

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE**

SECOND YEAR EXAMINATIONS, 2018

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(TUESDAY, MAY 15, 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/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

Miller, a client of Bud's firm, comes in to make a Will and leaves his entire estate to a local charity, "Dogs 4 U". He tells Bud that his only living relative is his estranged wife, Red, whom he has not seen for several years.

Miller tells Bud that he is going abroad and he does not want anyone to know where he has gone and, specifically, that he does not want his wife to be told. He gives Bud his address in Miami on the strict understanding that Bud is not to pass it on to anyone.

A few months later, a woman calling herself Red comes to Bud's office and asks to see Bud. She says that she believes her husband used to be a client of Bud and asks Bud whether he knows where he is. She says that her mother was diagnosed with a life-threatening illness, and it is extremely urgent that she gets in touch with him and wants Bud to help her. In the circumstances, Bud provides Red with Miller's email address.

Meanwhile, Bud's administrative assistant, through an oversight, files Miller's file in the closed matters, before Bud has a chance to draft the Will in accordance with Miller's instructions. Miller dies of a heart attack in Miami, and Red inherits his estate under the rules of intestacy.

Fido, the Director of *Dogs 4 U*, is aware of all that has occurred, and wants to bring an action against Bud. He has also reported Bud to the regulatory body in your jurisdiction. Bud seeks your advice on any liability and consequences he may face.

Advise Bud.

QUESTION 2

On Mini's way to work one morning, she comes to the scene of a road traffic accident involving two vehicles. The police and ambulance crews are in attendance and the road has just been cleared. Mini lingers around to see if she can help and, in the process, hands out some of her firm's business cards to the injured passengers in the accident.

Mini then recognises Merc, an injured passenger who is giving his details to the police. He is a neighbour of Mini and, through casual conversations in the past, knows that Mini is an attorney-at-law. Mini realises that Merc was a passenger in one of the vehicles involved in the accident, which was driven by his wife, Bimma, and that he and Bimma are injured. He recounts to Mini the events leading up to the accident, and asks Mini if she can help them. Mini gives him one of her business cards, and tells Merc and Bimma that she will see what she can do.

Mini proceeds to write to the attorneys-at-law representing the other owner/driver in the accident, and enters into negotiations for settlement on behalf of Merc and Bimma. She agrees to settle both matters in the total sum of \$1,000,000.

Mini advises Merc and Bimma about the agreement for settlement, and also sends them a bill for her fees in the sum of \$200,000. Merc is livid. He argues that he and Bimma never wanted Mini to represent them in the matter, and they are not accepting the settlement or paying her fees.

Advise Mini on any implications of her actions with the regulatory body in your jurisdiction, and any liability she may face as a result of her actions.

QUESTION 3

Jenny, attorney-at-law, has been acting for Ricky, the purchaser in a conveyancing transaction. Ricky is a returning resident from the USA, who now plans to live in your jurisdiction when he reaches retirement age next year.

According to Jenny, the vendor's attorney-at-law, Sophia, sent her a statement of account, showing a final balance due from Ricky of \$10,500,000. Sophia requested that Jenny either send her a bank guarantee for this sum, or give her professional undertaking to pay the amount due on completion.

Jenny forwarded the statement to Ricky, asking him to put her in funds to enable her to give the required undertaking. Ricky sent her a banker's cheque for US\$83,000, which, at the prevailing rate of exchange on that date, amounted to exactly the amount required.

As a result, Jenny duly gave her undertaking to Sophia to pay the balance of the purchase price of \$10,500,000 in exchange for the title registered in Ricky's name as proprietor. However, she decided not to convert the US dollars into the local currency until the funds were actually needed. Instead, she chose to take advantage of the strong US dollar, and instructed her broker to invest the money in a US dollar investment fund in her personal name.

Three weeks later, Sophia sent Jenny the title, duly registered in Ricky's name, and requested her to fulfil her undertaking by sending the balance purchase price. Unusually, the US dollar depreciated against your local currency with the result that, when her brokers made the conversion, Jenny was \$500,000 short of the \$10,500,000. Using various excuses, she delayed paying over the balance to Sophia and, at the same time, asked Ricky to send an additional \$500,000 in order to obtain the title.

Ricky is furious and refuses to forward the additional \$500,000. In the meantime, Sophia has become frustrated, and has reported Jenny to the regulatory body in your jurisdiction.

Prior to the hearing of the matter before the disciplinary body, and some two months after she received the title from Sophia, Jenny pays over to Sophia the full balance of the purchase price and delivers the title to Ricky. On that basis, Sophia seeks to withdraw the complaint against Jenny.

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

QUESTION 4

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

Whilst going through the papers provided by Harry, Sally found his diary in which he had recorded his memoirs about the armed robbery in question. When Sally confronted Harry about the memoirs he admitted to Sally that he did in fact commit the armed robbery, but that he wanted her to put forward the alibi defence. He also wanted Sally to prepare his girlfriend for the witness stand, since she was his alibi.

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

The prosecution's case was based on an eyewitness who saw Harry exiting the bank, holding a gun and a duffle bag. On several occasions during the trial, despite several warnings from the judge, the prosecuting counsel, Ott, referred to the defendant as "*a liar and a thief*", and in closing submissions called upon the "*Powers that be*" to assist the jury in "*doing society a favour*" by "*putting him away*".

Assume that you are an intern at the disciplinary body in your jurisdiction and the actions of Sally and Ott have been reported to it. Advise the chairman on:

- (i) the implications of Sally's actions; and
- (ii) the propriety of Ott's statements in the trial

and how the disciplinary body should treat with both matters.

QUESTION 5

RJ, a former General Counsel in a government agency, has retained Boxer, attorney-at-law, to represent her in an action against that agency for wrongful dismissal.

Initially, RJ was a model client. However, as the matter progressed, RJ became more and more difficult. She telephoned Boxer every day asking for a progress report. She informed Boxer that, having regard to her legal background, and her seniority to Boxer at the Bar, she wanted to be responsible for interviewing witnesses and vetting documents. When Boxer refused, she threatened to sue him for negligence.

Boxer is frustrated and, about a month ago, telephoned RJ to come in and collect her file and settle her fees, for which he sent a final bill by email. Boxer has since done no further work on the matter. RJ did not collect her file nor pay her bill. A couple of days ago, however, Boxer received a letter from Cami, attorney-at-law, advising him that she was now acting for RJ and requested Boxer to hand over RJ's files to her.

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

QUESTION 6

Black Widow (BW) attends the offices of Mantis, attorney-at-law, and wishes to instruct Mantis in the purchase of a luxury villa in an exclusive area of the city. BW indicates that she is a street vendor who sells designer clothing, which she brings into the country in her personal suitcase when she travels to and from the USA. She indicates that her business transactions are mainly cash, and she has been saving for many years and keeping the money under her mattress. Consequently, she will pay for the purchase and Mantis's fees in cash. She further states that if

Mantis expedites the transaction, she will pay her a “*nice bonus*”. Mantis enters into a retainer agreement with BW and proceeds with the work.

During the course of the transaction, it comes to Mantis’s attention that BW is the mother of Salamander, who is a notorious gang leader in your jurisdiction, and is wanted by the police for drug trafficking offences.

Soon thereafter, the police arrive at Mantis’s offices with a search warrant, pursuant to the anti-money laundering legislation in your jurisdiction, in relation to all documents in Mantis’s possession concerning BW. Mantis complies with the warrant and hands over all the requested documents.

Advise Mantis on any implications of acting for BW, as well as her compliance with the search warrant.

QUESTION 7

Naomi is an attorney-at-law and a model. The night before a criminal trial in which she is appearing, Naomi participates in a fashion show and an after party during which she gets quite drunk. She makes several comments to members of the media, who were present at the party, about Judge Jodi who would be presiding over the criminal trial the next day, calling her an “old hag prosecutor in judge’s clothing who subjects everyone to her unfair handling of cases and her senile judgments”. That night, she also posts photos of herself on social media in suggestive poses, wearing only a bikini and her advocate’s robe.

Naomi arrives the following morning, late for trial, and is still visibly drunk, swaying from side to side and slurring her words. At a certain point in the trial, after Judge Jodi had overruled her objection on grounds of hearsay, Naomi says,

“I don’t intend to put up with your nonsense. You must be conspiring with the prosecution and pretending not to know what hearsay is.”

Some minutes later, she takes objection to a statement made by the prosecutor, jumps out of her seat, and starts to approach the prosecutor in a menacing manner. Judge Jodi tells her to resume her seat, but she refuses.

Judge Jodi then says,

"I have had just about enough of you and your antics. You think that I don't know what you have been saying about me? I sentence you to two days' imprisonment!"

Advise Naomi on:

- (i) whether she can successfully appeal the conviction; and
 - (ii) any disciplinary implications of her actions.
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QUESTION 8

Partridge is a long-standing client of Swan, a senior attorney-at-law. Partridge retained Swan to represent him in a negligence and breach of contract claim for \$3,500,000 against More Money Investment Managers Limited. Partridge claims they invested his money in high risk bonds for which he never gave his consent. The risk materialised and Partridge lost all of his principal investment of \$3,500,000. Swan had to juggle his schedule and change travel plans in order to accept the retainer.

Swan and Partridge verbally agreed that Swan would bill Partridge at an hourly rate of US\$400 and that his associate, Chick, who was less than three years at the Bar, would bill at a rate of US\$200 per hour. In addition, Partridge agreed for Swan to receive 20% of any amount that Partridge recovered.

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

Bill for Professional Services

○ 2 meetings with Partridge, Swan and Chick – 2 hours per meeting	\$2,400
○ 3 meetings by Swan and Chick with 3 witnesses - 2 hours per meeting	\$3,200
○ drafting and filing of a 10-page skeleton argument by Swan – 10 hours	\$4,000
○ engagement of securities expert for trial	\$3,000
○ 10 hours in trial – Swan and Chick	\$6,000
○ 20% of judgment	<u>\$700,000</u>
TOTAL	<u>\$718,600</u>

Notwithstanding his historical relationship with Swan, Partridge is concerned that the bill that was submitted to him is unreasonable and excessive. Partridge consults you and indicates that he never agreed to the engagement of the expert. He seeks your opinion as to his agreement with Swan and the bill that was presented.

Advise Partridge.

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