

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2017

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(AUGUST, 2017)

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. Erasable pens are not allowed.
- (f) The Canons/Code of Ethics for your jurisdiction is provided. **Please do not write on it.**

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

## **QUESTION 1**

Allie's law firm is in Smokey Estates, two blocks away from the city landfill. Over the years, there have been many fires at the landfill. Sometimes, small fires continue to smoulder for days, casting heavy pollutants in the air. Several months ago, a faulty incinerator at the landfill caused a fire that raged for four days before fire-fighters were able to bring it under control. As a result, thick layers of smoke billowed over surrounding neighbourhoods and soot settled on the ground.

A community meeting of residents of Smokey Estates was held to address various issues relating to the landfill fire. Allie addressed the meeting on legal implications arising from the fire. Subsequently, several of the residents consulted Allie.

Carmella, a small-business farmer who lives in Smokey Estates, attended the meeting. Carmella sells her crops at various grocers and farmers' markets in Smokey Estates and surrounding neighbourhoods. As a result of the landfill fire, Carmella's entire crop was destroyed and she lost \$100,000 in produce orders that she was unable to fill.

Carmella sat next to Allie at the community meeting. The two conversed about the effect that the fire had had on their respective businesses. Carmella said to Allie, "You're a lawyer. You need to get to the bottom of this and make sure that we are compensated for everything that we've lost."

The following day, Allie wrote to the Ministry of Environment (MOE), which had responsibility for the landfill, demanding that they pay her "client", Carmella, \$120,000 for the injury and damage that she suffered from the fire. Allie sent Carmella an email telling Carmella what she had done but Carmella did not respond to the email. However, a week later, Carmella brought to Allie's office, copies of contracts with customers whose orders she had not been able to fill.

Allie received a letter from the MOE offering the sum of \$60,000 in full and final settlement of Allie's claim. Allie accepted the offer. She emailed Carmella to tell her what she had done and

attached to that email the bill for her services. Carmella told Allie that she had no right to act on her behalf and that she did not intend to pay any bill from her.

Carmella consults you for advice on Allie's actions in relation to her.

Advise Carmella.

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## **QUESTION 2**

Dino, a litigation attorney, worked at Flintstone & Co., attorneys-at-law, in Anteagua. One year ago, Dino relocated to your jurisdiction and is now a partner at Rubbles & Associates ("RA").

Just before he relocated, Dino had successfully defended West Indian News ("WIN") in a libel action brought by a member of the Anteaguan government. The matter was widely reported in the Anteagua news and was featured prominently in other newspapers throughout the region. Dino was especially pleased at the outcome of the matter as he owns shares in WIN.

Labour and employment law has formed the cornerstone of the practice of RA and Dino is expanding his own practice in those areas of the law. Dino has been approached by Fred who said that he had been employed with WIN, in its international news department, but was terminated, in his view, without cause. Fred wishes to retain RA to sue WIN.

You are an associate at RA. Dino has asked you to advise him as to any issues that may arise in relation to a retainer between RA and Fred.

Advise Dino.

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### **QUESTION 3**

K. Nyne, attorney-at-law, represented Rott Weiller on a charge of murder. The matter was before Justice Blunt. Poodle Pooches appeared for the prosecution.

The prosecution mounted a vigorous case. Pooches' philosophy was "have no mercy." Accordingly, she went "all out" in every matter that she prosecuted. In her opening address, she told the jury that soon enough they would be able to put away the accused and throw away the key. As she presented her case, she often referred to the defendant as a "boorish killer no better than Hitler". When Nyne rose to object, Pooches told him to "go to Hades in a boat without a paddle".

At this point, Justice Blunt warned Pooches that if she did not refrain from such "scurrilous behaviour" he would report her to the disciplinary body.

On the third day of the trial, Nyne did not appear. He sent a message to the court that he had not been "properly instructed". Justice Blunt ordered Nyne to appear. After he failed to comply with the order, Justice Blunt instructed the bailiff to escort Nyne from his office. When Nyne finally appeared in the courtroom, Justice Blunt said: "You are a disgrace to the profession. Bailiff, take him away. I am giving him two days in lock-up."

Pooches has just been contacted by the chair of the disciplinary body on the ground that she has committed professional misconduct.

Nyne and Pooches seek your advice with regard to the above.

Advise Nyne and Pooches.

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#### **QUESTION 4**

Skip is a long-standing client of Marlee, a senior attorney-at-law. Skip retained Marlee to represent him in a personal injury claim for \$1,500,000 against Lucky Riding Stables. He had fallen from a horse at their premises. Marlee had to juggle his schedule and change travel plans in order to accept the engagement.

Marlee and Skip verbally agreed that Marlee would bill Skip at an hourly rate of \$400 and that his associate, Steve, would bill at a rate of \$200 per hour. In addition, Skip agreed for Marlee to receive 20% of any amount that Skip recovered.

The matter was relatively simple and most of the work could have been completed by Steve. The trial lasted for two days and Skip's claim was ultimately successful. Steve prepared a bill to be submitted to Skip for the work completed.

#### **Bill of Costs**

- 2 meetings with Skip, Marlee and Steve – 2 hours per meeting \$2,400
- 3 meetings by Marlee and Steve with 3 witnesses - 2 hours per meeting \$3,000
- research and review of pleadings and correspondence – 5 hours Marlee; 10 hours Steve \$4,000
- drafting and filing of a 10-page skeleton argument by Marlee – 10 hours \$4,000
- engagement of equestrian expert for trial \$3,000
- 10 hours in trial – Marlee and Steve \$6,000
- 20% of judgment \$300,000

**TOTAL: \$322,400**

Notwithstanding his long relationship with Marlee, Skip is concerned about the bill that was submitted to him. He seeks your opinion as to his agreement with Marlee and the bill that was presented.

Advise Skip.

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**QUESTION 5**

In 2015, Hillaree Clint had instructed Tromp & Co., who specialise in estate planning, to prepare her will. In that will, she left her entire estate to her daughter, Melanie.

At the time of these instructions, Hillaree was known to be suffering from schizophrenia. Nonetheless, Tromp & Co. received her instructions that this will was intended to replace a previous will, executed in 2010. In the 2010 will, she purported to leave all of her property to her favourite charity *Cats and Dogs Rule*.

In January 2016, Hillaree had instructed Tromp & Co. to create an *inter vivos* trust for the benefit of her grandchild, Shellsea. In December 2015, an amendment to the Trusts Act came into effect requiring all new trusts to be registered by the settlor with the newly created Office of the Trustee General.

Hillaree died in March 2017. In proceedings to have the 2015 will admitted to probate, the court held that this will was invalid as Hillaree had lacked testamentary capacity at the time she executed it.

Melanie now wishes to bring an action against Tromp & Co. on the basis that the firm should have ensured that Hillaree had testamentary capacity in 2015 and, further, that they should have obtained medical evidence, at the time of execution, to prove that she knew and approved of the contents of the will.

Tromp & Co. had also omitted to have Hillaree register the trust. As a result, Shellsea wishes to take action against Tromp & Co. since the trust in her favour has failed.

Advise Melanie and Shellsea.

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## **QUESTION 6**

Ricky has represented Don in a number of litigious matters over the last few years. In fact, he is currently acting for Don in an action for breach of contract against his former employer. Don has recently instructed Ricky to create a trust for the benefit of his wife and also to set up an offshore company in the Keyman Islands. For the purpose of these transactions, Don has given Ricky a cheque for the sum of \$5 million, and \$1.1 million cash, which he wants to be held in Ricky's clients' account, until further advised.

Ricky is becoming concerned about these instructions, especially since Don, a store clerk, was recently dismissed without notice following an "irregularity" that was discovered in the way he handled the store's cash transactions. Indeed, there were some rumours that he may have defrauded his former employer of a large sum of money.

Ricky is uncomfortable about acting for Don. Although the civil claim is ongoing, he no longer wishes to represent him in that matter or to establish the trust and offshore company.

Advise Ricky on the following:

- (i) whether he can withdraw from representing Don in the claim; and
  - (ii) the possible consequences for him if he creates the trust and offshore company and the rumours about Don are true.
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## **QUESTION 7**

Sam Sung and Associates is a small firm of attorneys-at-law, specialising in conveyancing and commercial law. Mac, a UK national, has been a client of the firm for a number of years.

In the late afternoon of April 1, 2017, five members of the Serious Crime Unit of the police force arrived at the firm and presented a search order to Apple, who is a junior associate in the firm. This order was issued by a local judge, pursuant to the mutual assistance legislation of your jurisdiction.

At the time of the arrival of the police, Apple was the only attorney-at-law in the office. She was told by the officer in charge of the investigation that they were investigating all aspects of Mac's business activities, pursuant to a request from the UK government. The police in the UK are planning to initiate a prosecution against Mac for money laundering.

The officers demanded access to all of the firm's files and other documents bearing Mac's name. In particular, they asked to see the instructions from Mac, all contracts between Mac and third parties, as well as the receipts for all monetary transactions conducted by him.

Apple handed over the receipts but refused to deliver up the other documents. Nonetheless, and in spite of Apple's protests about the manner in which the officers were conducting the search of the law office, Apple handed over the remaining requested documents.

Mac is outraged and wishes to take action against the firm for "betraying his confidence."

Advise Sam Sung and Associates.

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### **QUESTION 8**

Choco, attorney-at-law, has been acting for Latte, the purchaser in a conveyancing transaction. Her client is a resident of the United States of America, who plans to live in your jurisdiction when she reaches retirement age.

According to Choco, the vendor's attorney-at-law sent her a statement to close showing a final balance of \$5,000,000, due from her client. The vendor's attorney-at-law requested that Choco



either send her a cheque for this sum or give her professional undertaking to pay the amount due on completion.

Choco forwarded the statement to Latte, asking her to put Choco in funds to enable her to give the required undertaking. Latte sent her a banker's draft for US\$100,000, which at the prevailing exchange rate on that date (\$50 = US\$1) amounted to exactly the amount required.

As a result, Choco duly gave her undertaking to the vendor's attorney-at-law to pay the balance purchase price of \$5,000,000 in exchange for the title registered in her client's name as proprietor. However, she decided not to convert the US currency until the funds were actually needed and, instead, lodged it to her personal foreign currency account.

Four weeks later, the vendor's attorney-at-law sent her the title duly registered in her client's name and requested her to fulfil her undertaking by sending the balance purchase price. Choco instructed her banker to sell the US\$100,000 and to lodge the proceeds to her clients' account to enable her to draw the cheque. At this point, she was advised by her banker that over the four-week period the exchange rate of the dollar had, unusually, appreciated against the US currency to \$40 = US\$1, with the result that the \$100,000 was now equivalent to \$4,000,000. That is, \$1,000,000 short of the amount of her undertaking.

Having recently repaid her outstanding student loans, Choco did not have the required amount available. In a panic, she sent an email to Latte asking her to send the difference in the amount due. She also wrote to the vendor's attorney-at-law requesting an additional four weeks to hand over the balance on the purchase price. However, Latte responded that she had no intention of sending any more money and the vendor's attorney-at-law refused to grant an extension.

Choco is concerned about what, if any, liability she may encounter as a result of the above.

Advise Choco.

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**END OF PAPER**

