

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2012

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(TUESDAY, MAY 22, 2012)

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 ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Austin was driving along Bumpy Road when his car dropped into a huge pothole. His car careened out of control ending up directly in front of the law offices of recent graduate Ally MacBean, attorney-at-law. Austin's car was slightly damaged and he suffered a whiplash. Ally had rushed outside when she heard the commotion. As Ally was assisting Austin from his car, Austin said to her "You better make sure somebody pays for this."

As he sat on the side of Bumpy Road waiting for an ambulance, Austin recounted to Ally how the accident had happened. The following day, Ally wrote to the Ministry of Roads demanding that they pay "her client, Austin" \$500,000 for the injury and damage that they had caused. Since the Ministry did not respond within the time allotted in Ally's letter, Ally instituted proceedings against the Ministry on Austin's behalf. Three weeks later, counsel for the Ministry wrote Ally and enclosed in the letter a cheque in the sum of \$250,000 as full and final settlement of the claim.

Ally thought that that amount was far more than Austin would have received if the matter was determined in court and so she accepted the settlement on Austin's behalf. She telephoned Austin to tell him the "good news" and that she would be sending the cheque from the Ministry along with her bill for \$75,000.

Austin was outraged and shouted, "How dare you. You had no business writing or acting on my behalf. You are out of order. I am not going to pay you one cent for anything you've done!"

Advise Ally.

QUESTION 2

In 2009 Georgia Bushy had instructed Romney & Co., who specialise in estate planning, to prepare her will in which she left her entire estate to her husband Mitt, with whom she had recently been reconciled.

At the time of these instructions, Bushy was known to be suffering from pre-senile dementia. Nonetheless, she instructed Romney & Co. that this will was intended to replace a previous will, executed in 2005, in which she purported to leave all of her property to her gardener Rick.

In 2007, Bushy had instructed Romney & Co. to create an *inter vivos* trust for the benefit of her grandchild, Michelle. In 2006, an amendment to the Trusts Act stipulated that all new trusts must be registered by the settlor with the newly created Office of the Trustee General.

Bushy died in 2010. In proceedings to have the 2009 will admitted to probate, the court held that this will was invalid as Bushy had lacked testamentary capacity at the time she executed it.

Mitt now wishes to bring an action against Romney & Co. on the basis that the firm should have ensured that Bushy had testamentary capacity. Further, Mitt also contends that the firm should have had evidence that Bushy knew and approved of the contents of the 2009 will.

Romney & Co. had also omitted to have Bushy register the trust. As a result, Michelle wishes to sue Romney & Co. since the trust in her favour has failed.

Advise Mitt and Michelle.

QUESTION 3

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

- **Ariel:** During the recent Carnival, Ariel was one of the Bluedot Beer Girls (“BB Girls”) who were “jumping” on the back of the big Bluedot Beer truck. The BB Girls are known for their immodest costumes and wild antics. In fact, a video of Ariel and the other BB Girls, which was uploaded to YouTube under the caption “BB Girls Shake It Up”, has “gone viral”.
- **Tiana:** Tiana has recently returned to your jurisdiction after residing and working for several years in the USA. She practises in the area of personal injury and has erected a neon-lit sign on the 123 Highway with the following slogan: “Had an accident, want speedy justice? Call me at 1 800 MUST WIN.” When a senior member of the local Bar suggested that she should remove the sign, she refused.
- **Belle:** During a noisy domestic dispute with her fiancé Beaste, the police entered Belle’s home where they found her pointing an unlicensed firearm at Beaste. They also found several rounds of ammunition and a small vial of cocaine. Although Belle was arrested, she was released without being charged, since a number of “nosy” neighbours had immediately descended on Belle’s house and inadvertently contaminated the evidence.

Advise Aurora, giving reasons.

QUESTION 4

Carter is a popular artiste who has produced several successful albums. For many years Carter would retain Shiny Monet, attorney-at-law, to represent him in several legal matters in which he was involved. As a result of these retainers, Carter sent several pieces of communication to Monet. From time to time, Monet would have to draft and execute documents, on Carter's behalf, with regard to commercial transactions in the USA.

The police have suspected that Carter was involved in laundering money through several banks, both in your jurisdiction and in the USA. They wrote Monet requesting disclosure of all the documents that she has in her possession in relation to Carter. Some of the documents that were requested were simply personal papers that Carter wanted Monet to keep for him. Others related directly to the foreign commercial transactions, whilst some of the requested documents concerned pending litigation. Carter had instructed Monet not to allow the police access to his files and she refused to hand over any of the requested documents.

The authorities then served a search warrant on Monet, pursuant to the anti-money laundering legislation in your jurisdiction, in relation to all the documents in her possession concerning Carter. When she contacted Carter to see if he would permit the search of his files, he dismissed her by saying that he was in the midst of recording a song and couldn't deal with her. Carter also told her that she should "just do what she had to do". Monet decided to comply with the warrant and handed over all the requested documents.

Last week Monet appeared on an interview on the local TV news which was doing a feature on crime in the entertainment industry. Monet candidly stated that one of her longstanding clients was a well-known artiste and that he was presently being investigated by the police for money laundering.

Carter is incensed, having learned about this interview as well as the handing over of his files to the police. He now wishes to take action against Monet.

Advise Monet.

QUESTION 5

Sally entered into an agreement to purchase a beach villa from Jeffy. In this transaction, the firm of Anna, Joey & Associates acted for both Sally and Jeffy since they were told by the firm that this would be “cheaper and faster” for the parties.

In the transaction, Anna represented Sally and Joey acted for Jeffy. Anna failed to disclose to Sally a report received by the firm from the Aviation Authority that it was planning to expand its runways at the Flyaway International Airport (“FIA”) to an area within 1/4 mile of the villa.

It was also undisclosed to Sally that Jeffy was indebted to the firm for legal fees incurred in previous retainers and that Jeffy and the firm had agreed that the proceeds of the sale would be used to offset those unpaid legal fees.

After the transaction was completed, Sally moved into the beach villa but was unable to sleep because of the constant drone of aircraft which came perilously close to her rooftop, on their descent into FIA. In desperation, she has tried to sell the property but has received only one offer since the villa is now virtually uninhabitable. The potential purchaser wishes to use the property as a car park business and has offered her a price which is 50% less than that which she paid for it. The offer is from AJ Ltd. which, unknown to Sally, is an investment company owned by Anna and Joey.

Sally now wishes to take action against Anna, Joey & Associates.

Advise Anna, Joey & Associates on any liability it may face.

QUESTION 6

In the course of a civil trial held at the Supreme/High Court, several objections were taken by I. Knowitall, senior counsel for the defendant. On each occasion, Justice Sitdown ruled in favour of the claimant.

After a brief adjournment for lunch, Knowitall rises and addresses Justice Sitdown as follows:

“May it please your Lordship, my clients have asked me to indicate to you that as a result of your obvious bias against them in this matter, they do not think that any useful purpose can be served by continuing to participate in this farce. They had hoped for justice but no longer expect to receive it. In the circumstances, my clients and I will take no further part in these proceedings. If your Lordship pleases.”

Justice Sitdown is livid and bellows:

“Well I never, of all the gross disrespect to this court. I find you guilty of contempt. You will pay a fine of \$10,000 or be imprisoned for 10 days at hard labour. Good Day Mr. Knowitall.”

Shortly after this exchange, Ima Scaredycat, junior counsel for the defendant, rose and in a soft tone, uttered:

“May it please your Lordship, may I also be excused from this trial as I have an urgent personal matter to attend.”

Justice Sitdown immediately shouted:

“You want to waste the court’s time too. Give me one reason why I shouldn’t hold you in contempt. Come on, answer me. You want counsel to represent you, see one over there.”

Scaredycat immediately broke down into a flood of tears and, without more, Justice Sitdown held her in contempt and fined her \$5,000 or 3 days imprisonment.

Both Knowitall and Scaredycat wish to appeal.

Advise Knowitall and Scaredycat.

QUESTION 7

Barby has represented Ken in a number of litigious matters over the last 5 years. In fact, she is currently acting for him in an action for breach of contract against his former employer. Ken has recently instructed Barby to create a trust for the benefit of his wife and also to set up an offshore company in the Cayman Islands. For the purpose of these transactions, Ken has given Barby a cheque for the sum of \$10 million which he wants her to keep in her client’s account until further advised.

Barby is becoming concerned about these instructions, especially since Ken has only worked as a store manager. In fact, he was dismissed without notice following an “irregularity” that was

discovered in the way he kept the store's books of account and other financial records. Indeed, there were some rumours that he may have defrauded his former employer of a large sum of money.

Barby is uncomfortable about acting for Ken and although the civil suit is ongoing, she no longer wishes to represent him in that matter or to establish the trust and offshore company.

Advise Barby on the following:

- (i) whether she can withdraw from representing Ken in the civil suit; and
- (ii) the possible consequences for her if she creates the trust and offshore company and the rumours about Ken are true.

QUESTION 8

Jessie is the defendant in an action for copyright infringement in relation to a book of poems that she published. She instructed James to represent her in the action.

James drafted an affidavit in which Jessie was to depose that she held two university degrees in literature from the Liberal Arts University ("LAU"). As she was about to swear the affidavit, Jessie tells James that she had forged both the undergraduate and graduate degrees that she purports to hold from LAU and, further, that she had in fact never attended LAU or any other university.

Although James told Jessie that these false statements in the affidavit should be deleted, Jessie refused and claimed that without the statements her case would not be as strong. James agreed that her case would be weakened and proceeded to file the affidavit.

At the trial, when asked by James what her academic qualifications were, Jessie asserted that they included BA and MA degrees from the LAU.

During the course of the trial, the judge requested that the defendant should produce further evidence of her studies at the LAU, including a transcript of her academic record. James gave an undertaking to the court that this documentation would be produced within 7 days and the matter was adjourned.

On the resumption of the trial, 2 weeks later, James sought an extension of time within which to produce the requested documents. However, counsel for the claimant submitted to the court a letter from the LAU confirming that Jessie had never attended that institution.

Advise James of any liability he may incur.

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