

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND-YEAR EXAMINATIONS, 2004

ETHICS, RIGHTS & OBLIGATIONS OF THE LEGAL PROFESSION

(FRIDAY, MAY 21, 2004)

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

Peter informed Joseph, an attorney-at-law, that his neighbour, Payne, is burning garbage everyday causing a nuisance. The next day Joseph filed proceedings against Payne in which he named Peter as the plaintiff/claimant.

When the matter came up for hearing Peter was absent from court. On enquiries by the judge, Joseph stated that he was surprised at Peter's absence as the proceedings were instituted at Peter's express request, and that Peter was notified of the date of hearing. Counsel for Payne immediately objected and requested that the proceedings be set aside.

The learned judge reserved his decision on the application and Joseph consults you as to the likely outcome.

- (a) Advise Joseph and consider whether the judge is likely to make any order against him personally.
  - (b) Would your answer be different if Peter appears on the adjourned date and informs the court that, though he had given no approval for the institution of the proceedings, he now wants Joseph to continue with the proceedings?
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## QUESTION 2

Two months ago, Albert appeared for Ed Crook, a leader of a gang, who was on trial before the High/Supreme Court on a charge of armed robbery.

During the examination-in-chief of one of the members of Crook's gang, Albert became very annoyed since his personal relationship with Crook was being exposed. He started shouting at the witness with the intention of trying to prevent him from giving his evidence.

The judge ordered Albert to sit and be quiet. Albert ignored the judge and continued shouting. The judge cited Albert for contempt of court and immediately sentenced him to seven days imprisonment. At that point, the judge ordered the police to remove Albert from the court.

Albert wishes to appeal the judge's order.

Advise Albert.

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### QUESTION 3

Avory, an attorney-at-law, has handled all the legal affairs of Gracie, an elderly widow whose health has been declining but who is mentally alert. Gracie had informed Avory that she wanted to sell one of her properties and to invest the money obtained in order to get an income towards her maintenance. She told Avory that the property was worth \$300,000.

Avory thought that it was a reasonable price and indicated his interest in purchasing it for himself. Gracie agreed to sell him the property for the \$300,000, and told him to prepare the necessary transfer documents, which he did.

One year after the sale Gracie learnt from a real estate dealer that she could have obtained a far better price if she had advertised the property for sale.

Gracie, on learning this, consults you with a view to having the sale of the property set aside. She also wishes to know whether any disciplinary proceedings may be taken against Avory.

Advise Gracie.

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#### QUESTION 4

- (a) Defence counsel is representing Carla Klepto in a larceny trial. Klepto, in accordance with her written instructions given to defence counsel detailing an alibi, pleaded not guilty. At the end of the prosecution's case Klepto tells defence counsel that since she is confident that they will win the case based on defence counsel's expert cross-examination of the prosecution witnesses, "just between us, I really did steal the things".

What options does defence counsel have in the further conduct of the case?

- (b) In the course of his closing address to the jury on behalf of the prosecution, Garth QC/SC says of two defence witnesses and of defence counsel:

*"Those white people want to come into our black people country and tell us what to do. But colonial days done. Send them back to their country and send the accused straight to the gallows where he belongs!"*

The judge is minded to report Garth to the disciplinary tribunal. Write an opinion for the Judge.

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**QUESTION 5**

Abdul Hack, an attorney-at-law, was known for representing persons who had been charged with money laundering and drug related offences. Abdul was retained by Handin De Pie to represent him on a charge of drug trafficking. Abdul, prepared his usual retainer letter which Handin signed and returned with the required deposit of \$75,000. Handin also gave Abdul several documents to keep for him. Some of these documents related to his defence on the charge.

In the course of their investigations into the charges against Handin, the police obtained a warrant to search Abdul's law offices. The police officers removed all of Handin's files including a legal opinion prepared by Abdul on the meaning of drug trafficking. They also removed Abdul's employees files, his personal and client accounts files including the bank statements from the office cabinets. On seeing this, Ms. Trembles, Abdul's secretary, called him on his cell phone and told him what was happening. Abdul immediately returned to his office and ordered the police officers to leave on the basis that all of the documents in his office were protected by legal professional privilege. The officers agreed to leave but promised to return the next day.

Abdul has retained you to take appropriate legal action on his behalf.

Advise Abdul.

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**QUESTION 6**

- (a) Lisa, an attorney-at-law, is required to act for the purchaser in a conveyancing transaction, the purchase price being US\$100,000.

What factors should guide her in fixing the appropriate fee?

- (b) Mary, in a personal injuries case, wants Savi, an attorney-at-law, to pursue the case for her on the basis that if she is successful Savi will be permitted to take 30 percent of the award of damages together with any costs awarded by the court and paid by the other side.

Advise Savi if she could take the case and, if so, what should she do.

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**QUESTION 7**

Dirk, an attorney-at-law, prepared the Will for Patrick, aged 90 years. Among the bequests is a valuable piece of art given to Dirk and half of the estate is given to one of Dirk's nephews, Fred. The remainder is shared among Patrick's five children. Patrick and his wife are both dead.

Advise Patrick's children who would like to contest the Will.

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## QUESTION 8

Tim Impatience, a client in a civil case before the High/Supreme Court, is dissatisfied with the pace of his litigation and believes that his attorney-at-law, Samantha, is not pursuing the case as vigorously as necessary. As a result he has spoken to another attorney-at-law, Iscariot, who is willing to take the case. Tim owes Samantha US\$10,000 for work done to date. Iscariot has written Samantha requesting Tim's file and papers. She has refused and is demanding her fees.

Advise Tim.

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