

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 2015

ETHICS, RIGHTS & OBLIGATIONS OF THE LEGAL PROFESSION

(TUESDAY, MAY 19, 2015)

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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **QUESTION 1**

Bennett, attorney-at-law, is a 'tech guru'. His law firm is ultramodern and is outfitted with the latest equipment. Bennett tries to use technology to outshine his fellow attorneys, including posting a series of videos on his YouTube channel. In each video, he delivers legal tips to the public and at the end of the clip he invites viewers to contact him at his office for a free initial consultation. Bennett's YouTube channel is immensely popular with over 50,000 subscribers. In fact, a number of Bennett's clients learned of him through his YouTube channel.

Bennett has also sent out the following Blackberry message to all of his contacts:

**"For Shoes, Suits, Gourmet Teas or the services of an ATTORNEY, plz contact Bennett at 999 1234 or pin 123. Plz re-broadcast. Thanks."**

Bennett's arch-rival at law school, Stan, has decided to trump Bennett's efforts by launching a blawg (a blog about legal issues). Stan specializes in intellectual property (IP) issues and in his blog he would offer advice about common IP matters.

Dez, a popular musician, is concerned that the lyrics from one of his hits has been sampled by another musician, Austin, in his upcoming single, without Dez's permission. Dez tells Stan, via the blog, about his desire to prevent Austin from releasing the single but there is no further exchange between Stan and Dez.

However, last week, Dez received a number of documents indicating that Stan had initiated proceedings to obtain an injunction to prevent Austin from releasing the single. Stan also attached his bill of costs for services rendered.

Dez is outraged since he did not intend to pursue this course of action and, in fact, had retained another attorney-at-law, after receiving no communication from Stan. Furthermore, Dez refuses to pay Stan.

Having just attended a law faculty symposium, both Bennett and Stan are concerned that the methods employed by them to attract clients may be in contravention of the canons/code

governing legal professional ethics. Stan is also confused about Dez's reaction to his bill of costs.

Bennett and Stan seek your advice with respect to the above.

Advise Bennett and Stan.

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## **QUESTION 2**

Zilara retained the law firm of Mickey, Pluto and Goofy ("MP&G") to initiate legal proceedings arising from a motor vehicle accident in which she suffered several broken bones. The retainer provided for a contingency fee agreement. At the commencement of the retainer, Zilara had the mental capacity to enter into the agreement. However, she later lost capacity on an intermittent basis due to periodic schizophrenia.

MP&G is concerned about Zilara's mental state and although Zilara has executed a power of attorney authorising her husband, Jackz, to instruct the firm with regard to her negligence claim, the firm wishes to terminate the retainer.

Since the trial has already commenced, Jackz does not want MP&G to withdraw. He is, however, concerned that the fee arrangement provides that in the event that the claim is successful, the firm would be entitled to 55% of the amount awarded to Zilara.

Jackz is concerned about the firm's proposal to withdraw from the retainer, as well as the fee arrangement, and seeks your advice.

Advise Jackz.

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## **QUESTION 3**

Kaycie, an attorney-at-law, had been driving well above the speed limit when she was pulled over by Officer Pete. Kaycie tried to explain that she was driving fast in order to avoid being

late for court. Officer Pete ignored both the explanation as well as Kaycie's outburst that policemen needed to address real crimes instead of interfering with 'decent people'. When Officer Pete handed Kaycie a speeding ticket, Kaycie snatched the ticket from him, tore it up and threw the pieces into his face. Officer Pete calmly issued her another speeding ticket and gave her a stern warning about her ill-mannered behaviour.

Yesterday, Kaycie appeared before Justice Hyatt as defence counsel for her client who was charged with unlawful possession of a firearm. When Kaycie saw that the police witness was Officer Pete, she uttered the following words within earshot of the jury, "Oh no, not this idiot again."

When Justice Hyatt asked Kaycie what she said, Kaycie retorted, "If it was meant for you to hear, you would have heard." Justice Hyatt, who had heard about Kaycie's encounter with Officer Pete, was incensed by Kaycie's last remark. He said, "Obviously you haven't learnt from your last brush with the law; 5 days or \$50,000." Before Kaycie could respond, Justice Hyatt adjourned for the day.

Kaycie wishes to appeal and seeks your advice.

Advise Kaycie.

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#### **QUESTION 4**

Alvin had practised law for over 35 years. He decided to mentor two law students and hired them in his firm. Two of Alvin's clients were Ellen and Jeffy.

Ellen had an erratic relationship with her children and, in a fit of rage with her son, had devised all of her property to a medical charity. Having reconciled with her son, she wanted to change her will to make dispositions to her children. She instructed Alvin accordingly.

Meanwhile, Jeffy had retained Alvin in respect of the purchase of a property in the hills. Since Alvin's law students were studying conveyancing, he had them review the transfer documents.

After 4 months, Alvin had still not carried out Ellen's instructions. When she enquired about the status of the will, he told her that his students were researching the matter. Another month elapsed when Ellen died suddenly but Alvin had not yet changed the will.

When Jeffy went to take possession of his property, he discovered that the transfer documents were defective as the property that was actually transferred was not what he had contracted to purchase.

Jeffy and Ellen's children are all livid about what they describe as Alvin's "deplorable" conduct and wish to take action against him.

Advise Alvin about any liability he may face in relation to the above.

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## **QUESTION 5**

Ziva is the Chair of the disciplinary body in your jurisdiction. She seeks your advice on whether disciplinary proceedings should be brought against the following attorneys-at-law for professional misconduct and what, if any, sanctions should be imposed on them.

- (i) **Calvin:** Calvin had received the sum of \$700,000.00 from his client, Sally, in respect of a transaction involving the purchase of a house. Although he was in possession of the money for several months, Calvin failed to pay it over to the vendor. As such, the vendor terminated the agreement. On several occasions, Sally had requested a refund of the sum paid and although Calvin promised that he would repay her, he never did. As a result, Sally was forced to move out of her rented premises, which she could no longer afford.
- (ii) **Aleeza:** Aleeza, a high-profile entertainment lawyer, recently attended a law conference in the resort town of Monbay. At the end of the conference, she posted a number of pictures of herself on her law firm's website. These included photos of her frolicking on the beach in a skimpy bikini and drinking tequila shots at the

pool bar with other conference delegates. The photos created a stir on social media with hundreds of followers posting both compliments and criticisms.

(iii) **Parris:** Parris was the counsel for the prosecution in a complex fraud case. The day before the trial started, he received an anonymous parcel which contained evidence that effectively absolved the defendant of any liability for the charges against her. Parris thought that it would delay the proceedings if he were to disclose this information to the defence and so he decided not to reveal the contents of the parcel. During the trial, Parris proceeded to adduce evidence that was inconsistent with that contained in the parcel.

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## **QUESTION 6**

Ella Golden, attorney-at-law, has been acting for the purchaser in a conveyancing transaction. Taylor, the vendor's attorney-at-law, sent Ella a statement to close showing a final balance of \$3,500,000 due from her client. Taylor requested that Ella either send her a cheque for this sum or give her professional undertaking to pay the amount due on completion.

Ella forwarded the statement to her client, Arianna. Ella asked Arianna to put her in funds to enable her to give the required undertaking. Arianna sent Ella a banker's draft for the full amount due. Ella duly gave her undertaking to the vendor's attorney-at-law to pay the balance purchase price of \$3,500,000 in exchange for the title registered in her client's name as proprietor.

At that point, Ella decided to lodge the draft to her personal account on a 60 day certificate of deposit. Five weeks later, the vendor's attorney-at-law sent Ella the title duly registered in her client's name and requested her to fulfil her undertaking by sending the balance purchase price.

Ella responded to the several requests for payment by repeatedly stating that the ongoing riots in the area precluded her from going to the bank to obtain the payment. In fact, Ella was waiting for the short-term certificate of deposit to mature so that she could collect the interest.

As a result of the delay, both Taylor and her client are outraged and have indicated that they will be taking action against Ella.

Ella seeks your advice on what, if any, liability she may incur.

Advise Ella.

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### **QUESTION 7**

Liv, attorney-at-law, seeks your advice in relation to the following matters:

- (i) Joey has recently attended a consultation in which he sought to retain Liv to establish a number of offshore trusts and companies around the Caribbean. Joey has indicated that he is willing to double Liv's fees if she handles the matter expeditiously. He tells Liv that he wishes her to hold US\$1 million in her client's account for him, which he will give to her in "instalments" in cash and cheques. When Liv examines the client information form that Joey completed, she notices that in the lines dealing with occupation and source of funds Joey had simply scrawled the words, "I'm a lucky man." Liv is concerned about the lack of information provided and is unsure how to proceed. She also wants to know what, if any, are the potential consequences for her if she accepts the retainer.
  
- (ii) Liv has just been served with a disclosure order pursuant to the anti-money laundering legislation in relation to all documents held by her concerning her client, Parker. Liv has been representing Parker, a senior government official, in a number of conveyancing matters in which Parker was the purchaser of several

properties. Parker has been responsible for the award of government contracts to foreign corporations seeking to do business in that jurisdiction and although Parker has never been charged, there have been rumours of him engaging in corrupt activity in relation to those contracts. At the time of the retainer, Parker told Liv that she must never let any nosy investigator come anywhere near his documents unless it is “absolutely necessary.” Amongst the documents held by Liv are the sales agreements and the instructions from Parker. Liv is unable to get in touch with Parker and does not know how to respond to the disclosure order.

Advise Liv.

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### **QUESTION 8**

Maddie entered into an agreement to purchase an apartment from Chloe. In this transaction, the firm of Avery, Tyler & Associates (“AT&A”) acted for both Maddie and Chloe since they were told by the firm that this would be “more economical and expedient” for the parties.

In the transaction, Avery represented Maddie and Tyler acted for Chloe. Maddie was unable to obtain a mortgage from a financial institution since she was unemployed. However, AT&A offered to finance the purchase at a rate of 15% per annum. Maddie realized that this was 3% higher than the average bank rate but, in the circumstances, she immediately accepted the loan. The security for the loan was the apartment.

Prior to the completion of the sale agreement, Tyler had received a notice from the local town council indicating that in an effort to maintain certain standards in that neighbourhood, property owners would not be permitted to rent any part of their premises. Tyler did not disclose this information to either Avery or Maddie.



After the transaction was completed, Maddie moved into the apartment but was struggling to afford the monthly repayments as she was still not able to find a job. She decided to rent out a room, in her apartment, to a law student but was fined heavily by the town council for breach of the renting restriction. As a result of the fine, Maddie has fallen behind in her monthly repayments.

Maddie has discovered that AT&A is planning to exercise its power of sale over the property. Maddie is distraught and now wishes to know what, if any, action may be brought against AT&A.

Advise Maddie.

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**END OF PAPER**

