

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

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, AUGUST 2022**

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

MONDAY, AUGUST 8, 2022

Instructions to Students

- (a) Duration: **24 hours**
- (b) Students shall enter their Examination ID Number **only**, not their names, on the cover page, the Academic Integrity Statement and on every separate page of the examination script.
- (c) The examination should be answered on letter-sized (8.5 x 11) paper only.
- (d) The examination should be submitted in Arial font 12 line spacing 1.5.
- (e) Students should clearly indicate the names of any cases with the citation and legislative provision/s (section number and Act) on which they rely to support their arguments. Consider using italics and/or bold text to make references prominent. (For example, *Rylands v Fletcher* [1868] UK HL1; **s.69 Real Property Act**). Sufficient detail is required to allow the examiners to understand the source of law that is being cited.
- (f) Footnotes, endnotes and a bibliography are not to be used.
- (g) Where word limits have been given, the actual word counts must be included at the end of your answer. Students who have exceeded the word limits will be penalised.

- (h) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (i) In answering any Part, 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.**
- (j) Each Student **must** ensure that their Anonymous ID in TWEN is changed to their four digit Examination ID Number, prior to submitting their examination script.
- (k) The examination script, with the cover page and Academic Integrity Statement saved in **ONE PDF DOCUMENT**, must be submitted in **ELECTRONIC** format via the **Year II AUGUST 2022 EXAMINATIONS, ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION DROP BOX on TWEN** by **TUESDAY, AUGUST 9, 2022 NOT LATER THAN** 9:00 a.m. (Jamaica), 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).
- (l) To upload the examination script which has been saved as one pdf document which includes the cover page and Academic Integrity Statement, you must follow these steps:
- Go to ***www.lawschool.westlaw.com***.
 - Log in using your username and password credentials and select the **TWEN** button.
 - Click on the link for **“Assignments and Quizzes”** located on the left-hand side of the navigation screen.
 - Select the relevant examination and the examination drop box as follows:

- Year II students with Examination ID numbers between **2100 - 2181** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box A Year II - 2100 - 2181**”.
- Year II students with Examination ID numbers between **2182 - 2263** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box B Year II - 2182 - 2263**”.
- Year II students with Examination ID numbers between **2264 - 2345** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box C Year II – 2264 - 2345**”.

Isla, Arch & Penn (IAP) is a successful law firm in your jurisdiction and you are employed there as a legal consultant. Tesla Ford, the managing partner, has requested an opinion on the ethical issues raised in matters being handled by the firm, and the conduct of certain associates, as set out below.

Acura Alpha

Mr. Reed Blaine consulted with Acura regarding his construction company, Blaine Construction Company Limited, which was the subject of a claim by the government for the collapse of a highway flyover on the East/West Link Road widening project. He explained that his company had won the bid for the construction of the highway flyover, and had hired Construction Engineering Technologies Limited (ConEnTech), experts in the area of designing and constructing multi-lane highway flyovers. Mr. Blaine stated that he wanted to sue ConEnTech for breach of contract.


Acura accepted the brief and signed a retainer. Mr. Blaine inquired how the fees would be charged in the matter. Acura told Mr. Blaine that her fees ranged from approximately US\$300 per hour to over US\$500 per hour. She told him that she would bill on a time-spent basis in accordance with those rates. Mr. Blaine agreed to this.

Acura had to rearrange her schedule to accommodate this new retainer. Over the course of several weeks, Acura read many lengthy contractual documents, engineers’ reports

and multiple documents concerning the matter, contained in numerous boxes. She researched cases on breach of contract in the construction of mega structures. She went on various site visits. Her research led her to conclude that the case turned upon a complex legal argument, and that she would need an independent foreign expert engineer to advise her on the technical aspects of the construction of the flyover, as well as Queen's/Senior Counsel to bolster the litigation team.

In due course, Acura filed the claim in the Supreme/High Court. It was defended and she therefore proceeded to take all necessary steps to prepare the action for trial, including interviewing prospective witnesses, preparing witness statements and consulting with experts, including the foreign engineer. She realised that the matter could go on for many months and she would have to drop everything and give this case all of her attention. The trial lasted ten days and Mr. Blaine's claim was successful.

She prepared and sent the following bill to Mr. Blaine.

 Isla, Arch & Penn Capital JURISDICTION			
			Account No. 246/2022 Date: July 12, 2022
Re: <u>Professional services rendered in the Claim 2022/0976</u> <u>Blaine Construction Company Limited v Construction Engineering Technologies Limited</u>			
Date	Professional Services	Hours	US\$
	Taking instructions, consultation with Reed Blaine, consultation with engineering expert, visiting site, research and preparation of opinion and general care and conduct of the matter	30	15,000
	Drafting and filing of skeleton arguments	5	2,500
	Trial	60	30,000
	Other Charges		
	Consultation with and engagement of QC/SC 30 hours x \$800		24,000
	Engagement of foreign engineering expert for trial		5,000
	Cost of travel to Jurisdiction and hotel accommodations - engineering expert		<u>3,000</u>
---		TOTAL:	<u>79,500</u>
With Compliments			
Isla, Arch & Penn			
Per: <i>Acura Alpha</i>			

Later, she received an email from Mr. Blaine confirming that he had received the bill but found it to be unreasonable and exorbitant. He informed her that he will not be paying that bill and further, that he was surprised at several items on the bill, specifically: (1) Her visiting the site at his expense. He did not recall any prior discussion with Acura on that; (2) Engaging an engineering expert – “a foreign one at that!”; (3) Consulting and engaging Queen’s/Senior Counsel and (4) The hourly rate charged.

Identify and explain to Mr. Ford the ethical issues arising from the bill as rendered by Acura, and what steps Acura can take to recover the outstanding fees from Mr. Blaine.

Bentley Beta

Bentley and Mrs. Pemberley, an elderly, wealthy business woman and a long-standing client of IAP, have become quite close, he having represented her in several matters. She is engaged in a variety of business ventures, including real estate acquisition and development, and the leasing of several residential and commercial properties.

Mrs. Pemberley entered into an agreement to purchase a large parcel of beachfront property. Bentley acted for her in the acquisition of the property. Bentley asked Evogue, another associate in the firm, who had experience in large-scale real estate development approvals, to obtain the necessary licences and approvals on behalf of Mrs. Pemberley.

Mrs. Pemberley, being very fond of Bentley, offered him the opportunity to purchase a luxurious townhouse in one of her developments, since he had told her that he was looking for a well-appointed and safe place to live. Bentley initially declined to take up the offer as he could not afford to purchase the townhouse on his salary as an associate.

Mrs. Pemberley was dismayed that he could not accept her offer. She had previously given him tickets to movies, sporting events and all-inclusive parties but wanted to do more to express her admiration for him. She regarded him as a son, and only wished to show her appreciation for his handling of her affairs.

She then suggested to Bentley that she would allow him, while she was alive, to live rent-free in the townhouse and on her death he would inherit the townhouse. Bentley is excited by Mrs. Pemberley's boundless generosity and desperately wants to accept her offer.

Bentley had previously represented Mrs. Pemberley in a multi-million dollar claim brought against one of her companies, Terra Acquisition and Development Company Limited (TAD), for breach of contract. Bentley successfully defended the claim against TAD.

In the course of the proceedings, Mrs. Pemberley gave him a copy of TAD's financial statements and other related documents.

During one of their client meetings, Mrs. Pemberley confided to Bentley that she and her husband, Geoff, were estranged. She informed him that she was considering a divorce but was hesitant since she was certain that he would "*take her to the cleaners*" for TAD, which had turned millions in profits over the last decade.

Geoff has since instituted divorce proceedings against Mrs. Pemberley, which includes an application for property settlement in which he is seeking to obtain half of the shares in TAD. In support of his application, Geoff's attorney-at-law wrote to Bentley seeking the TAD financial statements that Mrs. Pemberley had given to him.

Explain to Mr. Ford the propriety of Bentley accepting Mrs. Pemberley's gifts, as well as the ethical issues that arise from Geoff's request for TAD's financial statements.

Cortina Gamma

Cortina recently had a consultation with Mr. Sergey Elusk in which he sought to retain her to establish a number of offshore trusts and companies around the Caribbean. Mr. Elusk indicated that he is willing to double her fees if she handles the matter expeditiously. He went on to inform her that he wishes her to hold US\$1,000,000 in the firm's clients' account for him. He will give the money to her in "instalments" in cash and cheques.

When she examines the client information form that Mr. Elusk completed, she notices that in the lines dealing with occupation and source of funds, Mr. Elusk had simply scrawled the words, "*I'm innovative!*"

She is concerned about the lack of information provided and is unsure how to proceed. She is also concerned about the potential consequences for her if she accepts the retainer.

Cortina has just been served with a disclosure order, pursuant to anti-money laundering legislation, in relation to all documents held by her concerning her client, Gerven Helmutt.

Cortina has been representing Mr. Hellmutt, a senior government official, in a number of conveyancing matters in which Mr. Hellmutt was the purchaser of several high-value properties. Mr. Hellmutt has been responsible for the award of government contracts to foreign corporations seeking to do business in the jurisdiction and, although Mr. Hellmutt has never been charged, there have been rumours of his engagement in corrupt activity in relation to those contracts. When he became a client, Mr. Hellmutt told Cortina that she must never let any nosy investigator come anywhere near his documents unless it was “*absolutely necessary*.” Amongst the documents held by Cortina are the agreements for sale and the instructions from Mr. Hellmutt. Cortina is unable to get in touch with Mr. Hellmutt and does not know how to respond to the disclosure order.

Explain to Mr. Ford how Cortina should proceed, given her concerns about Mr. Elusk, and how she should respond to the disclosure order concerning Mr. Hellmutt.

Durango Delta

Durango formed part of the team representing five men who have been in custody, without being charged, under an executive detention system. He appeared before a judge in chambers in the matter of applications for a writ of *habeas corpus* (the applications). After the first hearing of the applications, the judge made certain orders orally, including that the men should be brought before him at the next hearing of the applications and the matter was adjourned to a later date.

When Durango exited the courthouse, journalists from various media organisations, waiting outside the courtroom, descended on him. Durango was asked to give a statement on the outcome of the proceedings in court, that day. Durango, who had never shied away from granting an interview, remarked:

“We have secured a victory for the small man in this country. The judge has ruled that the executive detention system pursuant to the Act is unlawful, unconstitutional and without justification! The men must be released forthwith!”

His statement was widely reported in the print and electronic media.

Buoyed by this 'victory' and the media attention earlier in the day, he was later interviewed by a journalist on the popular evening current affairs programme "The Probe". During the interview, Durango, after repeating the statement he gave on the steps of the court house earlier in the day, went on further to state that:

"The Minister of National Security/National Defence is acting on the whim of uneducated police officers with their five CXC subjects. The Minister is not allowed to drink his 'spirits' and then determine who is to go home today and who is to not to go home until he says so. The Minister's flick of the pen is being informed by these uneducated police officers."

He further stated that the Attorney-General/Director of Public Prosecutions was not properly advising the government on its constitutional mandate and ethical responsibility to its citizens.

He also appeared on a popular night-time news programme later the same evening and repeated his earlier comments. The Attorney General/Director of Public Prosecutions, who was also a guest on the programme, countered Durango's statement and sought to make it clear that the statement made by the judge was that a man's freedom could not be arbitrarily taken away but there was no final determination on the applications before the court. The Attorney General/Director of Public Prosecutions further stated, that the judge did not rule that the prolonged detention of the five men, who were the subject of the applications for *habeas corpus*, was unconstitutional, nor did he order their release.

This casts doubt on the statements made by Durango who had insisted that the judge ordered that his clients be released forthwith.

In another case, Billie Gramm and her brother, Finneous Gramm, were jointly charged with the wounding with intent of Leyland Massop, one of their tenants. They came to IAP for representation and consulted with Durango. They told him that they were nowhere near the crime scene and, in fact, had alibis. Durango agreed to represent them and they entered into a written retainer. Billie and Finneous would visit Durango together and,

sometimes, separately. When they visited separately, he would disclose to each of them what had been said to and by the other.

One day, when Billie attended his office on her own, she became emotionally distraught and confessed to him that she was, in fact, present when the incident happened but was not at all involved in it. She stated that it was Finneous who confronted Leyland for unpaid rent and got into a physical altercation with him which caused the grievous bodily harm. She revealed that Finneous bullied her into lying about their whereabouts at the time in question and even paid their other tenants to support their story. She told Durango that she was a single mother and she did not want to jeopardise her daughter's future by taking the risk of being found guilty.

Durango, moved by Billie's distress, resolved to himself that he would ensure that she was freed of the charge. He disclosed to Finneous what Billie had said, but Finneous told him to ignore Billie, and proceed to put forward the alibi defence. Durango was fearful of Finneous, so he proceeded with his instructions and coached Billie, Finneous and their alibi witness in such a way as to create doubt in the minds of the jurors as to the prosecution's case.

During the trial, Durango put to the police witness that Billie was nowhere near the scene of the altercation but did not put a similar case forward in relation to Finneous. Billie was acquitted and Finneous convicted.

Finneous has engaged a new attorney-at-law who has written to the firm stating he has been instructed to appeal Finneous' conviction.

Explain to Mr. Ford the propriety of Durango's action in relation to the matter of the applications for *habeas corpus*, as well as the implications and likely consequences of Durango's handling of Billie and Finneous' matter.

Evogue Epsilon

Evogue, despite being experienced in real estate development and in obtaining the required approvals, had never handled a large beachfront project like the one she agreed

to do for Mrs. Pemberley's company, Coco Cay Development Project Limited (the Company). Mrs. Pemberley told her that she would commence construction on the Coco Cay property while Evogue actively pursued the necessary licences and subdivision approval. Over the course of several months, however, she was engaged in a number of conveyancing transactions and omitted to file the application for subdivision approval.

As a consequence, Mrs. Pemberley has now been served with an injunction against the Company, prohibiting further construction at Coco Cay. The Company has been forced to put the project on hold and the prospective purchasers are seeking a refund of the deposits and other payments made by them under the contracts for purchase. Evogue had paid over those monies to Mrs. Pemberley, who is refusing to refund the deposits and return the other payments.

Mr. and Mrs. Tobias had entered into an agreement to purchase one of the properties in the Coco Cay Development and Evogue had drafted the agreement for sale. Mr. and Mrs. Tobias, who were unrepresented, paid Evogue US\$15,000 as an initial deposit towards the purchase price of the property, and an additional US\$3,000 within six months of that initial deposit. Evogue did not send a receipt to Mr. and Mrs. Tobias. They subsequently paid additional amounts to Evogue, so that during the course of the purchase, they had paid a total of US\$35,000 towards the acquisition of the property.

When they heard about the injunction, Mr. and Mrs. Tobias sought independent legal advice and were advised that the vendor was incapable of passing title to them. The attorney-at-law in question further advised the couple that, having reviewed the agreement for sale there were several unusual terms in it which were detrimental to their interest. Evogue received a letter from the said attorney-at-law informing her that he has been instructed to file a claim in the Supreme/High Court against her and to make a complaint to the disciplinary body for her handling of the transaction, including the fact that she paid over all their money to the vendor.

Evogue replied to that letter by stating that she was not obligated to Mr. and Mrs. Tobias as she did not represent them in the purchase of the property.

In another matter in which she was involved, Evogue was retained by Mr. Chance to apply for subdivision approval and to modify certain restrictive covenants endorsed on the Certificate of Title/Land Certificate. These restrictive covenants prohibit any subdivision of the land and the construction of more than one building on the parcel of land. Mr. Chance proposed to develop the property into several three-bedroom strata/condominium units, with a view to selling them. She prepared the relevant documents and filed the application in the Supreme/High Court.

Evogue gave her irrevocable undertaking to the Registrar of Titles/Lands to obtain an order for modification of the restrictive covenants on the Certificate of Title/Land Certificate by on or before February 27, 2022, in exchange for the Registrar of Titles/Lands issuing separate titles.

When the application came on for hearing, the court did not grant the order sought by the claimant and ordered as follows:

- (1) Application to modify restrictive covenants is refused.*
- (2) The claimant's attorney-at-law is to file and serve the formal order on the relevant bodies and the Registrar of Titles/Lands.*

The Registrar of Titles/Lands, on receiving the order, has written to Evogue to say that she will be making a complaint to the disciplinary body.

Identify and explain any ethical issues that arise from Evogue's handling of the sale in relation to Mr. and Mrs. Tobias and what liability, if any, she may incur. Explain the propriety of Evogue's action in relation to the undertaking given to the Registrar of Titles/Lands. Include in your response any consequences she may face regarding the complaints to the disciplinary body.

Required:

Prepare the opinion for Mr. Ford as instructed. **Your opinion should not exceed 4,500 words.**

END OF PAPER