

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATION 2024

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(TUESDAY, MAY 14, 2024)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **ALL** 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Ailey Alms became an attorney-at-law five years ago, after a long and successful career in the technology industry, working at various times in systems, data and performance reporting analyst positions. Ailey is a general law practitioner but does a considerable amount of intellectual property law work.

Tech Innovations Limited (TIL) is a start-up IT company, specialising in integrating technology into business processes, software production and creating applications for mobile devices.

At a networking event last month for technology industry insiders, TIL's CEO, Cess, told Ailey about a patent infringement dispute that TIL had to defend that could challenge the future of the company. Cess asked Ailey to look into the matter.

Cess also told Ailey about a new mobile app that TIL wanted to launch. However, TIL was having difficulty finding funding and was therefore looking for an investor. Ailey was enamoured with the idea and thought that the company could make millions. On the spot, Ailey agreed to invest in the company. The following week, he completed the necessary paperwork and executed the contract to provide the investment in exchange for which he received a 40% equity stake in TIL.

That week also, Cess sent Ailey a flash drive that contained information relative to the patent infringement claim. Cess and Ailey also exchanged emails on the matter.

Unbeknown to Cess, the flash drive also contained information about an employment dispute between TIL and one of its employees. Ailey, after reading those files, determined that the matter should not be litigated and wrote to the employee offering to settle it. The employee agreed to the settlement amount that Ailey proposed.

Ailey was a big proponent of TIL. He produced a video in which he 'starred' and which he shared across diverse social media platforms and posted on his practice's website. The video lauded TIL's business tools and stated that he, Ailey, had used TIL's software which created efficiency in his

law firm and increased his productivity, thus contributing to his becoming one of the top-tier attorneys-at-law in his jurisdiction and an expert/specialist in technology law.

In due course, Ailey sent a bill to Cess for the work that he had completed to date in the two matters concerning TIL. Cess objected to paying the bill saying, amongst other things, that TIL had no basis upon which to settle the employment dispute. Cess also told Ailey that TIL's Board of Directors has questioned Ailey's 40% equity stake in TIL.

Provide an opinion on all of the issues that arise with respect to TIL and his conduct of the practice.

QUESTION 2

Ari Adue, attorney-at-law, has been an environmental activist since her childhood. She is currently a member of the CaringEarth Network (CEN), a non-profit organisation concerned with environmental protection and advocacy.

Notwithstanding her deep interest in the environment, Ari's practice is primarily family law. As a sole practitioner, she feels the need to always be on the cutting edge. Consequently, Ari subscribes to several legal research databases and regularly uses artificial intelligence (AI) tools to enhance her legal research, and to assist with preparing court matters.

CEN is involved in a legal battle against Nation Developers, a large development company, which is planning to construct a mixed-use development project on a site that includes protected wetlands. CEN wants to halt the development, arguing that it violates many environmental regulations and would impact archaeology, hydrology, biodiversity and wildlife. However, as the organisation is strapped for cash, it approached Ari and asked her whether she could represent them in the matter at a reduced fee. Ari agreed.

Ari's research assistant began work on the matter. He provided Ari with several AI-generated cases, one of which indicated that a case that the Defendant was relying on had been overturned. Shortly afterwards, the research assistant left Ari's employment for another job. With the trial date approaching and under significant time pressure, Ari, being without the usual support for case preparation herself, turned to the AI tool to complete her case preparation. The AI tool generated a report confirming what Ari's research assistant had said about the case that had overturned one on which the Defendant was relying. Ari, accepting the AI-generated report as accurate, was ecstatic. She conveyed the good news to CEN stating that "they had it in the bag". Anticipating this favourable outcome, CEN was able to negotiate joint venture financing at a preferential rate.

Ari completed preparing the matter based on this information and included the AI-generated cases in the bundle of authorities submitted to the court.

During the trial, Ari confidently presented to Justice Jules the case purporting to overturn the Defendant's case. She cited specific details and legal principles from the case, claiming it was a landmark decision in environmental law, and from the AI-generated report. Ari assured the court that the case had been relied on and gave authority where it had been cited.

The day before the trial was to conclude, CEN issued a statement to the press about the dangers of 'Big Development' upsetting the ecosystems. Ari, who was at the press conference, responded to an invitation to provide her views. She referred to a series of blog posts which she had written and reiterated that, in her view, judges lacked environmental knowledge, were not alert to environmental concerns and had a predisposition to support corporate entities over environmental protection which often led to unfair trials. Ari's comments were widely carried in the daily newspapers, on the evening news programmes, blogs, YouTube Channels and other social media.

Justice Jules watched the evening news and read the daily newspapers the following morning. On resumption of the trial, Justice Jules said to Ari "Counsel, your utterances outside this place

are improper and unbecoming of an advocate. You are hereby fined US\$1000 and, *in lieu* of payment, 10 days' imprisonment".

Thereafter, the trial continued for the rest of the day and concluded with judgment being reserved. During the following week, in the course of preparing the judgment, Justice Jules' judicial clerk alerted him to her discovery that the case that Ari relied on did not exist. Justice Jules summoned Ari to appear before him to explain the inclusion of the cases in the list of authorities.

In the result, the Court ruled in favour of Nation Developers. When they heard about this, CEN's joint venture partner stopped the negotiations. CEN could only get financing at the standard rate.

Ari is now very worried about all of the things that occurred. She has asked you to provide an opinion as to whether there are likely to be consequences for her actions and whether she should proceed to pay the fine imposed by Justice Jules.

Prepare the opinion.

QUESTION 3

Ceeta CoPitt retained Anni Swift to represent her in extremely bitter and heavily contested divorce proceedings against her husband, Hashir, involving the custody and maintenance of their five children. She had previously been represented by Gloria Largo, attorney-at-law, but after five months, Ceeta terminated the retainer with Gloria.

The hearing is scheduled for August 2024. Ceeta is concerned because she has learnt that Theo Bates, the attorney-at-law acting for Hashir, is seeking to obtain copies of statements she had given to Gloria, in which she admitted that Hashir did not endanger or neglect the children. This conflicted with an earlier statement that she had made to the police asserting that Hashir would routinely leave the children unattended for long periods, and regularly used abusive language

while punishing them. The statements were on the file that Gloria handed over to Anni. Ceeta told Anni that she does not want Bates to obtain the statements.

Before the divorce proceedings commenced, Ceeta and her husband were negotiating the sale of a commercial property that they jointly owned. The terms of the Deed of Arrangements were that Anni would have carriage of the sale of the property and that Hashir was to receive 50% of the net proceeds of sale on completion of the sale. Anni wrote to Bates, promising to remit to him, 50% of the net proceeds of sale pursuant to the Deed of Arrangements, on the completion of the sale.

Upon completion, Anni on receipt of the proceeds of sale, deposited it in her clients' trust account and then made several withdrawals. Among these withdrawals were: (1) payment of all the statutory and other deductions associated with the sale; (2) monies to remit to Bates; and (3) transfer of the remaining proceeds of sale to her investment account to be used to purchase a 30-day certificate of deposit.

Later, Anni remitted monies to Bates and sent a statement of account showing the monies due to his client. Bates responded to confirm the receipt of the monies but indicated the amount received represented only 40% of the net proceeds of sale, which was not consistent with the Deed of Arrangements.

Anni did not transfer any monies to Ceeta, who repeatedly asked for her share of the net proceeds of sale.

Anni responded to the several requests for payment of the monies by repeatedly stating that she needed to reconcile her accounts with the bank. She said that, in order to do so, she was personally required to attend the bank to resolve the issues, but was precluded from doing so as she was engaged in a lengthy custody hearing that consumed her hours on the days when the bank was open for business. In fact, Anni was waiting for the certificate of deposit to mature, so that she could collect and retain the interest.

Ceeta is outraged. She has also heard that Bates is going to take some action against Anni.

Anni has asked you to prepare an opinion addressing Ceeta's concern regarding the statements made to Gloria, and to explain all issues that arise in relation to her conduct of the conveyancing transaction, and any liability she may face in relation to Ceeta and Bates as a consequence of her handling of the transaction.

Prepare the opinion.

END OF PAPER