

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2013

ETHICS, RIGHTS & OBLIGATIONS OF THE LEGAL PROFESSION

(TUESDAY, MAY 21, 2013)

Instructions to Students

- (a) Time: **3½ 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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Jessie was enjoying a day at the spa where she freely discussed her marital woes with Luke, the masseur. She was surprised when he handed her, from a stack of business cards, the following card:

Ravi Ross
Attorney-at-Law
Divorce Specialist
Tel: 1-800 EX-WIVES

Later that week, Jessie received in her mailbox a flyer addressed to: “The Occupant”. On the flyer was the name of another attorney-at-law, Zuri Kipling. In addition to listing her qualifications, Ms. Kipling described her expertise as including personal injury matters. At the top of the flyer the following words were written in bold:

“HAD AN ACCIDENT? HURT ON THE JOB?

WE’LL GET YOU THE BIG MONEY YOU DESERVE.”

Jessie retained Ravi to initiate divorce proceedings against her husband Bertram. Initially, Ravi was in frequent contact with Jessie but soon Ravi failed to return her calls. Jessie only learned that Ravi had failed to make an application for custody of the children of the marriage when she received notice that Bertram had made an application for full custody.

Three months ago, Jessie retained Zuri to commence litigation as a result of a car accident that occurred a few years ago, which left her with constant back pain. Yesterday, when she visited Zuri to find out the progress of her case, Zuri casually responded that she did not think that the

case was worth pursuing since any damages received would be “too small to justify the effort.” When Jessie insisted that she commence the lawsuit, Zuri admitted that the limitation period for the action had expired two weeks ago.

Jessie is furious about what she describes as the inexcusable behaviour of lawyers and wishes you to take action against Ravi and Zuri for “their deception and incompetence.”

Advise Jessie.

QUESTION 2

David has approached Beckam, who has been his trusted attorney-at-law for several years, in order to have his will drafted. He instructs Beckam that his diamond ring collection, valued at \$1 million, be bequeathed to Beckam’s daughter, Victoria.

Messie, a former client of Beckam, has been experiencing some financial difficulties and wishes to sell his beach villa. Beckam encourages David to purchase this villa and tells him that he should “grab it up at the special price” of \$5 million. David loves the beach and decides to purchase the villa. Beckam acts for Messie and David in the sale transaction since, as Beckam said, “this would be the clever, expedient thing to do.”

When the will was drafted and the sale completed, David sent Beckham a 'thank-you' gift comprising a fruit bouquet, wine and chocolate truffles which Beckham described as being "absolutely delectable."

After the property was transferred to David, he learns from a real estate agent that the value of properties in that area was in decline because of pollution from a nearby factory. In fact, the agent told David that, on average, villas similar to the one he bought were being sold for about \$3 million.

David feels betrayed by Beckham and seeks your advice on what, if any, recourse he has against him.

Advise David.

QUESTION 3

Sally Prince, attorney-at-law, decided to hold a neighbourhood 'Legal Fair' in order to inform her local community about their legal rights. Many persons turned up for what they called "free legal advice" and asked many questions.

Jeffy, one of Sally's neighbours, asked Sally about a land dispute that he had with Harry. Jeffy said that Harry had started a court action against him. Harry was claiming that Jeffy had built on a portion of his land without his permission. Jeffy showed Sally copies of his "land papers"

which he said proved that he, Jeffy, owned the land. Jeffy also told Sally that he wanted to “take the case to the next level” so that he could get on with his life.

Sally told Jeffy to leave everything with her to sort out. Jeffy left the papers with Sally and told her that he would telephone her the following day. When Jeffy called, Sally told him that she was taking care of the matter and that she had already retrieved copies of the court documents that had been filed.

One week later, Sally called Jeffy and told him that she had the land appraised and had managed to get Harry to accept \$50,000 as a settlement of their land dispute.

Sally also informed Jeffy that she would be sending him a bill covering her fees and expenses incurred in the matter.

Jeffy has now come to you for advice. He says that as far as he is concerned, Sally was never his lawyer and, therefore, he has no intention of paying either Sally or Harry.

Advise Jeffy.

QUESTION 4

In the course of a criminal trial in the High Court/Supreme Court, Rocky Rode, counsel for the defence, became visibly irritated when the judge, Sirius J., admitted a piece of evidence that was being tendered by the prosecution. Rode stood up, threw his belongings into his briefcase, in a noisy manner, and stormed out of the courtroom. In the process of leaving, he shoved aside Shy Guy, junior counsel for the prosecution, and muttered disparaging remarks about the judge. Sirius J. immediately adjourned the case for five days.

The following evening, on his radio show, Rode ranted about the “bias and inefficiency” of trial judges, particularly those presiding in criminal cases. Rode added that “these judges will admit anything the prosecution puts before them” and that is why “the justice system is in such a shambled state.”

When the trial resumed, Sirius J. calmly said to Rode: “Your behaviour has been outrageous and I am fed up with the disrespectful attitude of defence counsel to this Honourable court.”

Without more, Sirius J. called the bailiff to escort Rode to the lock-up where he ordered him to stay for seven days.

Rode wishes to file an appeal against this conviction.

Advise Rode.

QUESTION 5

Taylor represents Swiff in a widely publicised murder trial. Swiff, a gang leader, was indicted for allegedly killing his wife, Red, and her lover Bruno, a former member of Swiff's gang.

In the course of preparing the case for the prosecution, Justin, a young tenacious attorney-at-law, discovered that Beeber, one of the prosecution's witnesses, had given two statements to the police. Justin decided not to use the second statement in which Beeber described the poor lighting conditions on the night in question and under which he claimed to have seen Swiff committing the offence.

One week before the trial, Swiff told Taylor that he had "to deal with Bruno" because what he was doing was "a big disrespect" to him. Swiff made no admission in relation to Red but was adamant that he was not going to take the stand. Taylor simply thanked Swiff for this information and flippantly added that Swiff's decision would mean one less examination-in-chief for him to prepare.

At the trial, when the judge, Mars J., was summing-up, he repeatedly made the remark that it was the duty of the prosecution to show that it was "more probable than not" that the defendant had intended to cause injury to the victims. Neither Justin nor Taylor made an attempt to rectify the judge's comments.

Advise Taylor and Justin on the propriety of their actions.

QUESTION 6

James wishes to retain Bond, attorney-at-law, to establish a number of offshore trusts and offshore companies in The Bahamas and The Cayman Islands. He informs Bond that he is a successful entrepreneur and that he wants to keep his assets safe from his competitors and “the taxman.” James also wants Bond to keep a cheque in the sum of US\$10 million in his clients’ account until the offshore entities have been established. Bond is uncomfortable with the minimal information he has received from James and is unsure how to deal with him.

At the same time, Bond has been served with a disclosure order under the proceeds of crime legislation in relation to all documents held by him concerning his client Pierce. Bond has been representing Pierce, a politician, in a number of investment transactions. In the past, Pierce has been accused of having received ‘kick-backs’ for the procurement of government contracts but he has never been charged with corruption. Amongst the information requested pursuant to the order are copies of the investment contracts, details of the deposits/withdrawals into and out of the clients’ account as well as the email correspondence between Pierce and Bond.

Bond seeks your advice on the following:

- (i) how he should proceed in relation to James; and
- (ii) how he should respond to the disclosure order

Advise Bond.

QUESTION 7

Carlie retained Gabe to represent her in an action for negligence against the driver of the motor vehicle that collided into her car.

The matter had been set down for trial. However, two weeks prior to the trial date, Carlie informed Gabe that she was unhappy with his conduct of the matter. This is because Gabe had refused to follow her instructions about the manner in which he should interview the key witnesses in the matter. Carlie immediately terminated Gabe's services and retained Teddy as her attorney-at-law in the matter.

Teddy wrote to Gabe requesting that he send her all the papers belonging to Carlie. Gabe's fees in the matter are still outstanding. Carlie admits that she owes Gabe fees, but argues that he did not complete the matter and, further, that the amount of \$500,000 charged by Gabe is unfair and unreasonable.

Advise Gabe.

QUESTION 8

Tom N. Jerry, the Chairperson of the disciplinary body, seeks your advice on whether disciplinary action should be taken against the following attorneys-at-law and, if so, what, if any, sanction should be imposed on them.

- (i) **Chyna:** Chyna, who was representing the purchaser in a conveyancing transaction, gave an undertaking to the vendor's attorney-at-law that she would hand over the balance purchase price in exchange for the title being registered in her client's name as proprietor. However, she did not deliver the purchase money on the specified date, although the title had been transferred in her client's name. Chyna claimed that a fire at her office destroyed her clients' files and she did not realize that the purchase money had become due.
- (ii) **Indya:** Indya represented Arie in the sale of her property. Several months after the sale was completed, Indya failed to hand over the proceeds of the sale to Arie. It became apparent that Indya had deposited the monies into her personal account and was using the interest from those funds for personal expenditure. Arie has made numerous requests for the proceeds of sale but, to date, Indya has failed to account for them.
- (iii) **Vegas:** Vegas has a penchant for games of chance. He frequents horse-racing events, plays the lottery and is known to try his luck on the slot machines at various gaming houses. Recently, he established his own "underground" gambling club where he provides his fellow gamblers with activities such as roulette, poker and blackjack. The location of this private club is the conference room at his law office and it 'comes alive' after working hours.

Advise Tom.

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