

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2014

ETHICS, RIGHTS & OBLIGATIONS OF THE LEGAL PROFESSION

(TUESDAY, MAY 20, 2014)

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

Oscora and Pistora are identical twin sisters. Oscora was charged with the murder of her boyfriend. Oscora claims that she shot him in self-defence, thinking that he was an intruder.

Dell, a criminal defence attorney, has been retained to defend Oscora. On a visit to the prison, Dell met with the person she thought was Oscora. However, it was in fact Pistora. Pistora said that on one occasion when she visited Oscora in prison, she and Oscora were able to swap places without being caught by the prison officials. Pistora told Dell that since she was quicker on her feet she would be able to stand up better in court and that, in the worst case scenario, she was prepared “to take the rap” for her sister. On hearing that, Dell replied, “Wow, that would be hard to pull off, but it sure sounds intriguing.”

Just before the trial began, Dell noticed that both sisters were wearing identical suits and the only way to tell them apart was that Oscora was in handcuffs. She noticed that on the sisters’ request, the guard removed the handcuffs so that the sisters could embrace before they entered the courtroom. Dell observed how the sisters discreetly exchanged places, when the guard was momentarily distracted, and it was in fact Pistora who was escorted by the guard into the dock. Although shocked, Dell decided not to say anything.

In the presentation of the defence's case, Dell referred to Pistora as “Oscora” and permitted her to give her testimony as if she were Oscora. At no point did Dell reveal the truth about the “defendant’s” identity to the court.

During the trial, Soney, counsel for the prosecution, repeatedly referred to the defendant as a “blatant liar” who had “serious anger problems”. He also accused the defendant of shooting her boyfriend in a “fit of jealous rage”. He then called on the jury to disregard the defendant’s case and implored them to call on all the powers to help them “do the right thing and put that gun-toting menace away for life.”

The conduct of both Dell and Soney has come to the attention of Tosheba, the Chairman of the disciplinary body in your jurisdiction.

Advise Tosheba.

QUESTION 2

Honee Bunny, attorney-at-law, recently attended a law conference in Guadeloupe where she presented a paper to legal experts from around the world. She took with her a stack of business cards and a number of her firm's newsletters, both of which she displayed on the registration table for the delegates to see and take.

After her session, Ms. Bunny did a number of media interviews about negligence lawsuits, in which she specifically told the interviewer to introduce her as "the number one personal injury expert" in her jurisdiction.

At the conference 'after-party', Ms. Bunny felt relaxed and chatted freely about her law practice. In the course of this discourse, she bragged about the extent of her clientele and boasted that her clients included "a former Prime Minister, the incumbent Leader of the Opposition and a popular radio DJ".

In relation to the DJ, Ms. Bunny said that he was on air from midnight to 4 am on the top-rated radio station in her jurisdiction. She added that she was representing him in an action involving a collision between a minibus and a car that the DJ was driving. She said that her client was planning to settle the matter without any admission of liability. However, she whispered to her intrigued audience that her client had admitted to her, in confidence, that he fell asleep at the wheel because the last part of his show involved a "really boring" interviewee and that he "needed to have two beers to survive it". Unknown to Ms. Bunny, one of her keen

listeners at the party was an e-journalist who published much of the scintillating details of this conversation in an online newspaper, which had a large regional subscription.

Ms. Bunny returned home and was greeted at her office by her client, the DJ, who was very angry. As a result of the publication, the claimant had refused to accept the settlement and was pursuing the litigation against him. Further, the police had decided to charge him with reckless driving. Ms. Bunny also has a message to contact the disciplinary body of her jurisdiction “in connection with some possible breaches.”

Ms. Bunny is distressed and seeks your advice.

Advise Honee Bunny.

QUESTION 3

Rice represents Curry who is charged with shooting with intent. The matter has garnered a great deal of attention in the community. Rice’s arch-rival, Rotee, is the prosecutor in the case.

Two weeks before the trial began, Rotee went to the court registrar to see whether the date that had been set for the trial could be changed. The registrar, in a dismissive way, denied Rotee’s request. Rotee was totally dissatisfied with this response and, without a word, she spat in the registrar’s face and stormed out of the office. In an interview on national TV, Rotee was caustic in her criticism of the court administration and referred to all administrators in the court as “lazy and incompetent.”

At the commencement of the trial, Justice Sugars implored all parties to refrain from discussing the case in the public domain, in light of the sensitive nature of the trial. The prosecution team, led by Rotee, presented a very strong case. Rice feared that she would have an uphill battle and so decided to "pull out all stops". In her opening address, Rice described the police witnesses

and the prosecutor as "liars who were on the take". That evening, she tweeted the following, "liars, corrupt persons, all @ supreme court today". Later that night, in order to drum up sympathy, Rice posted to her Facebook page a baby picture of Curry, under the caption, "a picture of innocence".

When Rice and Rotee appeared in court the following day, Justice Sugars shouted, "Rice, you want to win this case by social network? I'll have none of that in my court. Bailiff, lock her up for 7 days." He then turned to Rotee and said, "As for you, you have no respect for this court, you think I don't hear about all you do and say? If you have nothing to say for yourself, ask your junior to speak for you. I feel nothing but contempt for you. Bailiff, lock her up for a week."

Rice and Rotee both seek your advice on appealing the orders of Justice Sugars.

Advise Rice and Rotee.

QUESTION 4

Elsa is the Chairman of the disciplinary body in your jurisdiction and seeks your advice with respect to allegations of professional misconduct being made in relation to the following attorneys-at-law.

(i) **Kristoff:** Last year Anna retained Kristoff, a conveyancing specialist, to act on her behalf in the purchase of a large beachfront property and its subsequent development into a multi-million dollar resort hotel. After the property was acquired and the building contractors retained, Anna discovered that Kristoff had failed to obtain the requisite building permits and, indeed, he had not advised her that the restrictive covenants on the title confine the use of the property to that of private residence only. As a result of these omissions, Anna was unable to build the hotel and has suffered losses in excess of several million dollars.

(ii) **Sven:** Sven has been charged with terrorist financing in connection with a number of transactions that he engaged in which facilitated his client Hans, a well-known terrorist, in funding certain nefarious activities. A significant amount of this money was held in Sven's clients' account and the rest used to finance commercial transactions overseas. It is likely that Sven's trial for the terrorist financing offence would be delayed indefinitely as a result of difficulties in obtaining evidence located abroad, as well as the multiplicity of legal challenges that are being made in connection with Sven's case.

(iii) **Olaf:** Olaf has always been somewhat of a funny guy. Recently, he joined a group of stand-up comedians that performs every Saturday night at a local club. Olaf's stage name is Joker QC and his routine involves mocking members of the Bar and the judiciary. In some acts, he would mimic the clothes, speech and mannerisms of particular attorneys and judges, much to their chagrin. Olaf's show has become very popular and many of his performances have gone viral on YouTube.

Advise Elsa whether disciplinary proceedings may be taken in relation to the above attorneys-at-law and what, if any, sanction should be imposed against them.

QUESTION 5

Max, a factory worker, was involved in an accident at the plant in which both of his hands were amputated at the wrist. He was later dismissed by his employer, Kandyworld, without any form of compensation.

Max was aggrieved by this turn of events and consulted Roger, attorney-at-law, with a view to bringing a claim against Kandyworld. After discussing the details of his accident and dismissal, the time came for signing the retainer letter. However, as Max was unable to sign, Roger assured Max that he need not worry because, as far as he was concerned, they were both

gentlemen and their word was their bond. Max's wife Ruby, who was present at the consultation, agreed to drop off certain documents requested by Roger.

The next day, Ruby delivered to Roger an alphabetized expanding folder containing the requested documents along with other personal documents which included a certificate of title for the couple's land and their birth certificates. She explained that she did not have the time to sort out the documents and so she would return for the folder and personal documents at a later date.

Roger immediately commences proceedings against Kandyworld, by filing a claim for wrongful dismissal and he submits a bill to Max for the work done up to that point. Max was concerned that he was being sent a bill for filing a claim against Kandyworld for wrongful dismissal when he had planned to sue them for negligence in relation to his injuries. He is also alarmed since he discovered that Roger had previously represented Kandyworld in another matter involving an accident and wrongful dismissal. Max goes to Roger's office, challenges Roger's actions, refuses to pay any bill and accuses Roger of being a double-crossing attorney.

When Max asked Roger to show him a copy of the letter of retainer, Roger refused and said, "Look here. You never signed anything. You don't test me either. I'm the lawyer and I decide who to sue and what claim to bring." Max is frustrated with Roger. He has come to you for assistance in pursuing his negligence claim against Kandyworld and also in recovering his documents and important personal papers which Roger refuses to deliver.

Advise Max.

QUESTION 6

Jeffy, Sally & Associates, Attorneys-at-law (JS&A), consult you with regard to their concerns about the propriety of the following:

(i) A few months ago, they acted for Amber in a personal injury matter. Their fees for this case amounted to \$1 million. However, Amber said that she did not have that amount of money in cash but she had land valued for exactly \$1 million. Amber wishes to transfer her land to JS&A as payment for the legal services provided.

(ii) JS&A have been instructed to draft a will for Ivy, a long-time elderly client of the firm. Under the will, Ivy would devise her luxury condominium in London to the firm, for the attorneys to use on business trips to the UK. Also, as a show of appreciation for all the good work the firm has done to date, Ivy wishes to give Jeffy and Sally an exotic fruit basket each.

(iii) Over the last few months, their client Anu has made several deposits into their clients' account, amounting to \$10 million. On each occasion, Anu claimed that the amount represented the deposit for a proposed purchase of real property. However, shortly after making the deposit, Anu would advise them that he no longer wished to pursue the purchase and he would request a cheque from the firm for the amount deposited. They are concerned since rumours have been circulating that Anu has been involved in some shady business with members of the underworld.

Advise Jeffy and Sally about what, if any, consequences may flow from the above and, further, on any steps they may take to avoid liability.

QUESTION 7

Cedric retained James, an attorney-at-law who was recently admitted to the Bar, to bring proceedings against Princess & Co. for copyright infringement. James told Cedric that his fees

would be charged at an hourly rate of US\$100. However, James did not provide Cedric with a written fee agreement.

James filed the claim in the Supreme/High Court and proceeded to take all steps to prepare for trial, including interviewing prospective witnesses, preparing witness statements and conducting legal research. During a trip to Boston to attend a conference, James spent three days at the Harvard law library to conduct further research. On his return home, he obtained an opinion from eminent Queen's/Senior Counsel with respect to trial strategy.

The case went to trial and James called an expert witness to give testimony in support of Cedric's claim. However, despite James' best efforts, Cedric was unsuccessful in his claim. Nonetheless, last week James presented an unsigned bill of costs to Cedric for an amount which included a charge for the following:

(i)	Cost of 3 days accommodation in Boston for the purpose of legal research	US\$1,000.00
(ii)	Fee paid for the opinion of Queen's/Senior Counsel	US\$1,000.00
(iii)	Fee paid to expert witness	US\$ 500.00
(iv)	Fees for receiving instructions, filing action and conduct of matter (20 hours at US\$100 per hour)	<u>US\$2,000.00</u>
	Total	<u>US\$4,500.00</u>

Cedric is shocked about this bill, which he considers to be excessive, especially since James did not tell him that he was going to Boston to do research or that he would be calling an expert witness or even seeking the advice of Queen's/Senior Counsel. He is also of the opinion that James is being unfair and unreasonable in his fees and sees no reason why he should pay the bill.

Advise Cedric.

QUESTION 8

Mystic, an attorney-at-law, has been acting for Maarten. In March, she wrote to the Regal Bank requesting them to release the title for Maarten's property, for the purpose of having a second mortgage endorsed on it. She gave an undertaking to the Regal Bank to return the title as soon as she received it from the land registry.

Unfortunately, due to a fire at her office last month, all the files at her office were burnt up, including the one containing Maarten's title. Regal Bank has written to Mystic seeking the return of the title since Maarten is in arrears with his mortgage payments. Mystic is unable to provide the title and is so distressed about the fire that she has had to be hospitalized.

Meanwhile, Mystic has been involved in a case involving the division of matrimonial property. She is acting for the wife, Juliana, and in the course of this litigation she gave an undertaking to the husband's lawyers not to release her client's share and bond certificates to her, since there was a risk that she would sell the shares and bonds and leave the jurisdiction with the proceeds.

The certificates were left with Mystic's accountant, Mountain, for safekeeping since her office was being refurbished. Juliana was required to meet Mountain to discuss some financial matters. Mystic did not send anyone to accompany Juliana during this consultation nor did she advise the husband's attorneys of Juliana's requirement to visit Mountain. Juliana was crafty enough to persuade Mountain to release the certificates to her. She then sold the shares and bonds and fled the jurisdiction with all the proceeds of sale.

Mystic discovered that when she delivered the certificates to Mountain, she had inadvertently included the written instructions that she received from Juliana, pertaining to her case against her husband. When Mystic realised her error she immediately informed Juliana who casually replied, "I don't care, show whoever you want, I'm outta here forever." Mystic has just received a request from the husband's attorneys to hand over to them all information she shared with Mountain about Juliana.

Mystic is concerned about all the above and seeks your advice on the possible implications and how she should proceed.

Advise Mystic.

END OF PAPER