

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATION 2019

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(TUESDAY, MAY 14, 2019)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate may reply, in accordance with the law of a 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

Gem, an attorney-at-law, had been retained by Pearl, a politician, to handle the establishment of a number of offshore companies and offshore trusts in Bermuda, an offshore financial centre. Although Pearl had attained a certain degree of notoriety for accepting secret commissions from various lobby groups, she has never been charged with an offence.

In order to set up the offshore companies and trusts, Pearl deposited US\$1,000,000 in Gem's clients' account. Gem was instructed by Pearl to have the funds sent by wire transfer to an offshore bank in Bermuda, in which she held an account. Although she felt uncomfortable with the transactions, Gem duly complied with the instructions. She also decided not to ask Pearl any questions about the funds and never made a report of the transactions to the relevant authorities.

Two days ago, Gem was served with a disclosure order, pursuant to the anti-money laundering legislation. The disclosure order was in relation to her client, Pearl, and the documents listed in the order included the incorporation documents for the offshore companies, the trust instrument and the instructions from Pearl.

At the time the retainer was executed, Pearl told Gem, in no uncertain terms, that she must never reveal any information about her without her express permission. However, when Gem contacted Pearl about the disclosure order, Pearl told her to stop bothering her since she no longer cared about the offshore companies and trusts in Bermuda. Gem duly complied with the disclosure order and handed over all the documents sought.

Gem is now concerned about what transpired and seeks your advice in relation to the following:

- (i) whether she could incur any liability for conducting the transactions requested by Pearl; and
- (ii) whether her compliance with the disclosure order violated any duties owed by her to Pearl.

Advise Gem, giving reasons.

QUESTION 2

Mr and Mrs Waugh 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. Waugh has been prosecuted for not paying her taxes, shoplifting and being drunk and disorderly. Mr Waugh has two convictions for theft, the latter being an armed robbery. Peace Law Firm has represented them on all their court appearances, and is currently defending Mr. Waugh in a civil claim for damages for allegedly assaulting a co-worker.

Quiet is working in the Matrimonial Department of Peace Law Firm and one morning she comes in to find Mrs. Waugh sitting in the reception area with a black eye and a split lip, following an alleged beating from Mr. Waugh. She tells Quiet that she wants her, as her attorney, to get an injunction against Mr. Waugh and file a divorce petition on her behalf.

Quiet proceeds to file the divorce petition. Mrs. Waugh instructs Quiet that she has endured years of terrible abuse at the hands of Mr. Waugh and wants her to include that information in the divorce petition. However, whilst Quiet is out of the room, Mrs. Waugh confides in Quiet's junior attorney that this was the only time that Mr. Waugh has been abusive towards her, and she thinks he is under pressure at work.

- (i) Advise Quiet on the implications of her accepting the retainer from Mrs. Waugh and of complying with Mrs. Waugh's instructions regarding the content of the divorce petition.
- (ii) Would it affect your answer if the facts were changed to say that all the work that Peace Law Firm has ever done for Mr. and Mrs. Waugh in the past has been conveyancing transactions. Give reasons.

QUESTION 3

Newby is a newly qualified attorney-at-law who has set up his own practice. He is very busy with referrals from friends and family. 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. Newby told Innovate that he was reluctant to accept the retainer because he was swamped and also because he had no experience in intellectual property law.

Innovate replied, *"I don't really care and I have the utmost confidence that you can do a better job than any of the other lawyers I know."*

Newby took the documents Innovate had with her and said, *"I will look into it but I cannot promise anything."*

Newby 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 Newby.

Newby is of the view that he never entered into a retainer with Innovate and never made any promises. He was just seeing if he could help her out, as a friend.

Advise Newby on the potential consequences of his actions.

QUESTION 4

North retained South, an attorney-at-law who was recently admitted to the Bar, to bring proceedings against North's former employer, Westco. South told North that his fees would be charged at the hourly rate of US\$300, plus a contingency fee of 10% of any judgment awarded in her favour.

South filed the claim in the Supreme/High Court and proceeded to take steps to prepare for trial including meeting with prospective witnesses, preparing witness statements and conducting

legal research. South also obtained a legal opinion from a QC/SC who specialises in employment matters.

The trial took place yesterday and, to North's surprise, South called an expert witness to give evidence in support of North's claim.

The trial has concluded and North has received judgment in her favour. She has received the following bill of costs from South:

Bill of Costs:

Re: North v Westco.

1.	Fees paid for the opinion of Queen's /Senior Counsel	US\$ 1,500
2.	Fees paid to expert witness	US\$ 1,200
3.	Professional fees for receiving instructions, filing the claim and conduct of matter (20 hours)	US\$ 6,000
4.	Contingency fee of 10% of judgment award of US\$50,000	US\$ 5,000
	Total	US\$13,700

North is concerned about the bill because she thinks it is extortionate and she never authorised the use of a QC/SC or an expert. She has retained you to advise her on whether she should challenge it.

Advise North.

QUESTION 5

Boasty, attorney-at-law and senior partner at the law firm Boasty, Benny and Co., is the editor of a magazine published by the firm bi-annually. The magazine includes articles on events sponsored

by the firm such as seminars, legal fairs and articles on attorneys-at-law in the firm, their legal accomplishments and cases that they had successfully defended.

The magazine is published on the firm's website, various social media platforms and is also distributed through the local bar association's office. Copies are also left in strategic places such as court buildings, registries and downtown restaurants.

Yesterday, Justice Judy's clerk retrieved six copies of the magazine that had been left in Justice Judy's courtroom and gave them to her. Justice Judy immediately noticed the following articles, both written by Boasty:

"Big Benny slays at Legal Tech Seminar

Big Benny, attorney-at-law, the country's foremost legal technology lawyer, headlined at the recent Techlaw seminar sponsored by Boasty, Benny & Co. Big Benny can be contacted at b.benny@bbco.com."

"Justice Judy rants again

Outspoken judge, Mrs. Justice Judy, is at it again. This time, the bad-tempered judge is suggesting that the court backlog arises from the tardiness of lawyers in arriving at court. This is what we say to Justice Judy, 'Madam, you are far removed from the realities of legal practice. 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 Judy's law clerk. She tells you that she intends to summon Boasty to her court and that she will impose a fine on her. She has asked you for your opinion as to her intended course of action and as to any other recourse that she may have against Boasty.

Give Justice Judy your opinion.

QUESTION 6

Conrad and his cousin, Dan, consulted Arnie in relation to their defence to a charge of armed robbery. They told Arnie that on the night in question, they were both at Dan's house and were asleep. Arnie agreed to represent both of them.

Two days before the trial commenced, Arnie met Conrad and Dan in Arnie's office for a final briefing. As he was leaving the office, Conrad said privately to Arnie *"You know I really hope Dan doesn't take this rap for me cause he's definitely not guilty. I did that job but Dan doesn't know. You'd better make sure both of us get off"*.

The following day, Arnie emails Conrad and informs him that he can no longer represent him in the matter, and at the trial. He attaches a copy of his bill which he asks Conrad to settle. However, Arnie is continuing to represent Dan in his defence of the matter.

Conrad is outraged at the fact that he has been left in the lurch a day before his trial, and that Arnie is still representing Dan. He immediately contacts you for advice as to what recourse, if any, he has against Arnie as a result of his actions, and whether he can demand his file from Arnie.

Advise Conrad.

QUESTION 7

Mario, 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. He also wishes to know what, if any, sanction should be imposed on them.

- (i) Anissa: Anissa is a contestant on a popular TV show called Dancing Dynamos. On the show, Anissa's dance routine involves her 'twerking' in a revealing costume. The songs selected by Anissa are almost invariably ones that contain sexually explicit lyrics.

- (ii) Buster: Buster is reputed to have an alcohol dependency. He has been charged twice with the offence of driving under the influence, but on both occasions the prosecution has not proceeded due to technicalities. Buster arrives one morning at Judge Sobers's court for a civil trial, swaying from side to side and slurring his speech. Judge Sobers adjourned the trial and has reported Buster to the disciplinary body.
- (iii) Julia: Julia is a committed contributor to her favourite charity. Since last year, she has had great difficulty meeting the amount that she had pledged to contribute. As such, for the past few months, every week Julia would withdraw US\$100 from her clients' account, in order to make the contributions. Julia had always intended to replace the total amount withdrawn 'when things get better' but to date has not done so.

Advise Mario, giving reasons.

QUESTION 8

Berry has recently instructed Orange to act for him in the purchase of a luxury villa in an exclusive area of town. For the purpose of this transaction, Berry has given Orange cash in the sum of US\$500, representing monies on account for expenses in the matter.

Orange deposits the monies in his firm's office account and proceeds with the transaction.

Lemon, who is acting for the vendor in the transaction, sends Orange a statement of account showing a final balance due from Berry of US\$200,000. Lemon requests that Orange either send her a bank guarantee for this sum or give her professional undertaking to pay the amount due in exchange for the title registered in Berry's name.

Orange forwarded the statement of account to Berry asking him to put her in funds to enable her to give the required undertaking. Berry sends Orange a cheque in the sum of US\$200,000 and, as a result, Orange duly gave her undertaking to Lemon to pay the balance of the purchase price in exchange for the title registered in Berry's name.

The cheque from Berry is returned dishonoured, and Orange's efforts to get the balance of the purchase price from Berry have so far been unsuccessful. One week ago, Lemon sent the title to Orange, duly registered in Berry's name, and requested that Orange fulfil her undertaking by sending the balance of the purchase price.

Advise Orange.

END OF PAPER