

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2010

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(MONDAY, AUGUST 16, 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

Paul appears for the defendant Sean at his trial for murder. Sean's defence is one of alibi, supported by the testimony of his mother that at the time of the alleged offence he was attending a family reunion with her in Sleepyville.

The prosecution's case is being conducted by Shaggy Jones, attorney-at-law. During Shaggy's examination-in-chief of the investigating officer, Shaggy was interrupted several times by Justice Curious. The judge asked numerous questions of the witness, with the effect that the prosecution's case was more clearly put. Attempts by Paul to halt the judge's questioning were ignored.

During the course of his summing up, Justice Curious tells the jury that it is for the defence to satisfy them beyond reasonable doubt of the truthfulness of Sean's alibi.

After the summing up, Justice Curious asks both Paul and Shaggy whether he had omitted anything or if there was anything further that they would wish him to tell the jury. Shaggy says nothing about the judge's error with regard to the burden and standard of proof in respect of the alibi.

Advise Paul.

QUESTION 2

Your client, Hillary Bush, is the granddaughter of Barbara Clinton, deceased.

Hillary informs you that last December Barbara had instructed George Obam, attorney-at-law, to alter her will. Barbara had told George that she was terminally ill and that she intended to

leave a sizeable portion of her estate to Hillary, who had been her principal caregiver for many years.

Two weeks after Barbara met with George, she took a turn for the worse, was admitted to hospital and died three days later. At the time of her death, the will had not been altered.

Hillary wishes to know whether there is any basis on which she can bring an action against George.

Advise Hillary.

QUESTION 3

During the course of a criminal trial in the Circuit/High Court, a heated argument developed between Mikey Bigmouth, counsel for the defence, and Pedro Loud, counsel for the prosecution.

Loud is reported to have hurled accusations at Bigmouth, alleging various acts of dishonesty, whilst Bigmouth accused Loud of engaging in bribery and other acts of corruption.

The judge, Placid J, was utterly appalled by the behaviour of counsel, and called upon them both to desist at once. At this point, Loud immediately took his seat. However, Bigmouth headed for the courtroom door and, just before leaving, turned back to Loud and hissed: "You're lucky Placid is here to protect you today or I would really deal with you".

Placid J thinks that Bigmouth has now gone much too far and immediately orders him to be brought back before the court. However, Bigmouth does not return to the courtroom until 30

minutes later. In fact, when the policeman went to fetch him he is reported to have said “That weakling Placid will just have to wait”.

However, upon his return, Placid J informs Bigmouth that he has been “rude and disobedient” and immediately sentences him to a fine of \$50,000 or 3 days imprisonment for contempt of court.

Advise Bigmouth on his chances of success on appeal.

QUESTION 4

On March 10, 2010, Venus Wills consulted Rafael Nad, attorney-at-law, with respect to a matter concerning a negligence law suit against Venus and another matter concerning the liquidation of one of Venus’ companies.

The following day, Venus delivered the key documents in the negligence matter to Rafael. Rafael immediately acknowledged service in the matter on behalf of Venus since it was the last day for so doing before being out of time.

Rafael began his research on the matter shortly afterwards. Without consulting Venus, Rafael asked Roger Feds, Queen’s/Senior Counsel, to prepare a legal opinion on the issue of damages for him. Roger prepared the opinion and sent it to Rafael along with a bill of costs.

Three weeks later Rafael, without Venus’ prior consent, negotiated a settlement of the negligence matter. He drafted a consent order and sent a copy of it to the claimant’s attorney-at-law.

Rafael submitted a bill of costs to Venus for the work that he had completed, including the consent order. He also submitted the bill for the legal opinion from Roger. Since Rafael had done no work on the liquidation matter he did not bill Venus for anything in that regard.

Venus is resisting paying the bill. She says that she was unaware that Queen's/Senior Counsel would have been involved or that the matter would have been settled. She also said that Rafael still had to complete the liquidation matter before she would pay any bill.

Advise Rafael.

QUESTION 5

James Browne is an attorney-at-law in your jurisdiction. He had been retained by Aretha Frank to handle several legal matters. First, he was retained to prepare her will to provide for her children on her death. In the will, she gave James a gift of \$50,000 and she also left him a vintage Rolls Royce motor car. James was not a witness to the will.

James was also retained to prepare contracts for the sale of several parcels of land that Aretha owned.

When James realized that her property near the sea was for sale, he asked Aretha if she would sell it to him and she agreed. The asking price for the land was \$1,000,000. Aretha agreed to allow James to buy the land for \$650,000 because he was such a good lawyer. James thought that it was such a good deal that he immediately wrote a cheque for the purchase price of the land. James also drafted the legal instruments to convey the land from Aretha to himself.

Aretha has now died and her children want to know if they can challenge the devise under the will and the sale of the land to James.

Advise Aretha's children.

QUESTION 6

Jane retained Austen to represent her in extremely bitter divorce proceedings. At one of their meetings, Jane said to Austen, "I'm at my wit's end. I should just go over there and shoot that waste-of-time man." Austen simply said, "Venting is good".

Austen was also the host of a popular radio talk show. The day after their meeting, Jane heard Austen repeat her comments to him on his radio show. He attributed the remarks to one of his clients but did not identify her by name. Jane was outraged and immediately filed a complaint with the disciplinary body of the legal profession.

In a recent tabloid report on "lawyers behaving badly", Austen was featured in a drunken state leaving a place of "ill-repute". The caption under his photo read: "Good lawyer gone BAD!!!"

Emma, the chairperson of the disciplinary body, wishes to institute proceedings against Austen in respect of the tabloid report. She has also received Jane's complaint.

Advise Emma.

QUESTION 7

The duty of confidence is a fundamental characteristic of the attorney/client relationship. However, in the fight against serious crime there exist many statutory gateways that permit the flow of otherwise confidential information.

Nonetheless, legal professional privilege remains an absolute bar to any attempt to access material held by a lawyer.

Discuss.

QUESTION 8

Ricky Martinez is an attorney-at-law with a very busy practice. In January, he wrote to United Bank requesting them to release the title for the land of his client Jenny Lopez, for the purpose of having a caveat endorsed on it. He gave an undertaking to United Bank to return the title as soon as he received it from the Titles Office.

Unfortunately, Ricky's bearer inadvertently delivered the title to Jenny. United Bank has written to Ricky seeking the return of the title since Jenny is in arrears with her mortgage payments. Ricky is unable to locate Jenny as she has now left the jurisdiction.

Two weeks ago, Ricky went to Court in relation to another matter for which he had been retained. Whilst there, he gave an undertaking on behalf of his client, Antonio, that he would file and serve certain documents within seven days. Yesterday, when the matter resumed, it was discovered that Ricky had not done as he had undertaken.

Advise Ricky on the consequences that may ensue as a result of these undertakings.
