

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2016

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(AUGUST 5, 2016)

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

Bob Minion, attorney-at-law, considers himself as much a journalist as an attorney. Bob has a weekly radio show called "*Right About You*" and he also writes a weekly newspaper column entitled "*That's Right*".

Two weeks ago, Bob had dedicated his radio show to the sentencing process. In the course of the show, he made the following comment:

"Those who dispense justice must do so, not in a dim-witted haze, but must act precisely, clearly and fairly. The extreme severity or unbridled leniency that we find in sentencing by some judges cannot continue to be the order of the day."

Bob was so pleased with the positive response to that radio show that he wrote an entire column on the same topic. In the column, Bob asserted that "*the judiciary must be as concerned with handing out fair sentences as it is with receiving fair salaries*".

Yesterday, Bob was scheduled to appear before Justice Gru in a fraud trial in which he was acting for Kevin, the defendant.

Justice Gru had heard the radio show and read the newspaper column, and was incensed that Bob had expressed such views in the media.

When Bob appeared in court yesterday, Justice Gru adjourned the trial and said to Bob, "*You have the audacity to insult this court. You're a disgrace to your profession. I hereby fine you \$10,000 for your rudeness and obstinacy.*"

Bob is shocked and has retained you to advise him on how he should proceed.

Advise Bob.

QUESTION 2

Jon Sham, attorney-at-law, had a busy practice. He spent a great deal of time developing his law practice as well as writing legal fiction. Indeed, his most recent novel, *The Cheating Liar*, is currently ranked on the bestsellers list.

Six months ago, Brittany Spares retained Jon to apply for a patent for a new species of plant that she had genetically modified. Jon, who had little knowledge of intellectual property law, agreed to do the necessary work to obtain the patent. Since he was about to embark on a promotional tour for his new book, he placed Brittany's file on his desk, where it has remained ever since. Brittany has just discovered that another person has applied for a patent for the same plant and that her claim is now worthless. She is outraged and wishes to take action against Jon.

At the same time that Jon accepted Brittany's retainer, Jon had also been instructed by Nona, to prepare her will. Nona wished to leave her entire estate to Wendy. Jon prepared the will which was witnessed by Wendy's mother and brother. However, two weeks before the will was executed, the succession legislation in the jurisdiction was amended. The amendment rendered null and void any gift under a will, in circumstances where a person witnessing the will was a relative of a beneficiary under the will.

Nona has died and Wendy has now learned that she may not be entitled to receive her gift under the will. She is depressed and wishes to know if any action can be taken against Jon.

Brittaney and Wendy seek your advice on what, if any, action may be brought against Jon.

Advise Brittany and Wendy.

QUESTION 3

Astral Fairy, attorney-at-law, acts for Goomer in relation to his lease of 10 Hard Drive. On January 15, 2016, Astral wrote the following letter to Damon Washington, attorney-at-law for Eleanor, the owner of 10 Hard Drive.

“Dear Mr. Washington,

Re: Undertaking concerning premises at 10 Hard Drive, Queenstown

I hereby formally undertake that Goomer, his servants, guests, visitors and/or agents will quit, give up possession and vacate the premises at 10 Hard Drive, Queenstown on February 15, 2016 by 7:30 pm.

Further, I hereby formally undertake to pay to you the sum of \$500,000 on February 15, 2016, in full and final settlement of Mr. Goomer’s indebtedness to Eleanor for rent in arrears.

Yours faithfully,

Astral Fairy

Attorney-at-Law”

Four months have elapsed since this letter was sent. However, to date, Astral has not paid the \$500,000 to Damon since, in fact, she has not yet received the money from Goomer.

Further, although Eleanor had intended to rent 10 Hard Drive to other persons from March 1, 2016, she has been unable to do so since Goomer is still in possession of the property.

On March 10, 2016, Astral was involved in a motor vehicle accident in which she suffered severe injuries to her limbs. As a result of her injuries, she was hospitalized for several weeks and has been unable to return to work since she is in a full-body cast.

Eleanor is frustrated since she is unable to recover possession of her property whilst the rent remains outstanding.

Advise Eleanor on what, if any, action may be taken against Astral.

QUESTION 4

Asha, an attorney-at-law, is strikingly beautiful and has managed to earn money as a model, primarily to fund her legal studies. After Asha was admitted to practice, she continued to accept modelling contracts but on a much reduced scale. Occasionally, she would appear in television advertisements marketing hair products.

In this regard, Asha features in a television shampoo advertisement in which she is wearing her legal robe. In the advertisement she says, "In my line of work, a 'good hair day' can make the difference between winning and losing. That's why I use Fantene shampoo everyday."

Asha has a rather flamboyant personality and feels duty-bound to "jazz up" the legal profession. She printed holographic business cards which, when tilted, displays an image of her wearing her court attire. She also decided to encase the outdoor sign, displaying her firm's name, in pink neon lights.

In April, Martha visited Asha for advice. Martha wished to evict Tom, her former boyfriend, who was renting an apartment from her. Martha claimed that Tom had not been paying the rent. Asha advised Martha of the best course of action, and Martha left a copy of the lease agreement and receipts evidencing some rent payments.

The next day, Asha instituted proceedings against Tom, and obtained a hearing date. Asha emailed Martha, informing her of the date. When the matter came up, neither Martha nor Tom attended. The matter was adjourned and costs were awarded against Martha.

Asha informed Martha of what had transpired. At this point, Martha expressed surprise that the proceedings had been instituted as she and Tom had “made up”, and she had given Tom permission to continue to stay at the apartment.

Asha has been asked by the disciplinary body to explain her advertising practices.

Asha is troubled by this turn of events.

Advise Asha on all the issues that arise.

QUESTION 5

Evie retained Mal, an attorney-at-law who was recently admitted to the Bar, to bring proceedings against her former employer, Holy-wood Arts. Mal told Evie that her fees would be charged at an hourly rate of US\$300.

Mal filed the claim in the Supreme/High Court and proceeded to take steps to prepare for trial, including interviewing prospective witnesses, preparing witness statements and conducting legal research. Mal also obtained an opinion from eminent Senior/Queen’s Counsel with respect to trial strategy.

The trial began yesterday. To Evie’s surprise, Mal called an expert witness to give testimony in support of Evie’s claim. At the trial, Evie was also shocked to discover that her former employer, Holy-wood Arts, was represented by Jay. In fact, Jay had acted for Evie in a previous dispute involving Holy-wood Arts.

Mal has presented the following bill of costs to Evie:

Bill of Costs

Re: Evie v Holy-wood Arts

(i)	<i>Fee paid for the opinion of Senior/Queen's Counsel</i>	<i>\$1,500</i>
(ii)	<i>Fee paid to expert witness</i>	<i>\$1,200</i>
(iii)	<i>Professional fees for receiving instructions, filing action and conduct of matter (20 hours)</i>	<i><u>\$6,000</u></i>
	<i>Total</i>	<i><u>\$8,700</u></i>

Evie is concerned about the bill and Jay's representation of Holy-wood Arts. She wishes to know how to proceed.

Advise Evie.

QUESTION 6

Trina is an attorney-at-law who is also a volunteer at Elderly Acres, a residential care facility for senior citizens. Trina's favourite resident was Benji.

Benji, a successful businessman, had decided to live at Elderly Acres so that he could have people around him at all times. Trina and Benji had become quite close as a result of her regular visits. Indeed, Benji admired Trina for being such a successful attorney-at-law and had even introduced her to his children. On every occasion that Trina visited, Benji would give her a box of exquisite British afternoon tea biscuits for Trina to share with her daughter.

Benji regularly confided in Trina. As a result of these conversations, Trina realised that Benji did not have a will and she impressed upon him the importance of having a will.

Benji told Trina about his several properties and expressed a desire for these to be shared amongst his children. Benji also told Trina that he wanted to leave her his log cabin, which was located in the fashionable Short Mountain neighbourhood. Benji asked Trina to draft a will which gave effect to all his wishes.

Trina drafted the will which was duly executed. Benji died a few months later. His children have now retained you, claiming that Trina had no right to any gifts from their father.

Advise Benji's children.

QUESTION 7

Lucas is charged with trafficking illicit drugs and illegal possession of firearms. The allegation is that Lucas used his fishing boat to deliver drugs to Karlos, a rogue coast guard officer, in exchange for guns. The two would allegedly meet at a rendezvous point located near Sheep Island.

Zara, Lucas' attorney-at-law, visited him in prison to take instructions. Lucas told Zara that he was afraid of water and never went boating or swimming and so he was not in the area where the drug deals were alleged to have occurred.

Zara discovers that the only substantial evidence that the prosecution has is a statement from Blake, a goat farmer on Sheep Island. According to that statement, Blake said that he would see Lucas and Karlos meet on several occasions just offshore of Sheep Island, and that they would exchange large bags.

As a result of her own investigation, Zara also discovered that Lucas was a licensed fisherman and a member of the Nautical Boat Club (NBC). When she checked the log at the NBC, she realised that on each occasion that Lucas was alleged to have made a drug deal, his boat was logged as being “at sea” and Lucas was named as the captain.

When she brought these facts to Lucas’ attention, he admitted that her findings were correct but insisted on running an alibi defence. Zara duly complied with his instructions.

At the conclusion of the trial, in summing-up, the judge omitted to give the jury a direction as to the standard of proof required to prove the charge. Neither Lucas nor prosecuting counsel brought the omission to the attention of the judge.

The jury is deliberating and Zara is suddenly overwhelmed by “an attack of conscience” and seeks your advice on the propriety of her conduct.

Advise Zara.

QUESTION 8

Bubbles had retained Jojo, attorney-at-law, to represent her in an action against her boyfriend, Bulldog, for custody and maintenance of their one-year-old child. Two weeks later, Jojo terminated the retainer since Bubbles insisted that Jojo should pursue a course of action which, Jojo repeatedly advised her would fail, since such an approach lacked any merit in law.

Bubbles has now retained you to pursue the matter on her behalf, and the matter is scheduled to commence in three weeks. Bubbles does not have any copies of the relevant documents since these are still in Jojo’s possession. Bubbles tells you that she has tried on several occasions to obtain her file, but Jojo refuses to release it until his legal fees are paid in full.

Bubbles is also concerned since she has learned that Bulldog's attorneys-at-law are seeking to obtain copies of her instructions to Jojo, in which she had admitted that Bulldog did not hit the child. This was in conflict with an earlier statement she had made to the police claiming that Bulldog would regularly abuse their child by slapping him on the arms and legs.

Bubbles insists that she does not want Bulldog to obtain copies of her instructions to Jojo and, further, that she has no intention of paying Jojo his legal fees.

Advise Bubbles.

END OF PAPER