 2**

### **ANSWER (a) AND (b)**

- (a) Eighteen months ago, William Prince was retained by Kate Windsor, an elderly widow, to act for her in relation to the sale of land to her niece, Liz Tudor. Liz had been Kate’s caregiver for the last 10 years. Kate proposed to sell the land to Liz for \$1,000,000. The land was valued at \$2,000,000. In fact, William was a

friend of Liz, and Kate had retained him on Liz's recommendation. William acted for both Kate and Liz in the transaction.

Kate has contacted you. She tells you that she has learnt that Liz has since sold the land to William for \$1,500,000 and that William and Liz had agreed to do this prior to the first sale.

Advise Kate.

- (b) I-yam Rich is an extremely wealthy client of the firm, Prosper & Company. I-yam intends to invest \$2.5 million in a fish farming venture. He has retained the firm to assist him in obtaining the necessary permits and otherwise establish the business. These matters are being handled by Sally Bynoe, an associate of the firm.

I-yam is also updating his fleet of fishing vessels. He appreciates the legal assistance that Sally is giving him in relation to the project and, at her request, has agreed to sell her two of his older fishing vessels, at a price offered by Sally.

Advise Sally on any issues that may arise in relation to her proposed purchase of the vessels.

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### **QUESTION 3**

Dora, the Chairman of the disciplinary body in your jurisdiction, seeks your advice on whether disciplinary proceedings should be taken against the following attorneys-at-law for professional misconduct.

- (i) **Diego**: Diego has posted photos on his Facebook Wall from his recent vacation to Amsterdam. Amongst them are a number of photos taken at the infamous Red Light District, under the caption, “enjoying the perfectly LEGAL local attractions”. These photos included one of Diego eating a marijuana burger and another showing him entering a massage parlour.
- (ii) **Izzy**: Izzy was retained to sell the property of Benny. For several months after completion of the sale, she did not hand over the proceeds of sale to Benny nor could she provide him with a record of the deposit of such funds into her clients’ account. Eventually, Izzy delivered a cheque for the amount due, but this cheque was dishonoured by the bank and, to date, she has failed to account to Benny for the proceeds of sale.
- (iii) **Alicia**: United Bank forwarded the duplicate certificate of title and executed Discharge of Mortgage to Alicia to facilitate the completion of the sale of the property in relation to which it was the mortgagee. Alicia gave a professional undertaking to pay the sum due under the mortgage and not to part with or deal with the certificate of title in any way prejudicial to the bank’s interest.

Although the mortgage has been discharged and the property transferred to the purchaser, Alicia has failed to satisfy the undertaking and the mortgage has not been settled from the proceeds of sale.

Advise Dora, giving reasons.

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#### **QUESTION 4**

Philip Phelps, attorney-at-law, appeared before Justice Manott in Chambers on an interim application. Justice Manott refused the application. In a tone loud enough to be heard by counsel for the respondent and both clients, Phelps said to Justice Manott, "You know you're wrong, you look uncomfortable." Justice Manott said to Phelps, "You're treading on dangerous ground."

One week later, Phelps saw Justice Manott as the judge was leaving the Posh Country Club, where he was playing golf. Phelps said to him, "I'm still upset about your ruling. You have to convince me that your personal relationship with the respondent's niece is not affecting your judgment."

Five minutes later, Justice Manott was handed a copy of the community newspaper which contained an article written by Phelps entitled: "Justice denied". In the article Phelps referred to his matter before Justice Manott and stated, "Justice can be denied where a Judge, though otherwise competent, is so wrapped up in affairs of the heart that he fails to give proper consideration to matters that are simple enough for first year law students to grasp."

Justice Manott was incensed. The following day he issued a warrant for Phelps' arrest. When Phelps was brought before Justice Manott, the judge stated: "Your behaviour has been outrageous. You have scandalized this court. I find you guilty of contempt." Phelps was immediately sentenced to imprisonment for one month. He has retained you to appeal the conviction.

Advise Phelps.

## **QUESTION 5**

Nancy and Drew are the two principals in Best Builders, a real estate development firm. Best Builders owned property in Baha Bay, but discovered that they could not develop it without certain licences and approvals which were necessary for the development of beachfront property.

In January 2011, Nancy and Drew instructed Hardy, an attorney-at-law experienced in real estate transactions, to obtain the necessary licences and approvals on behalf of Best Builders. Hardy, who had never worked on a beachfront project, omitted to obtain a permit from the Coastal Commission.

Nancy, who had been diagnosed with a terminal illness in December 2010, instructs Hardy to draw up her will. The will was to include a gift of 6 acres of beachfront property in Mama Bay to her niece Bobsy. Nancy died two weeks ago and the will had not yet been drafted.

Drew, who had been developing the firm's business abroad, has returned home and found out that the Coastal Commission had secured an injunction against Best Builders prohibiting further building at Baha Bay. This was a consequence of Hardy's failure to obtain the permit. Best Builders has been forced to abandon the project.

Drew and Bobsy have both consulted you.

Advise Drew and Bobsy.

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## **QUESTION 6**

Ernie, attorney-at-law, seeks your advice in relation to the following clients.

- (i) **Bert**: Bert has recently attended a consultation in which he sought to retain Ernie for the purchase of a luxury beach villa. Bert has indicated that he wants to have a “quick buy” of the property and that he has the US\$5 million purchase money in “hard cash”. When asked about his occupation, Bert simply said that he is a “salesman”. Ernie has some concerns and wishes to know what, if any, are the potential consequences for him if he accepts the retainer.
  
- (ii) **Grover**: Ernie has just been served with a search order in relation to all documents held by him concerning his client Grover. Ernie has been representing Grover, a building contractor, in the drafting and execution of a number of contracts, including those with various government departments. Grover is known to have certain “connections” with the underworld, and for engaging in extortion and other forms of misconduct in the building industry, although he has never been charged with any crime. Amongst the documents held by Ernie are the contracts, instructions from Grover, as well as receipts for transactions between Grover and third parties. Ernie does not know how to respond to the search order and seeks your advice on how he should proceed.

Advise Ernie.

  

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## **QUESTION 7**

### **ANSWER (a) AND (b)**

- (a) Madge is the mother of 6 year old Jeffy. Madge had taken Jeffy from your jurisdiction to Canada, without his father's consent, but subsequently became concerned about violating the law.

Sometime in February, whilst surfing the internet, Madge discovered the website of Simon Idol, attorney-at-law, who lives in your jurisdiction. The website features articles of the Hague Convention and contains an e-mail link which says *"Contact us for further information on international family law, consultation and representation"*.

Madge sent Idol an e-mail admitting that she removed Jeffy without his father's consent and asking advice on how to proceed. Madge received an automatic reply to her message simply saying, "Thank you for your email", but she received no further communication about her request.

However, last week she received a number of documents indicating that Idol had initiated formal custody proceedings over Jeffy on her behalf. Idol also attached his bill of costs for services rendered.

Madge is outraged since she did not intend to pursue this course of action and, in any event, had already retained another attorney-at-law, after receiving no further correspondence from Idol.

Advise Madge.



- (b) Betty Wonder, a former senior public officer, retained Clark Kent to represent her in an action against the state for wrongful termination. As the expiration of the limitation period was imminent, Kent dropped everything in order to institute proceedings in time.

Initially, Betty was a model client. However, as the matter progressed, Betty became more difficult. She telephoned Kent everyday insisting that he provide her with a progress report. She informed Kent that since her various jobs had provided her with more than 20 years “exposure to the law” she wanted to be responsible for interviewing witnesses and vetting documents, as her reputation was at stake. After Kent refused to do so, she threatened a negligence suit against him.

Kent became exasperated and, a month ago, he telephoned Betty to come in to collect her files and settle her fees. Kent has done no further work on the matter. Betty did not collect her files nor did she make any payment towards settlement of the account. However, last week Kent received a letter from Bruce Mann, attorney-at-law, advising him that he was now acting for Betty in the matter and requesting Kent to hand over Betty’s files to him.

Advise Kent.

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## **QUESTION 8**

Twinkle Starr, a recent law school graduate, practises in your jurisdiction. She has just established a page on MySpace.com in which she sets out her legal qualifications. She

has a photo of herself in her court attire and also has the following statement set out in bold letters at the top of her page:

***“If you have been injured in an accident and you want justice then come to me: Twinkle Starr, attorney-at-law.***

***I have the know-how, the patience and the determination to see that those responsible for your injury PAY YOU what you deserve. Don’t suffer in silence, get what is yours.***

***Call me at 809 512 1234 or email me at [starrwins@hotmail.com](mailto:starrwins@hotmail.com)***

***Don’t worry if you can’t pay the legal fees, I work on a “no win, no fee” arrangement and will split what you get on a reasonable 50-50 basis.***

***So what are you waiting for, I want to help YOU!”***

Starr now has some concerns about the propriety of her website and the proposed fee arrangement in your jurisdiction. She consults you for advice.

Advise Starr.

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