

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2019

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(AUGUST, 2019)

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 zoned for this school, **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 are provided. **Please do not write on it.**

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Happy has represented Lucky in a number of litigious matters over the last few years. In fact, she is currently acting for Lucky in an action for wrongful dismissal against his former employer. Lucky has also recently instructed Happy to act for him in the purchase of a luxury villa in an exclusive area of town. For the purpose of this transaction, Lucky has given Happy a cheque for the sum of \$5,000,000 and \$1,000,000 in cash which he wants to be held in Happy's clients' account, until further advised.

Happy is becoming concerned about these instructions, especially since Lucky, 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. Happy is uncomfortable about acting for Lucky in the purchase of the luxury villa.

Happy is served with a search and seizure order pursuant to the money laundering legislation in your jurisdiction. The order is in respect of the account ledgers for all monies held in the clients' account on behalf of Lucky, all documents pertaining to the purchase of the luxury villa and all files relating to the litigation matters Happy has conducted on behalf of Lucky in the past. Happy duly complies with the order.

Advise Happy on the following:

- (i) the implications of representing Lucky in the purchase of the luxury villa; and
 - (ii) the possible consequences for her in complying with the search and seizure order.
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QUESTION 2

Koffie has practised law for over 35 years. He decided to mentor two law students and later hired them in his firm. Two of Koffie's clients were Ella and Joe.

Ella had an erratic relationship with her children and in a fit of rage with them, had devised 80% of her property to a medical charity and 20% to Koffie as a show of gratitude for being such a good attorney-at-law. However, having recently reconciled with her children, she wanted to change her Will to make dispositions to her children instead of the medical charity. She instructed Koffie accordingly.

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

After four months, Koffie had still not carried out Ella's instructions. When she enquired about the status of the Will, he told her that the students were researching the matter. Another month elapsed when Ella died suddenly without Koffie having changed the Will.

When Joe 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.

Joe and Ella's children are all livid about what they describe as Koffie's deplorable conduct and wish to take action against him.

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

QUESTION 3

Jill, an attorney-at-law, has been acting for Ricky, the vendor in a conveyancing transaction. Ricky is migrating to the United Kingdom (UK), and wants to sell his property in Jamaica and use the proceeds to pay off a personal loan and establish himself in the UK.

Ricky pays Jill US\$500 on account of costs at the commencement of the transaction which she pays into the office account and proceeds with the transaction. Jill gives her professional undertaking to the loan company that she will pay off Ricky's loan upon completion.

About a month ago, Jill completed the transaction and received the balance due on completion, in United States Dollars (US), from the purchaser's attorney-at-law. However, Ricky was not well at the time of completion and had to be hospitalised. He therefore postponed his migration to the UK indefinitely. Consequently, Jill decided that she would take advantage of the strong US dollar and instructed her broker to invest the completion monies in a US dollar investment fund in her personal name.

The investment turned out to be high risk, and the risk materialised, resulting in Jill losing US\$1000 on the principal sum invested. Ricky has now recovered and has made several demands that Jill discharge his loan debt and pay over the proceeds of sale to him, to no avail.

Ricky has become frustrated and has reported Jill to the regulatory body in your jurisdiction.

Prior to the hearing of the matter before the disciplinary committee, and some two months after completion, Jill fulfils her undertaking to the loan company and pays over the balance of the sale proceeds to Ricky. On that basis, Ricky seeks to withdraw the complaint against Jill.

Advise Jill, on all the implications of her conduct in this matter and the likely outcome of the disciplinary proceedings against her. Include in your answer an opinion on the implications, if any, of Ricky seeking to withdraw the complaint against Jill.

QUESTION 4

Carl was charged with murder. Two weeks before the trial, he retained Kate, an attorney-at-law, as his defence counsel and asked her to put forward an alibi defence.

Whilst going through the papers provided by Carl, Kate found his diary in which he had recorded his memoirs about the murder in question. When Kate confronted Carl about the memoirs he admitted to Kate that he did in fact commit the murder, but in self defence. However, Carl didn't think that the jury would believe him, so he wanted Kate to proceed with the alibi defence, and to prepare Carl's girlfriend for the witness stand, since she is his alibi witness.

Kate was not comfortable with the situation, but was intimidated by Carl, and therefore duly complied with her client's instructions.

The prosecution's case was based on an eye witness who saw Carl leaving the scene of the crime, with blood on his shirt. Kate cross examined the eye witness vigorously and she suggested to him that Carl was not the person he saw leaving the scene of the crime.

On several occasions during the trial, despite several warnings from the judge, Ralph, the prosecuting counsel, referred to Carl as "*a cold-blooded killer*" who thinks that his "*big money*" would help him get away with murder. At the conclusion of the trial, the judge told Ralph that he had warned him 'one too many times', that his behaviour was intolerable and fined him US\$1000 for contempt.

Kate is now feeling very uneasy about her conduct of Carl's defence. Ralph is upset about the fine imposed by the judge.

- (i) What are the implications of Kate's actions?
- (ii) What recourse would Ralph have, if any, in relation to the judge's actions in fining him for contempt?

QUESTION 5

Pam, an attorney-at-law, has retained Dave, an attorney-at-law, to represent her in an action against her former employer, Saul & Co., Attorneys-at-Law, for wrongful termination.

Initially, Pam was a model client. However, as the matter progressed, Pam became more and more difficult. She telephoned Dave every day asking for a progress report. She informed Dave that, having regard to her legal background, and her seniority to Dave at the Bar, she wanted to be responsible for interviewing witnesses and drafting all communications. All she wanted Dave

to do was to put them on his letter head and sign them. When Dave refused she threatened to sue him for negligence.

Dave is frustrated and about a month ago, telephoned Pam to come in and collect her file and settle her fees, for which he sent a final bill by email. Dave has since done no further work on the matter. Pam did not collect her file or pay her bill. A couple of days ago, however, Dave received a letter from Cami, an attorney-at-law, advising him that she was now acting for Pam and requested Dave to hand over Pam's files to her.

Advise Dave on the propriety of his conduct of the matter, the termination of Pam's retainer, the issue of his outstanding fees, and Cami's demand for the file.

QUESTION 6

Michelle was a passenger in a motor vehicle driven by her boyfriend, which was involved in a road traffic accident with another vehicle. Michelle has retained Mark to sue the owner/driver of the other vehicle, for damages for personal injury.

At the first hearing of the matter, counsel representing the owner/driver of the other vehicle successfully adds Michelle's boyfriend as an ancillary defendant.

Michelle and her boyfriend have now attended Mark's offices to request that he represent both of them in the matter since they are adamant that liability for the accident rests with the owner/driver of the other vehicle.

Mark proceeds to act for both Michelle and her boyfriend and procures an accident report from the police on the issue of liability and a report from a consultant orthopaedic specialist to speak to the long term effects of Michelle's personal injuries.

The trial is conducted and Michelle's boyfriend is found to be contributorily negligent for the accident and liability for Michelle's personal injuries is apportioned 50:50 between him and the owner/driver of the other vehicle.

Michelle and her boyfriend are very dissatisfied with the judgment and think that Mark has not represented their best interests. They are also questioning the expenditure Mark incurred in obtaining the accident report from the police and the report from the consultant orthopaedic specialist, stating that they never agreed to the same and are not prepared to foot that bill.

Advise Mark.

QUESTION 7

David is an attorney-at-law and he also does some modelling to supplement his income. David poses in a 2019 special edition calendar for a popular underwear brand, featuring men from various professions. David is 'Mr. May' and is wearing only a pair of boxer shorts and counsel's robe.

At the 'after party' for the launch of the calendar, David gets quite drunk. He arrives the following morning, late for trial and still visibly drunk, swaying from side to side and slurring his words. He is argumentative with the presiding judge and almost gets into a brawl with opposing counsel.

The judge adjourns the trial and reports David's conduct to the disciplinary body in your jurisdiction.

Not to be outdone by David, Victoria, an attorney-at-law, who has a rival legal practice, prints holographic business cards which, when tilted, display an image of her wearing her court attire. She also decides to encase the outdoor sign, displaying her firm's name, in pink neon lights and, after her firm's name, includes the tagline 'the best by far'.

Advise the disciplinary body in your jurisdiction on any implications of the actions of David and Victoria and the likely outcome of any disciplinary proceedings which may be brought against them.

QUESTION 8

Falcon is a long-standing client of Crow, a senior attorney-at-law. Falcon retained Crow to represent him in a negligence and breach of contract claim for US\$50,000 against Big Bucks Investment Managers Limited, who he claims invested his money in high-risk bonds for which he never gave his consent. The risk materialised and Falcon lost all of his principal investment of US\$50,000. Crow had to juggle his schedule and change travel plans in order to accept the retainer.

Crow and Falcon verbally agreed that Crow would bill Falcon at an hourly rate of US\$400. Crow indicated that he would be assisted by a junior counsel in the matter but never confirmed with Falcon who that junior would be, or their hourly rate. Crow was in fact assisted by Chick, who was less than three years at the bar, who billed at a rate of US\$200 per hour. In addition, Falcon agreed for Crow to receive 20% of any amount that Falcon recovered.

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

Bill of Costs

<input type="checkbox"/>	2 meetings with Falcon, Crow and Chick – 2 hours per meeting	\$2,400
<input type="checkbox"/>	3 meetings by Crow and Chick with 3 witnesses - 2 hours per meeting	\$3,600
<input type="checkbox"/>	drafting and filing of a 10-page skeleton argument by Crow – 10 hours	\$4,000
<input type="checkbox"/>	10 hours in trial – Crow and Chick	\$6,000
<input type="checkbox"/>	20% of judgment	\$10,000
<input type="checkbox"/>	TOTAL	US\$26,000

Notwithstanding his historical relationship with Crow, Falcon is concerned that the bill that was submitted to him is unreasonable and excessive. He seeks your opinion as to his agreement with Crow and the bill that was presented.

Advise Falcon.

END OF PAPER