

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2016

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(TUESDAY, MAY 17, 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.
- (f) The Canons/Code of Ethics for your jurisdiction is provided. **Please do not write on it.**

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Freddy was charged with a terrorism-related offence stemming from his possession of a number of weapons and other material that were allegedly to be used in the hijacking of an aircraft. When Spencer, attorney-at-law, accepted the retainer, he expressed concern to Freddy about getting a successful outcome. He told Freddy that, in his view, Freddy was guilty. However, he assured Freddy that he would still “give it his best shot”. Prior to the commencement of the trial, Spencer told Freddy that, in the course of the trial, he should be “evasive and forgetful” when being questioned about certain key facts concerning his case.

During the trial, Spencer accused the prosecutor of making “wild and crazy accusations” against his client. He consistently interrupted the examination-in-chief of the prosecution witnesses, describing some of them as “idiots” and others as “liars”. On one occasion, he shouted at the prosecutor, calling her “a second-rate lawyer”.

Jade was the junior prosecutor in the trial. In the course of Freddy’s examination by Spencer, Jade sent out a WhatsApp broadcast saying: “He is so guilty. People like him are just born terrorists. This trial is such a waste of time and money.”

The trial has now ended and the jury has begun its deliberations. However, the conduct of both Spencer and Jade has come to the attention of Mel, the Chair of the disciplinary body in your jurisdiction.

Advise Mel on what, if any, action may be taken against Spencer and Jade, giving reasons.

QUESTION 2

Tori considered herself to be an Instagram model and would frequently upload photos of herself at various events. Her site was very popular with over 5,000 followers. After graduating from law school last year, Tori posted a picture of herself, dressed in court attire. In the photo, she was

standing in her office, in front of a bookcase filled with law reports and journals. Under the photo, she had the following caption:

“New attorney on the block: I am young, energetic and smart and I believe in justice for all.

Comment on the photo. For all your legal needs contact me at:
1-800-BEST LAWYER or hotshotlawyer@hotmail.com”

Six months ago, Kat commented on Tori’s photo as follows:

“Love the outfit, lawyer lady. I was in a car accident 5 ½ years ago when Sam crashed into my car. The car was totalled and I was left with a permanent limp in my left leg. I want you to sue Sam for \$5 million.”

Kat then set out the details of the accident in the comment box. Tori seldom reads the comments on her photos and, in fact, did not see Kat’s comments. Yesterday, Kat attended Tori’s office to enquire about the status of her action against Sam. On listening to Kat, Tori realized that the limitation period on Kat’s matter had expired last week. When she informed Kat about this obstacle, Kat was outraged and threatened to take action against Tori for being “an incompetent fraud.”

Tori is concerned and seeks your advice.

Advise Tori.

QUESTION 3

Gibby retained Noah in connection with an action against Slow, a local telecommunications giant. The claim arose out of the negligence of one of Slow’s employees, who had caused some cables to fall from the poles, resulting in injury to Gibby who was walking on the sidewalk. Gibby, who

was originally from another jurisdiction, told Noah that he really didn't trust "third world lawyers" but said that he was hopeful that Noah could rise to the occasion and handle the matter. Gibby told Noah he was prepared to have him take his case to the highest court, if necessary.

Noah proceeded with the case which eventually came on for hearing. Throughout the process, Gibby insisted that Noah send him weekly updates to ensure that Noah was not "slacking off". Gibby had also sent Noah two short opinions, on matters relative to his negligence case, which he said had been obtained from his attorney friend "back home". Although Noah told Gibby that the legal opinions were not useful, Gibby insisted that Noah advance the views expressed in the opinions. In spite of Gibby's requests, Noah refused to include these opinions as part of his submissions to the court.

The negligence action concluded and Gibby was successful in recovering judgment in the amount of \$1,000,000. Noah sent Gibby a bill for \$400,000. When Gibby received the bill he "hit the roof" since he was dissatisfied with this judgment. He advised Noah that he wished to appeal the quantum of damages. He also told Noah that he was not paying him that exorbitant amount of fees since he had not followed all of his instructions. He further suggested that Noah return to his "third world law school" to learn how to properly represent and bill his clients.

Noah is frustrated with Gibby and has written a letter advising him that he would not be handling the appeal. Once again, he enclosed his bill of \$400,000, which he stated was due and payable immediately. Noah has now received a letter from Dyson, attorney-at-law, stating that he had been retained by Gibby to conduct the appeal. In the letter, Dyson requested Noah to send him all of Gibby's files.

Noah has sought your advice on how to proceed.

Advise Noah.

QUESTION 4

Carly, the Chair of the disciplinary body in your jurisdiction, seeks your advice on whether disciplinary action should be taken against the following attorneys-at-law for professional misconduct. She also wishes to know what, if any, sanction should be imposed on them.

- (i) **Victor:** Last year, Victor was retained by Benson to sell his property located at 123 High Hills. In fact, Benson was the owner of two properties in High Hills: Lot 123, a modest bungalow and Lot 231, a 5-acre ranch. Victor requested the paralegal in his firm to draft the relevant documents. The paralegal referred to Lot 231 in all the documentation and when the transfer was complete the purchaser insisted on taking possession and ownership of Lot 231.
- (ii) **Lola:** At the conclusion of her trials, Lola was always keen to do interviews outside of the courtroom. Last month, Lola did such an interview with a popular male reporter named Beck. In the course of the live TV interview, Lola gazed into Beck's eyes and flirtatiously said: "Why don't we wrap up this chat over drinks at the HipStrip Bar? See you later at about 7?"
- (iii) **Cheez:** Cheez was involved in an altercation with a policeman after being stopped for disobeying a stoplight. In the course of the exchange, Cheez pulled the officer's handgun from the holster, pointed it at him and threatened to fire it if he did not stop writing the ticket. The officer duly complied. However, to date, Cheez has not been charged in relation to her behaviour towards the policeman.

QUESTION 5

Simon Chip, attorney-at-law, represented *The Daily ChitChat* in a libel action brought by Theodore. The newspaper was unsuccessful and was ordered by Justice Alvin Monk to pay several million dollars in damages as well as issue a public apology. Immediately after the decision, Simon

read a statement to members of the public and journalists, who were gathered outside the courtroom. Throughout that week, the contents of Simon's statement were quoted by various reporters in the media. In the statement, Simon accused the judge of "not knowing his head from his toe". Further, he said that the decision was a blow to justice and to freedom of speech and that the entire trial was tantamount to a "kangaroo court".

Shortly after reading the statement, Simon saw Dave, the registrar, who was standing nearby. Simon approached him to talk about another matter in which he was involved. Dave, who had heard Simon's statement, was in no mood to speak to him. However, as Dave walked away, Simon shouted: "You lazy sloth. You're the reason why cases take forever to be heard around here." Dave continued to ignore Simon and, in a frustrated attempt to get his attention, Simon hissed his teeth and threw the contents of his water bottle in Dave's direction. In spite of this, Dave just walked away.

One week later, Simon appeared before Justice Monk in another matter. At the end of those proceedings, Justice Monk said to Simon: "Counsel, your utterances last week outside this place have tested my patience. You are hereby sentenced to 10 days' imprisonment."

Simon wishes to appeal and seeks your advice.

Advise Simon.

QUESTION 6

Jack Wolf, attorney-at-law, had acted for Rob in different matters. A significant portion of Wolf's fees was unpaid. Andre, another attorney, was in possession of some funds belonging to Rob in respect of the sale of his property. Rob had authorized Andre to account to Wolf for the balance of his fees from the proceeds of the sale of the property. As a result of these instructions, Andre sent an email to Wolf stating: "I have the \$200,000 in my account and of course I shall retain it until you have sorted everything out with Rob."

Two days later, Rob demanded that Andre hand over the payment of \$200,000 to him. Andre complied with the request but, to date, Rob has failed to settle the fees that were due to Wolf.

In another matter, Andre had written to Rex, attorney-at-law for Loan King Ltd. (LKL), agreeing to pay them \$500,000 out of the proceeds of the sale of certain shares owned by Rob “whenever those proceeds come to hand”. However, to date, Andre has not received the proceeds from the sale of the shares. Nonetheless, Rex is insisting that Andre pay over the amount.

In January, Andre had written Mortgage World International (MWI) requesting them to release the title to Rob’s land, for the purpose of having a second mortgage endorsed on it. Andre promised that he would return the title as soon as he received it from the Titles Office/Land Registry. Unfortunately, Andre’s bearer inadvertently delivered the title to Rob. MWI has written to Andre seeking the return of the title since Rob is in arrears with his mortgage payments.

Rob has since left the jurisdiction and Andre is concerned since Wolf, LKL and MWI are outraged at what they describe as his “broken promises.”

Advise Andre on any liability he may incur a result of the above situations.

QUESTION 7

Calvin has been retained by Harris to represent him in litigation stemming from the termination of his employment by Deelish Foods. Harris has also instructed Calvin to create an offshore trust in the Cayman Islands for the benefit of his wife and children. In this regard, Harris gave Calvin a cheque in the amount of US\$1 million which is to be held in Calvin’s client’s account, until further instructed.

Calvin is concerned about the amount involved in these instructions since, to the best of his knowledge, Harris only worked as a pastry chef at Deelish Foods. He is also aware that Deelish

Foods has gained notoriety as a popular playground for local gangsters who visit there, not just for the exotic cuisine, but also to discreetly peddle their drugs to members of the “in-crowd” who frequent that hotspot.

Last night, the police served a search warrant on Calvin, pursuant to the anti-money laundering legislation in your jurisdiction. The warrant was in relation to all the documents held at Calvin’s office concerning Harris. The documents sought include the employment contract between Harris and Deelish, the instructions from Harris to Calvin, as well as documents relating to the litigation.

At the outset of the retainer, Harris had said to Calvin, in no uncertain terms, that he must never let any nose investigator look into his affairs. Despite several attempts to contact Harris to see if he would permit the search of his files, Calvin has been unable to reach him.

Calvin is concerned and seeks your advice about:

- (i) the possible consequences for him if he keeps Harris’s money in his account and sets up the offshore trust;
- (ii) the steps he should take to avoid any potential liability; and
- (iii) how he should respond to the search warrant.

Advise Calvin.

QUESTION 8

Sally entered into an agreement to purchase a farm from Jeffy. In this transaction, the firm of Regina, Honey & Associates (RHA) acted for both Sally and Jeffy, since both parties were advised by the firm that this would expedite the process and reduce the costs. In the transaction, Honey acted for Sally and Regina represented Jeffy.

Sally had indicated to Honey that she wished to use the farm to raise horses and conduct equestrian training. In anticipation of her new venture, Sally purchased all the necessary equipment which was to be installed once she gained possession.

The firm had received a report that, after June 2016, only agricultural farming would be permitted in that area. However, the contents of this report were not disclosed to Sally. The sale was completed and Sally has taken possession of the property. In appreciation of the work done by the attorneys, Sally sent the firm a large fruit basket. As a special treat for Honey, Sally gave Honey's daughter, Jelly-bean, a Shetland pony which she kept on her farm for Jelly-bean to use whenever she wished.

Sally has now learned of the impending prohibition against horse-farming in her area and is livid.

She feels betrayed and wishes to know what, if any, action she may take against RHA.

Advise Sally.

END OF PAPER