

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2025

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(MONDAY, AUGUST 4, 2025)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **ALL** questions.
- (c) In answering any question, a candidate may reply by reference to the law of any 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

- (a) Frobish and Partners is a small firm of attorneys-at-law in your jurisdiction that specialises in family law. The firm acted for Mark in his divorce from his first wife. Brent was the partner in charge of that matter. The firm has now been retained by Wendy, Mark's second wife, to act for her in her divorce from Mark. The partner in charge of Wendy's divorce is Jennifer, who also happens to be Wendy's personal friend.

It has come to Mark's attention that the firm is acting for Wendy, and he has raised strong objection to them doing so. He maintains that the firm is in possession of information about him and his assets that could be used to his prejudice in the divorce from Wendy.

You are an attorney-at-law whom the firm consults from time to time on ethical issues. You have been asked to opine on whether there is any legal basis for Mark's objection and, if there is, to suggest a way in which the firm could allay Mark's fears and continue to represent Wendy.

Write a letter to the firm giving the requested opinion.

- (b) Phillip, an attorney-at-law with five years at the Bar, was retained by Belinda. Belinda had been prosecuted for manslaughter caused by her recklessness in a motor vehicle accident in which a passenger in another vehicle was killed.

During Belinda's trial, the trial judge repeatedly interrupted Phillip's examination and cross-examination of witnesses. Phillip, not wanting to land himself in any trouble, did not protest but patiently allowed the judge to say whatever he wanted and tried to maintain his composure and train of thought, but found it very difficult to do so.

Counsel for the prosecution, as if sensing that things were not going in Phillip's favour, made several insulting and denigrating remarks about Phillip and his client. This drew a half-hearted rebuke from the judge but was otherwise unchecked.

Ultimately, the jury, which had been visibly paying close attention to the judge and

prosecution counsel, returned a guilty verdict.

Phillip has requested your advice as to whether what transpired in court with the judge and prosecuting counsel provides any basis for appealing the conviction.

Write a letter of advice to Phillip, giving reasons.

QUESTION 2

- (a) Montrose, an attorney-at-law, was talking to his neighbour, Angel, as both watered their gardens one evening. Angel's husband had died suddenly about a year before.

At first, the conversation was about the news of the day. Ultimately, it became a lament by Angel about a debt due from one Randy, a friend of her husband, who had borrowed money from him when he was alive, and had not been paying it back as agreed.

The more she talked, the more upset Angel got as she recounted how hard managing her finances had been since Randy's death, and yet this "*so-called friend*" who had offered to help her "*in any way possible*" when he died, was in fact now hurting her by not paying.

Angel went inside and brought out a file to Montrose, which she said related to the debt. He took it without saying anything as he didn't want to upset her any further.

The following morning, as he was leaving for work, Angel called to him from her kitchen window saying, "*Remember to look at those papers I gave you. We have to collect this money and the sooner the better.*"

When he had reached office, Montrose perused the contents of the file that Angel had given him. Angel's husband had been very organised and had kept a record of everything, including evidence of the loan arrangement and the payments made. Nonetheless, it took the better part of the day to ascertain the current position as the loan appeared to have

been rolled over a few times and the record of payments made took some time to understand.

Montrose sent Randy a letter in which he described himself as representing Angel in her capacity as executrix of her husband's estate. The letter demanded to know when she might expect to be paid the balance principal and interest due on the loan, which was now past due. Montrose took a copy of the letter home to give to Angel but discovered that she had gone overseas to assist her sister who had fallen ill.

Angel returned home a week later and immediately came to see Montrose. She was very angry. Randy, having received Montrose's letter, had called her to complain about it, praying in aid the many years of friendship with her husband and her. He told her that he was just going through a hard time but had transferred a small portion of what was due to the usual account. He hoped she could just give him a little more time to clear the debt.

Angel has told Montrose that he had no authority to send the letter, and that she hoped he did not intend to charge her for it, since she never asked him to do any such thing.

Montrose is now quite indignant. He fully intends to bill Angel for the work done and has asked you, his colleague, for your advice on his legal position.

Advise Montrose, giving reasons.

- (b) Bernice, an attorney-at-law, was retained by the vendor, Kevin, to represent him in a sale of land transaction.

Bernice had an unblemished record as an attorney-at-law, having never before had a complaint filed against her. In her personal life, she was known to be financially prudent. Lately, however, there had been much strain on her finances as her daughter had been diagnosed with a rare illness and the treatment was costly. Even with health insurance, Bernice was unable to pay for it.

Consequently, upon receipt of the proceeds of sale from the purchaser's attorney-at-law,

Bernice transferred the money to her personal account and used it to pay for her daughter's treatment. She hoped that she would be able to replace the money out of fees received for matters that she was handling, before Kevin, who was expecting to receive the net proceeds of the sale, lost patience with her.

As it happens, Bernice had not received sufficient fees to put her in a position to pay Kevin until after he had filed a complaint with the disciplinary tribunal in your jurisdiction, but before the hearing of the matter.

The hearing will shortly take place and Bernice has asked you to represent her. She has also asked for your advice on:

- (i) whether the matter could be disposed of if Kevin decides, or can be persuaded, to withdraw his complaint; and
- (ii) any possible mitigating circumstances arising from the facts and the extent to which they would influence the disciplinary tribunal's decision as to the appropriate sanction to be applied.

Advise Bernice, giving reasons.

QUESTION 3

- (a) Janice is an attorney-at-law in your jurisdiction.

One day, she received, at her office, an original signed lease agreement and some copy receipts for payments made under the lease. Attached was a note from one Poly Brown which stated that he had been asked to leave the documents with her by his sister, Olivene Brown, who would call Janice later that day about some legal assistance that she required.

Olivene is a national of your jurisdiction who lives in the United Kingdom. In her call to Janice, she indicated that she had bought a house in your jurisdiction about six months ago, but needed to sell it quickly, due to an urgent need for cash. The house was bought subject to an existing lease, but she needed to sell it with vacant possession as she had a buyer who would buy it on a cash basis, and who was offering to pay “top dollar”. She wanted Janice to act for her in the sale and needed Janice’s preliminary advice on how she could “get rid of the lessee”. Janice agreed to peruse the lease and provide the requested advice for a fee of US\$300. Their arrangement was confirmed by email.

Janice reviewed the lease and noted that it was for a fixed three-year term with two years still to run. In addition, there was no option for early termination. She emailed Olivene a detailed letter of advice, the essence of which was that she could try to negotiate termination of the lease with the lessee as there was no other option available in the circumstances. Olivene called her immediately upon receipt of her letter. She questioned everything Janice had said in the letter and in a most sceptical tone. The call lasted about an hour, with Janice having to patiently repeat herself numerous times. At the end of it all, her impression was that Olivene was not convinced.

That Janice had cause for concern, was confirmed by an email from Olivene the next day. In it, Olivene expressed her dissatisfaction with the advice and accused Janice of failing to put herself in her client’s position. Finally, Olivene told her that she would speak to her brother, Poly, and get back to Janice.

Two days later, Olivene called Janice saying that she knew what to do and that Janice just needed to provide “legal cover”. It became clear to Janice, from the ensuing conversation, that Olivene planned to resort to threats of physical violence against the lessee and his family members in order to force them out. The plan appeared to involve Poly.

Janice immediately responded with a letter saying that, while she understood why Olivene would like to be able to take advantage of the opportunity to sell quickly at a good price, she, Janice, could not condone Olivene’s plan, nor provide the “legal cover”

requested. She also indicated that Olivene would be breaking the law if she instigated the proposed action, and that her brother, who lived in the jurisdiction would be in serious jeopardy of being prosecuted.

Olivene was incensed and responded saying that Janice was “*out of order and of no use as an attorney*” and that Janice could consider their relationship to be at an end. Janice was only too happy to hear that and has confirmed termination of the retainer by way of another letter, enclosing her bill for the advice rendered for the agreed fee of US\$300.

Olivene has refused to pay and is demanding that Janice hand over the lease and receipts to her brother, Poly. Janice has indicated to her that she will be doing no such thing until she is paid. Janice has taken the precaution of checking with experts in landlord and tenant matters that her legal advice to Olivene was sound, and has been assured that it was.

Olivene is threatening to take disciplinary action against Janice, who has asked you for advice on her legal position.

Prepare a letter of advice to Janice, giving reasons.

- (b) Justin instructed Helen, a senior attorney-at-law, specialising in trusts and estates, to create an *inter vivos* discretionary trust for the benefit of his physically disabled son, Thomas.

Justin clearly specified that the trust was to provide for Thomas's long-term care, maintenance and medical expenses. He also made it clear that he wanted the trust to be as tax efficient as possible.

Helen drafted the trust deed, but she:

- (i) failed to adequately advise Justin on the tax implications of the trust structure or to make it as tax efficient as possible;
- (ii) included a poorly defined discretionary clause, which failed to include

specific guidance on how the trustees should exercise their power, in relation to Thomas's specific needs; and

- (iii) failed to include a clause that would allow for an inflation-linked increase to the trust funds provided to Thomas.

Justin passed away five years later.

Thomas, now an adult, has found that the trust funds were rapidly depleted due to unexpected tax liabilities.

Thomas also discovered that the vague discretionary clause made it difficult for him to access funds for essential medical treatment, which has caused his physical condition to worsen due to delays in treatment.

In addition, he has suffered significant financial hardship and emotional distress.

Thomas has threatened to file a formal complaint against Helen with the disciplinary tribunal and to file an action in court for compensation.

Helen has asked you to advise on whether Thomas has *locus standi* to take the threatened steps and whether the missteps made by her in the handling of the matter can be made the subject of disciplinary action and sanction.

Advise Helen, giving reasons.

- (c) James, an attorney-at-law in your jurisdiction, is at his weekly Rotary Club meeting when he is approached by Leo, another member of the club. Leo also happens to be his client, whom he is currently representing in the purchase of an investment property.

Leo tells James that his church is having a gala dinner in another two months to celebrate its 100th anniversary, and he would like James to support it by purchasing five tickets at US\$200 each. James would rather not buy any tickets. Nevertheless, he says to Leo that he can only purchase two, but he will sell the others for Leo.

The following week, James receives the five tickets in an envelope at his office. By this time, he regrets what he has said to Leo. After holding the tickets for two days, he returns them with a note saying that, regretfully, he will not be able to attend after all, and that he has realised that he is just too busy to undertake the sale of any tickets.

James receives a call from Leo, expressing surprise that James would breach his promise to him in this way, considering that he is an attorney-at-law and especially because he, Leo, is not only his fellow Rotarian but also a client. While Leo does not expressly say so, the clear inference is that he considers James's promise at the club meeting to constitute some kind of professional obligation.

You are an intern in James's chambers, and he has assigned you the task of sending him a memorandum with guidance on the applicable law and your view as to whether he has any professional obligation to fulfill the original promise to Leo.

Draft the memorandum.

END OF PAPER