

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATION 2025

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(TUESDAY, MAY 20, 2025)

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

Aston is an attorney-at-law. Clifford was his client for a very long time, Aston having represented him in a myriad of matters since his admission to the Bar in 1995.

In July 2023, Clifford consulted Aston about making his Will. He was 75 years old and had finally acknowledged that he “wouldn’t be around for ever” so it was time to put his affairs in order.

Clifford instructed Aston to include in the Will a bequest of \$5,000,000 to his “devoted niece, Nadia” as well as a bequest of \$1,000,000 to him, Aston, “my faithful adviser over these many years”. Aston was also to be named as one of the executors, together with Clifford’s wife, who was also the residuary legatee.

The Will was prepared in accordance with Clifford’s instructions. Due to an illness from which he was suffering at the time, the Will was sent to Clifford’s home for execution. Aston sent written instructions with respect to execution but failed to mention that the attesting witnesses should not be any of the beneficiaries or their spouses.

The Will was signed by Clifford and witnessed by his niece, Nadia, and her boyfriend, who happened to be visiting Clifford at the time. As “Nadia” was her family pet name, her actual name being Bernice Jones, Nadia signed as Bernice Jones and that was the name written in the attestation clause of the Will.

Clifford died in January 2024. As the estate did not consist of much cash, it took some time after they obtained the grant of probate in the estate for Aston and the other executor to realise assets in order to pay the numerous cash bequests. Consequently, they turned their attention to the distribution of cash gifts just under ten months after the grant of probate.

During that process, Aston realised that Nadia and Bernice Jones were one and the same person, that the gift to “Nadia” had, therefore, failed and that there was nothing he nor she could do about it. He advised Nadia of what had happened, and she was livid. Her ire was increased by news of the bequest to Aston, which she found “utterly reprehensible”.

All of this has compounded a negative view she was forming of Aston because of an entirely different matter.

Nadia is the chairman of a construction company called GH Construction Ltd. The company had built an upscale residential complex and put the units up for sale.

Aston represented one of the purchasers, who had been his trusted client for several years. He had sent a letter to GH Construction Ltd. which stated, "I will send you the balance of the amount due from the purchaser upon receipt of the title to the property in the name of the purchaser."

In fact, when the title was sent to Aston, he called on the purchaser to put him in funds but has not received the amount. It so happened that the purchaser had disappeared without a trace.

Meanwhile, Aston has been giving the company the run around. The sum due is a large one, and his answer to every enquiry made by the company is that he "is still waiting to hear from my client".

This matter had been reported to the board of GH Construction Ltd. and Nadia had made a note of Aston's name.

Nadia has now sought your advice on Aston's conduct in relation to:

- (i) the failed bequest to Nadia;
- (ii) the bequest to Aston; and
- (iii) the failure by Aston to pay the balance due on the housing unit

and any steps that may be taken against him in respect of it.

Advise Nadia.

QUESTION 2

- (a) Henry is a newly minted attorney-at-law. His practice includes personal injury litigation, and he plans to make that an area of specialisation. Henry's brother is a doctor who works at a large hospital. At a recent family gathering, Henry's brother suggested that Henry give him some of his business cards as he sees many patients in the Emergency Room who have been injured in motor vehicle and industrial accidents, and he is certain he could "drum up some business" for Henry.

Further to their discussion, Henry has sent his brother a stack of his business cards and received a phone call from him acknowledging receipt, but asking if Henry couldn't make them "a bit more exciting and memorable". Henry is presently contemplating how to do that.

Meanwhile, Henry's sister-in-law who works with an advertising agency has asked Henry to appear in an advertisement for natural hair products. Henry is tall, good-looking and has thick healthy hair that he styles in the latest fashion.

You are an attorney-at-law and an acquaintance of Henry's. As you dabble in graphic art in your spare time, he has come to you about his business cards. He has explained the entire context around his trying to make them more exciting, including the offer made by his brother to "drum up" some business for him. Henry has also mentioned the proposed shampoo advertisement, saying that his public profile is about to "ramp up".

Given your understanding of the ethical rules of the legal profession, what guidance would you give to Henry concerning his plans?

- (b) During a criminal trial in the Supreme/High Court, in which she appeared for the defence, Pamela Gooding, an attorney-at-law, had several very testy exchanges with the trial judge, Justice Bright, whom she thought was interfering too much during her examination and cross-examination of witnesses. Both Pamela and the judge were known to be short-tempered and so this was not surprising to anyone; however, Pamela's actions in court during the last exchange between them that day caused some dismay.

Seemingly pushed beyond the limits of her patience, Pamela addressed the bench in a deceptively calm tone, saying:

Justice Bright, do you think that just because your name is 'Bright', all of us lawyers who appear before you don't know what we are doing and have no sense! It's either that, or you have your own agenda in this matter. I hope tomorrow is not the same, my Lord. You should know by now that I, Pamela Gooding, am not afraid to stand my ground and fight for what is right.

The Judge was incensed and shouted:

Mrs. Gooding! You have gone too far today! It is time for us to adjourn, but we will see what will happen tomorrow in relation to what you said just now. Just wait and see!

You are a young attorney-at-law working with Judge Bright. He has been muttering about sending Pamela straight to prison for contempt tomorrow. You are concerned that the judge may be so angry that he does not think the matter through carefully. You have suggested to him that he allow you to prepare a memorandum to him on the law that should guide him as he contemplates his stated intention. He has grudgingly agreed.

Prepare the memorandum.

- (c) Monty has been arrested and charged for the alleged murder of his common law wife, Pretty. You are undertaking his defence at the request of his sister, who is a security guard assigned to your office building.

At your first meeting with Monty, he tells you that he really did murder Pretty but is asking you to do what you can for him because he has six children that depend on him.

What approach should you take in Monty's representation in these circumstances?

QUESTION 3

Essex Enterprises Limited (“Essex”) is a company incorporated and operating in your jurisdiction since 2002. Its principal business is hazardous waste collection and disposal.

There has been heightened scrutiny of the activities of persons in the waste disposal industry over the last two years. It began with the passing of the Hazardous Waste Act (“the Act”) and the establishment of the Hazardous Waste Authority (“the Authority”). Under the Act, the Authority has the power to investigate possible breaches and to refer them to the Director of Public Prosecutions/Attorney General for consideration for criminal prosecution. The penalties for such breaches are extremely high.

Essex has operational rules designed to ensure adherence to the Act. There has never been an adverse report about their employees or contractors to suggest breach of the rules. There have, however, been a few cases of employees developing cancer, after working for long periods in the business.

The board of directors of Essex, noting the indiscipline of the general population, were highly sceptical of the rosy picture being reported to them of Essex’s compliance with the Act and were worried about possible criminal prosecution. In addition, the board wanted a review of Essex’s practices to ensure employee safety and improve operational efficiency.

Consequently, Essex established a Hazardous Waste Investigation Committee (“the Committee”) to conduct a thorough investigation of Essex’s operational rules, as well as the practices on the ground. The Committee was to examine and report on whether Essex’s rules were appropriate for the purpose of ensuring compliance with the Act, and whether employees and contractors complied with those rules. The Committee was also to investigate and report on whether Essex could do more to minimise any risk to employee health and to improve operational efficiency.

Six months into the Committee’s work, Essex received notice that they were being investigated for breaches of the Act by the Authority. The Authority has demanded to see copies of documents generated in the course of the Committee’s work. They include correspondence from

environmental law attorneys with whom the Committee had consulted, and reports from various experts rendered to those attorneys-at-law.

In addition, three former employees have since filed separate claims against Essex, claiming compensation for illnesses allegedly caused by exposure to dangerous chemicals in the course of their employment.

Lynda was retained to represent Essex in respect of this litigation, to which she was asked to give the highest priority. She has been told that Essex is particularly sensitive about the claims playing out in court when an investigation is being conducted by the Authority, albeit in respect of matters unrelated to the health issues of their employees. Her instructions were, therefore, to bring the matter to an end as soon as possible. No written retainer agreement was signed and there was no discussion as to fees.

Lynda is a senior attorney-at-law with over twenty-five years at the Bar. She gave Essex preliminary advice to the effect that Essex's potential exposure in each of the claims was between US\$250,000 and US\$300,000, once a link could be established between the chemicals to which they had been exposed in the course of their employment and their illnesses. It was accepted by Essex that this was their potential liability.

Lynda has settled one of the claims and rendered a bill in respect of it. In the bill she has included charges for the following:

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|------------|---|-------------------------|
| <p>(1)</p> | <p><i>Professional services rendered in perusing documents,
including relevant medical reports;
correspondence with opposing counsel; procuring
and studying report from medical toxicologist on likely
impact of chemical exposure on human health;
negotiating settlement with opposing counsel</i></p> | <p><i>US\$6,000</i></p> |
| <p>(2)</p> | <p><i>Fee due to medical toxicologist</i></p> | <p><i>US\$1,000</i></p> |

She has also requested that Essex remit to her the sum of US\$150,000 for payment to the relevant employee in settlement of the claim.

Both the demand by the Authority to see the documents related to the Committee's work, as well as Lynda's bill and request for payment in respect of the litigation, were reported to the board of directors of Essex.

One of the directors, a retired attorney-at-law, was very outspoken in respect of the Authority's request for the documents and expressed the view that Essex should not hand them over as they were "all privileged".

Another has objected to Lynda's handling of the litigation matter, as well as her bill, on the grounds that she had no authority to settle with the other side; that her professional fees were outrageously excessive; and that Essex had not approved the hiring of a medical toxicologist.

In response to the growing disquiet amongst board members upon hearing the strong views of these two directors, the Chairman has requested you, as in-house counsel for Essex, to provide him with a memorandum advising on:

- (i) the validity of the assertion at the meeting that the documents requested by the Authority were "all privileged";
- (ii) whether Essex should oppose or accept the charges set out in Lynda's bill; and
- (iii) whether the objection in the meeting to Lynda's settlement of one of the matters referred to her was a reasonable one, and whether Essex could refuse to pay the US\$150,000 requested.

In each case, give the basis for your advice.

Write the memorandum.

END OF PAPER