

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2018

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(AUGUST , 2018)

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/Codes of Ethics for your jurisdiction are provided. **Please do not write on them.**

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Mr and Mrs Strife have been clients of Peace Law Firm, on and off, for years. During this period, they have moved house twice, and each time Peace Law Firm did the conveyancing. Mrs Strife has been prosecuted for tax evasion, shoplifting and disorderly conduct. Mr Strife has two convictions for offences of dishonesty, the latter being for armed robbery. Peace Law Firm has represented them on all their court appearances, the last one being two years ago.

Quiet is working in the matrimonial department of Peace Law Firm. One morning, she comes in to find Mrs Strife sitting in reception with a black eye and a split lip, following an alleged beating from Mr Strife. She tells Quiet that she wants her, as her attorney-at-law, to get a protection order against Mr Strife and file a divorce petition on her behalf.

Mrs Strife instructs Quiet that she has endured years of terrible abuse at the hands of Mr Strife and wants her to include that information in the divorce petition. However, whilst Quiet is out of the room, Mrs Strife confides in Silence, an associate attorney-at-law assigned to Quiet, that Mr Strife was very gentle towards her, and that this was the only time he has been abusive towards her. Silence communicates this information to Quiet.

- (i) Advise Quiet on the implications of her accepting the retainer for Mrs Strife, and on complying with Mrs Strife's instructions regarding the content of the divorce petition.
- (ii) How does it affect your answer if the facts were changed to say that, the only matters in which Peace Law Firm has acted for Mr and Mrs Strife in the past are their conveyancing transactions?

QUESTION 2

Mrs Greenback is a long-standing client of Yen, an attorney-at-law. She has a criminal history of larceny/theft and fraud. She comes to see Yen because she has been charged with fraud under the relevant legislation in your jurisdiction, and she would like Yen to defend her in this matter.

Mrs Greenback is alleged to have defrauded several local persons into paying her large sums of money, in return for placing them in jobs, and obtaining work permits for them in Canada. The allegations are that, in fact, there were never any jobs and work permits to be obtained, and that she intended to, and did, defraud vulnerable persons desperate for work. She is alleged to have amassed a small fortune as a result of these activities.

Mrs Greenback provides Yen with several certificates from tertiary education institutions, which speak to her qualifications as regards recruitment consultancy work, and which she instructs Yen to put into evidence as part of her defence. However, by virtue of the evidence that she has given in previous trials, Yen knows that Mrs Greenback has no education beyond high school, and that the certificates are fraudulent. Mrs Greenback also instructs Yen to defend her reputation as a *“respectable businesswoman who has an unblemished character”*.

At the same time, Mrs Greenback indicates to Yen that she has recently come into a large sum of money because *“an aunt died”* and left her everything. She would like to set up a company which provides work placements abroad, and she requests Yen’s legal assistance in that exercise. She states that she wants the company to be registered in an offshore jurisdiction in order to minimize tax liability.

Advise Yen on any implications of acting for Mrs Greenback in the various matters, and as regards complying with her instructions regarding the defence.

QUESTION 3

JC Lately (JC) is a newly qualified attorney-at-law who has set up his own practice. He is very busy with referrals from friends and family. One day, Innovate, one of his school friends, attends his offices one day and asks to retain him to apply for a patent for a new species of plant which she has genetically modified. JC expressed to Innovate his reluctance to accept the retainer because he was swamped and also because he has no experience in intellectual property law.

Innovate says she does not care and she has the utmost confidence that he can do a better job than any of the other lawyers she knows.

JC took the documents Innovate had with her and said that he would “*look into it*” but could “*not promise anything*”.

JC is then involved in a series of back-to-back trials and, before he even has time to look at Innovate’s papers, someone else has applied for a patent for the same plant and Innovate’s claim is now worthless. Innovate is outraged and wishes to take action against JC.

To make matters worse, JC gave an undertaking to the court that he would file his skeleton arguments and list of authorities before the trial of a civil matter, due to commence on that very day. However, due to his heavy workload, he has not been able to do so, and arrives at court unprepared to commence the trial and seeks an adjournment. The trial judge is livid.

Advise JC on the potential consequences of his actions.

QUESTION 4

Kenya retained Chad, an attorney-at-law who was recently admitted to the Bar, to bring proceedings against her former employer, PD Limited. Chad told Kenya that his fees would be charged at the hourly rate of US\$300.

Chad 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. Chad also obtained a legal opinion from a Senior/Queen’s Counsel who specialised in employment matters.

The trial took place yesterday and, to Kenya’s surprise, Chad called an expert witness to give evidence in support of Kenya’s claim.

The trial has concluded, and Kenya is awaiting judgment. In the meantime, she has received the following bill for professional services from Chad:

Bill for Professional Services:

Re: Kenya v PD Limited

1.	Fees paid for the opinion of Senior/Queen’s Counsel	US\$1,500
2.	Fees paid to expert witness	US\$1,200
3.	Professional fees for receiving instructions, filing action and conduct of matter (20 hours)	US\$6,000
	Total	US\$8,700

Kenya is concerned about the bill and she has retained you to advise her on whether she should challenge it.

Advise Kenya.

QUESTION 5

Arlene Abbot, the senior partner at Abbot, Benny and Co., Attorneys-at-Law, is the editor of a magazine published by the firm biannually. The magazine includes articles on events sponsored by the firm such as seminars and legal fairs. It also carries feature articles on attorneys-at-law in

the firm and on their law-related accomplishments, and summaries of law topics featured on the firm's radio talk show.

The magazine is published on the firm's website and various social media platforms. Hard copies are also left in strategic places such as at court buildings and downtown restaurants.

Yesterday, Justice Jack's orderly retrieved six copies of the magazine that had been left in Justice Jack's courtroom and gave them to him. Justice Jack immediately noticed the following articles both written by Arlene Abbot:

"Abbot, Benny & Co Hosts 'Radio Law Talk'

Tune in to 199.9 FM every Wednesday at 5:00 p.m. for 'Radio Law Talk' hosted by a legal expert from Abbot, Benny & Co. We're also streaming live at www.abclaw.com. We will answer all your legal questions on the drive home. To appear on 'Radio Law Talk' email us at radiolawtalk@abclaw.com.

Justice Jack rants again

Outspoken judge, Mr Justice Jack is at it again. This time the bad-tempered judge is suggesting that the courts' backlog arises from the unpreparedness of lawyers. This is what we say to Justice Jack- 'Sir, stay out of lawyers' business and focus on your job. If more judges actually understood what they claim to understand and complete their court docket, this country would be further ahead.'"

You are Justice Jack's judicial clerk. He tells you that he intends to summon Arlene to his court and that he will immediately fine her. He has asked you for your opinion as to his intended course of action, and as to any other recourse that he may have against Arlene Abbot.

Give Justice Jack your opinion.

QUESTION 6

You are working as an intern at the regulatory body in your jurisdiction. Don, the Chairperson of the disciplinary body, seeks your advice on how to treat with the actions of the following attorneys-at-law:

1. Murcia - Murcia is a devoted contributor to her favourite charity, "Feed The Orphans". For the past year, she has been having financial difficulties and has had difficulty in making her usual monthly contributions. As such, for the past six months, Murcia has been withdrawing US\$200 per month from her clients' account, in order to make her monthly contributions. Murcia had always intended to replace the monies withdrawn "when things got better", but to date has not done so.
2. Jerez - Jerez likes to socialise with his friends by drinking at the local bar every Friday night after work. Unfortunately, Jerez often drives himself home whilst intoxicated and, as a result, has several convictions for offences over the years, namely, exceeding the speed limit; driving under the influence of alcohol; failure to stop at pedestrian crossings; and resisting arrest.
3. Arnie - Arnie has recently been called to the Bar. Frustrated with the slow pace at which his legal practice is developing, he decides to diversify his income stream by setting up a plant nursery called "The Law of Plants".

He has created a website for his plant nursery, on which he posts pictures of the various plants in the nursery, as well as photos of himself tending to the plants, along with tips on caring for plants. He has also posted a video of himself, standing next to the plants, and dressed in his counsel's robe, saying:

"Talking to plants helps them to grow, and I treat my plants with the utmost care and attention. Despite my busy court schedule, I make time to check on them daily and give them words of encouragement. They certainly seem to appreciate it! Just look at how well they are doing!"

Advise Don, giving reasons, whether disciplinary proceedings for professional misconduct may be instituted against the above attorneys-at-law, and what, if any, sanction(s) should be imposed upon them.

QUESTION 7

Mario is the head of the commercial litigation department at Luigi & Co., Attorneys-at-Law. The firm employs 25 attorneys-at-law in total and operates in three jurisdictions in the region. Mario works at the Bereeze office. He has several high-profile clients, amongst whom is the Amantala Drinks Corporation (ADC), which he successfully defended in a negligence claim brought by a member of the public who suffered personal injury after consuming one of its soft drinks. The matter was widely reported in the national newspaper and was featured prominently in other newspapers throughout the region. Mario was especially pleased at the outcome of the matter since he owns shares in ADC.

Luigi & Co.'s office in another jurisdiction, Vincenza, has been retained by Giant Beverages Company (GBC) in its takeover bid for ADC. The CEO of ADC hears about this, and threatens to terminate ADC's retainer with Luigi & Co., as well as seek an injunction preventing Luigi & Co. from acting for GBC in its takeover bid.

Mario seeks your advice on the matter.

Advise Mario.

QUESTION 8

Orange, an attorney-at-law, has represented Berry in a number of matters over the last few years. In fact, she is currently acting for Berry in an action for wrongful dismissal against his former employer. Berry has also recently instructed Orange to act for him in the purchase of a luxury

villa in an exclusive area of town. For the purpose of these matters, Berry has given Orange a cheque for the sum of \$5,000,000, and \$1,000,000 in cash, which he wants to be held in Orange's clients' account, until further advised.

Orange is becoming concerned about these instructions, especially since Berry, a store clerk, was 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.

Orange is uncomfortable about acting for Berry. Although the civil claim is ongoing, she no longer wishes to represent him in that matter, nor to act for him in the purchase of the luxury villa. The vendor's attorney-at-law has just sent Orange the draft Agreement for Sale.

Advise Orange on the following:

- (i) whether she can withdraw from representing Berry in the civil claim, giving reasons; and
- (ii) the possible consequences for her, if she proceeds with the purchase of the luxury villa on Berry's behalf, if the rumours turn out to be true.

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