

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND-YEAR SUPPLEMENTARY EXAMINATIONS, 2005

ETHICS, RIGHTS & OBLIGATIONS OF THE LEGAL PROFESSION

(THURSDAY, AUGUST 4, 2005)

Instructions to Students

- (a) Time: 3 ½ 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 ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Six months ago while Joseph, an attorney-at-law, was having a discussion with his friend Peter, Peter informed him that he wished to take legal action against his neighbour Payne. The next day Joseph filed an action against Payne in which he named Peter as the plaintiff/claimant.

When the matter came up for hearing Peter was absent from court. On enquiries by the judge, Joseph stated that he was surprised at Peter's absence as the action was instituted at his express request, albeit verbal. Counsel for Payne immediately objected and requested that the action be set aside.

The learned judge reserved his decision on the application and Joseph consults you as to the likely outcome.

- (a) Advise Joseph and consider whether the judge is likely to make any order against him personally.
- (b) Would your answer be different if Peter appears on the adjourned date and informs the court that, though he had given no approval for the institution of the proceedings, he now wants the matter to proceed?

QUESTION 2

Lancelot, an attorney-at-law, was convicted for fraudulent conversion of property belonging to a client of his and sentenced to two years imprisonment.

Lancelot appealed his conviction and his conviction was quashed on a technicality.

A member of the Bar would like disciplinary proceedings to be taken against Lancelot.

Write an opinion as to how this could be done stating at the same time the possible orders that can be made against Lancelot.

QUESTION 3

Margaret, an attorney-at-law who has always represented Frank, a widower, aged 85, is consulted by Frank for the purpose of making a new Will.

Frank instructs Margaret to include in the Will a bequest of \$50,000 to his son, Francis.

The Will is prepared in accordance with Frank's instructions. Due to Frank's failing health, the Will is sent to Frank at his home for it to be executed.

Margaret sends written instructions with respect to the formal requirements for execution of a Will but neglects to mention that a gift to an attesting witness, or spouse of a witness, is null and void. The Will is signed by Frank and witnessed by Francis' wife and Martha, a friend of Frank.

Frank has recently died and Francis has now been informed that the bequest to him has failed due to the fact that his wife was a witness to the Will.

Write an opinion as to the course(s) of action available to Francis.

QUESTION 4

Hardup has a case for damages following injuries received in a road traffic accident.

Hardup persuades John, an attorney-at-law, to take the case on the oral understanding that he would pay John 30% of the damages recovered. On this basis, John consents to act for him.

John is successful in obtaining a substantial award of damages and also his taxed costs from the defendant, but Hardup now objects to any deduction from the award of damages, saying that John is limited to the recovery of the costs only.

Hardup sues John to recover 30% of the damages, which John has retained.

John seeks your opinion. Write an opinion.

QUESTION 5

On April 24, 2004, Mr. Justice Walk was presiding over the trial of a civil case in which Ray and Brutus, attorneys-at-law, were appearing for the parties.

During the course of the hearing, a noisy quarrel developed between the two attorneys-at-law in the course of which each verbally abused the other. The exchanges between them were shouted rapidly and loudly across the court.

Mr. Justice Walk ordered them to desist at once. Ray complied immediately but Brutus continued shouting abuses at Ray, accusing him of dishonesty whereupon the judge charged Brutus with contempt of court and sentenced him to five days in prison.

Brutus would like to appeal and seeks your opinion.

Write an opinion.

QUESTION 6

You are appearing for a man charged with murder, and your instructions at first are that your client was not the person who did the act as he was elsewhere at the material time.

As the case progresses, however, it becomes abundantly clear to you that those instructions are wrong, and you take fresh instructions from your client, who now admits to you that it was he who did the act.

- (a) How should you now proceed in the case?
 - (b) How should you act if your client refuses to accept your instructions as to the course of the case?
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QUESTION 7

Diva Spencer, attorney-at-law, has acted for Raymond Charles with respect to several legal matters both contentious and non-contentious. Recently, Charles found himself in severe financial difficulty and offered to sell his beachfront property to Spencer. Spencer accepts the offer and further proposes to prepare, on behalf of Raymond and herself, the agreement for sale and deed of conveyance.

Prepare a legal opinion as to the propriety of Spencer's proposed course of action.

QUESTION 8

John, an attorney-at-law, has been instructed by Tom, a long-standing client, to prepare a Will.

In the instructions Tom wishes to make a gift of a substantial amount to John as a token of his regard and appreciation for his past services. He also wishes for John to be the sole executor of the Will.

Advise John on the steps that he should take to avoid any challenge to the gift.
