

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

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATION 2023**

ETHICS, RIGHTS AND OBLIGATION OF THE LEGAL PROFESSION

(TUESDAY, MAY 9, 2023)

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

Mario Tendo is orally retained by Bowser Koopa, a film director and producer, to act on his behalf in several contentious and non-contentious legal matters. Bowser is a long-standing client of Mario.

Among the matters that Mario has been instructed in are:

- (i) to defend a claim brought against Bowser for breach of contract;
- (ii) to institute a claim against Dulce Peach for Dulce's failure to deliver media equipment which Bowser had purchased from her;
- (iii) the purchase of shares in a small independent film studio; and
- (iv) an appeal against the quantum of damages in a defamation claim brought by Bowser against Spotlight Inc., an internet blogger.

Mario, who was engaged with another very complex legal matter, without speaking to Bowser about his plans, arranged with Luigi Ninoli, his best friend, who sometimes does legal work for Bowser, to have conduct of the first two matters. Mario subsequently passed the relevant files to Luigi but retained carriage of the purchase of the shares in the independent film studio and the appeal in the defamation claim.

In relation to the first matter concerned with defending the claim against Bowser for breach of contract, Luigi acknowledged service and filed a defence, but subsequently entered into negotiations with the claimant's attorney-at-law with a view to reaching a compromise of the action. In the second matter, Luigi commenced the proceedings and filed a claim on behalf of Bowser.

Meanwhile, to contest the quantum of damages against Spotlight Inc. on Bowser's behalf, Mario filed several applications, conducted research and prepared submissions and skeleton arguments. Mario sent Bowser a bill for the work he had completed in the purchase of the shares in the independent film studio and for work done to date on the defamation matter. Bowser,

however, informs him that he has no intention of settling any bills until all four matters in respect of which he (Mario) has been instructed are complete.

Mario told Luigi what Bowser said, whereupon Luigi decided not to do any more work on the files. Luigi subsequently emailed Bowser to inform him that he had been working on the two matters for him and that -

- (i) in relation to the defence for the breach of contract matter, he (Luigi) had agreed to compromise the matter with the claimant for the sum of US\$50,000, and that Bowser would bear the costs in the action; and
- (ii) in relation to the action against Dulce, he had entered a default judgment.

Luigi also sent a bill to Bowser claiming payment for the work that he had completed in both matters. Bowser was livid when he received Luigi's email and bill and emailed Mario to tell him that he (Bowser) did not instruct Luigi in any of the matters Mario had passed to him.

Advise Mario on the ethical issues that arise in his handling of the legal matters in respect of which he was retained by Bowser, and the course of action you would advise that he should adopt.

QUESTION 2

Ken Mattel is the Senior Partner of the law firm, Mattel & Associates, where you are engaged as an associate attorney-at-law.

The firm is on a list of the panel of approved attorneys-at-law of its client, Carib Bank (WI) Ltd. (Carib Bank). A customer of Carib Bank, Mrs. Gerwigg, while transacting business at Carib Bank's city branch, saw an advertisement on Carib Bank's digital noticeboard, for the sale of a parcel of land at Pink Caye (the Pink Caye Land) in the jurisdiction. She made enquiries and was told by the Loans Officer how to contact the vendor.

Having agreed with the Vendor to purchase the Pink Caye Land, Mrs. Gerwigg made arrangements for the bank to finance the acquisition of the land. Carib Bank requested that she select an attorney-at-law to act for her from among those listed on the bank's panel of attorneys-at-law.

Mrs. Gerwigg subsequently entered into an agreement for sale with the vendor for the purchase of the Pink Caye Land and stated her intention to build her house on it.

The agreement for sale contained, *inter alia*, the term, that the agreement was "*Subject to the Vendor providing the Purchaser with proof of approval for residential use from the relevant government authorities.*"

Barbee, an attorney-at-law at Mattel & Associates, who specialises in conveyancing, acted on behalf of both Mrs. Gerwigg and Carib Bank in the purchase of the Pink Caye Land. Barbee prepared the mortgage/charge instrument which was executed by Mrs. Gerwigg and the authorised officers of Carib Bank.

In the course of the transaction, Barbee did not seek information from the relevant authority as to whether the Pink Caye Land had the approvals for the erection of buildings for residential use. She also did not ascertain whether the vendor had a good marketable title and that the necessary statutory approvals were in place to facilitate the construction of a house which would affect the marketability of the Pink Caye Land.

Barbee, however, represented to Carib Bank that the Pink Caye Land had the requisite approvals for a building on the land. She had in fact overlooked the contents of the notification from the relevant authorities that stated that the statutory approval was for use of the land for commercial development which was the basis on which Carib Bank was led to provide a mortgage facility to Mrs. Gerwigg.

Following the completion of her purchase of the Pink Caye Land, Mrs Gerwigg applied for, but was unsuccessful in obtaining the required approvals. Without the relevant statutory approvals

Mrs. Gerwigg cannot access a loan from any institution to finance the construction of the house using the Pink Caye Land as security.

Mrs. Gerwigg has threatened to sue the firm and Barbee as she has expended considerable sums for the preparation of a building plan for the construction of her house. Further, subsequent to the purchase, Mrs. Gerwigg spent an average of US\$1000 for monthly maintenance and upkeep of the Pink Caye Land. She is very upset that she is unable to build her home although she has had to be servicing her loan with Carib Bank.

Ken wishes to know whether there is any legal basis upon which proceedings can be brought by Mrs Gerwigg against Barbee and the firm.

Ken also tells you that he was involved in a high-profile and complex litigation matter, in which his junior associate attorney-at-law, Allan, was assisting him. After hearing submissions, the judge reserved judgment. Sometime later, the judge emailed Ken and counsel on the other side providing them with an electronic copy of the draft judgment in advance of delivery, under embargo, on the following terms–

- (i) neither the judgment nor its substantive terms should be disclosed in the public domain;
and
- (ii) no action should be taken in response to the draft judgment before the Court actually delivers its ruling.

Ken learnt yesterday that Allan, being so excited about the outcome of the matter and his research contribution to it, shared that excitement on his LinkedIn Page posting just the last few pages of the judgment which contained the ratio and the amount awarded as damages.

Ken is very concerned about the conduct of Barbee and Allan, and has asked that you provide him with a legal opinion on the firm's exposure arising from the matters above.

Prepare the opinion.

QUESTION 3

Adonis Drake has been a client of Dejah, attorney-at-law, for many years. Adonis uses no other attorney-at-law and instructs Dejah on all his legal matters and transactions. Adonis resides in the USA and has twice been convicted there of drug trafficking offences. The financial investigations authority (FIA) in your jurisdiction commenced investigations into suspected money laundering by Adonis, triggered by his pattern of purchasing, selling and leasing of real estate and other assets in your jurisdiction.

Adonis from time to time instructs Dejah to deduct monies from his client account and to make payments on his behalf to various persons using funds from the account. Adonis, who contributes to the financial care of one of his aunts, had instructed Dejah to settle a claim for outstanding arrears of rent amounting to US\$24,000 that his aunt owed to her landlord. The arrears were to be paid from his client account by the end of January 2023. Dejah informed Adonis that the account was 'short' because she had not yet replaced funds that she had borrowed from it to provide her son with money for his college tuition and monthly maintenance.

In fact, Dejah, knowing that Adonis would not be returning to the jurisdiction anytime soon, would routinely withdraw monies from his and other clients' accounts to promote herself as an author and radio show host, and invest in short term securities. She would also place some of the monies that she collected from the sale and/or rental of Adonis' properties in her personal investment account.

Although Adonis was very angry about Dejah using monies from his client account, he agreed to transfer, in early February 2023, sufficient funds to his client account for Dejah to pay over to SIRR-JAY, the attorney-at-law for his aunt's landlord. Based on that assurance, Dejah wrote to SIRR-JAY, promising that she would settle the total outstanding arrears, interest as well as costs and attorney's fees in two weeks.

Shortly after Dejah sent the letter to SIRR-JAY, the FIA attended her chambers with a search and seizure warrant pursuant to the anti-money laundering legislation. The FIA was seeking to obtain from Dejah's chambers various documents including-

- (i) conveyancing files relative to Adonis' property purchases and sales;
- (ii) documents and bank statements in relation to Adonis' client account;
- (iii) email communications between Dejah and Adonis concerning Adonis' investments;
- (iv) documents relating to Adonis' leasehold premises including copies of communication with his tenants; and
- (v) documents relative to Adonis' purchase of a fishing vessel, including a report of a boat mechanic on the cost of repairs for damages incurred in a collision with another vessel, resulting in a claim initiated by the captain of the other vessel.

Dejah flatly refused to hand over the documents to the FIA but the documents were nonetheless taken, placed in a bag, tagged and sealed in her presence.

The FIA also obtained a freezing order on Dejah's client account with respect to money held on behalf of Adonis. As a result, Dejah could not pay SIRR-Jay the interest as well as costs and attorney's fees as she had promised. She was only able to pay the outstanding arrears of rent.

Dejah is concerned about what has transpired and seeks your advice on the ethical issues that arise, and any liability she may incur as a result of:

- (1) the propriety of her handling of her client accounts;
- (2) her failure to pay, to date, the money as promised to SIRR-Jay and the recourse available to SIRR-Jay; and
- (3) the seizure of the documents relative to any duties owed by her to Adonis, identifying any similarities and differences between those duties.

Advise Dejah.

END OF PAPER