

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

LEGAL EDUCATION CERTIFICATE

SECOND YEAR SUPPLEMENTARY EXAMINATIONS, OCTOBER 2020

ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

WEDNESDAY, OCTOBER 14, 2020

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 bibliography are not required.
- (g) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (h) In answering the 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.**
- (i) 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.
- (j) 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 OCTOBER 2020 EXAMINATIONS, ETHICS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION DROP BOX** on TWEN by **Thursday, October 15, 2020, NOT LATER**

THAN 9:00 a.m. (Jamaica) 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).

(k) 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 2100-2162 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box A Year II - 2100-2162***”.
 - Year II students with Examination ID numbers between 2163-2232 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box B Year II - 2163-2232***”.
 - Year II students with Examination ID numbers between 2235-2311 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box C Year II - 2235-2311***”.

Castle & Castle (the Firm) operates a thriving diverse practice with a rather varied clientele from around the Caribbean. The Managing Partner of the Firm requires advice in respect of the following situations involving some of the partners and associates of the the Firm:

- (i) On April 1, 2020, Colin Sweeny consulted Tega Castle, a partner in the Firm, with respect to a defamation suit against Colin and also in relation to another matter concerning the registration of a trust.

Two days later, Colin delivered to Tega the relevant documents in the defamation matter. Tega immediately acknowledged service in the defamation matter since the period for acknowledging service would have expired the following day.

Tega began his research on the matter and, without consulting Colin, asked Suri Windsor, Queen’s/Senior Counsel, to prepare a legal opinion on the issue of damages. Suri prepared the opinion and returned it to Tega, along with a bill of costs.

Four weeks later, Tega, without Colin's prior consent, negotiated a settlement of the defamation matter. He drafted a consent order and sent a copy of it to the claimant's attorney-at-law.

Tega submitted a bill of costs to Colin for the work that he had completed, including the consent order. He also submitted the bill for the legal opinion from Suri. Since Tega had done no work on the trust matter, he did not bill Colin for anything in that regard.

Colin is resisting paying the bills. He says that he did not formally retain Tega and, further, that Queen's/Senior Counsel should not have been involved "in such a straightforward matter". In addition, Colin is adamant that he would never have permitted the matter to have been settled. Colin also insists that Tega has to complete the trust matter before he pays the bills.

Advise on the agreement between the Firm and Colin, the bills presented and the entitlement to be paid for services rendered by all the attorneys-at-law involved.

Your answer should not exceed **800 WORDS**.

- (ii) Avis entered into an agreement to purchase a beach villa from Diego. In this transaction, the Firm acted for both Avis and Diego, since they were told by the Firm that this would be "economical and expedient" for the parties.

In the transaction, Remi Castle, another partner in the Firm, represented Avis and Tega acted for Diego. Remi failed to disclose to Avis a report, received by the Firm from the Aviation Authority, that it was planning to expand its runways at the Flyaway International Airport ("FIA") to an area within 1/4 mile of the villa.

It was also not disclosed to Avis that Diego was indebted to the Firm for legal fees incurred in previous retainers and that Diego and the Firm had agreed that the proceeds of the sale would be used to offset those unpaid legal fees.

After the transaction was completed, Avis moved into the beach villa but was unable to sleep because of the constant drone of aircraft which came perilously close to her rooftop, on their descent into FIA. In desperation, she has tried to sell the property but has received only one offer, since the villa is now virtually uninhabitable. The potential purchaser, Talisman Limited, wishes to use the property for a car park business and has offered Avis a price which is 50% less than that which she paid for it. Unknown to Avis, Talisman Limited is an investment company owned by Tega and Remi.

Advise whether any action can be pursued against Tega, Remi and the Firm in respect of their conduct in the sale and purchase transaction, giving reasons.

Your answer should not exceed **600 WORDS**.

- (iii) Madam Justice Cross has had the reputation of being an irascible judge who never “suffers fools gladly”, and is known for her summary way of “getting to the root of the matter”. This often involves taking over the examination or cross-examination of a witness from Counsel so as to “arrive at the truth of the matter”.

Ben Saymore, a recently admitted attorney-at-law and junior associate at the Firm, was appearing for the defence in only his second criminal trial. While presenting the case, he was completely thrown off balance by the behaviour of the learned judge, and soon found himself floundering. His predicament worsened when he heard a sarcastic comment from the judge about the quality of lawyers being “let loose on the public”.

This remark caused Saymore to stammer saying that if her Ladyship would only allow him to get on with his case, his client might get a fair trial.

To this the judge retorted: “Are you saying that your client is not now getting a fair trial? Be very careful of your answer now.”

Saymore realized that he hadn’t chosen his words wisely, but made matters worse by saying that, because of the constant interruptions by her Ladyship, he was not able to carry out any proper defence on behalf of his client.

The judge then said: “In other words, you are saying that I am not acting judicially, are you not?” Whereupon, Saymore, utterly confused, turned his back to the judge and muttered to a colleague in the bench behind him, “What the hell do I do now?”.

The judge, now thoroughly enraged, continued “Mr. Saymore, you are not only incompetent as an advocate, but you are also rude and in contempt of court, and I so find. What do you have to say for yourself now?” Mr. Saymore replied: “My Lady, I wish to ask for an adjournment to consult Counsel.”

“Your application is refused. You must pay a fine or in default you will do five days in prison.”

Saymore reported the incident to the Managing Partner who wants to know whether to appeal the sentence handed down by Cross J.

Advise the Managing Partner, giving reasons.

Your answer should not exceed **500 WORDS**.

- (iv) The Firm has just been served with a production and inspection order pursuant to the anti-money laundering legislation. The order seeks to give the investigators access to documents held by the Firm in relation to its client, Avis, for whom the Firm acted in the acquisition of a beach villa. Amongst the documents listed for inspection are: the agreement for sale, receipts for the purchase money as well as the instructions taken from the client.

What are the Firm's obligations in complying with the production and inspection order?

Your answer should not exceed **400 WORDS**.

- (v) The Firm was served with a search order in respect of the files and any other material it had in its possession in relation to its client, Mundeia. The Firm has been representing Mundeia in litigation involving one of her charitable organisations. Mundeia has been linked to a number of terrorist cells and the search warrant forms the basis of a request by the United States of America under the mutual assistance laws. In fact, last week, in exercising this order, the police "invaded" the Firm's office and seized all the documents bearing Mundeia's name, despite Tega's vociferous pleas for the police to follow "the proper guidelines" when searching a law office.

Discuss the issues raised by the actions of the police and the obligations of the Firm in the circumstances.

Your answer should not exceed **600 WORDS**.

- (vi) In January, Kunde, an associate in the Firm, wrote to Regional Bank requesting them to release the title for the land of the client, Mariz Jose Lopez, for the purpose of having a restriction endorsed on it. Kunde gave an undertaking from the Firm to Regional Bank to return the title as soon as he received it from the Titles Office/Land Registry.

Unfortunately, Stella, the Firm's senior Administrative Assistant, inadvertently included the title in a letter updating the progress of the matter to Mariz Jose Lopez. Regional Bank has written to Kunde seeking the return of the title, since Mariz Jose Lopez is in arrears with her mortgage payments. Kunde is unable to locate Mariz Jose Lopez as she has now left the jurisdiction.

Two weeks ago, Kunde went to Court in relation to another matter for which he had been retained. Whilst there, he gave an undertaking on behalf of the client, Antonio, that he would file and serve certain documents within seven days. Yesterday, when the matter resumed, it was discovered that Kunde had not done what he had undertaken to do.

Explain the liability Kunde and the Firm may incur as a result of his actions.

Your answer should not exceed **400 WORDS**.

- (vii) Blanca and Delia are the two principals in Grande Builders, a real estate development firm. Grande Builders owns property in Baha Bay, but discovered that they could not develop it without certain licences and approvals, which were necessary for the development of beachfront property.

In January 2020, Blanca and Delia instructed Lupedo, an associate in the Firm experienced in real estate transactions, to obtain the necessary licences and approvals on behalf of Grande Builders. Lupedo, who has never worked on a beachfront project, omitted to obtain a permit from the Coastal Commission.

Blanca, who was diagnosed with a terminal illness in December 2019, instructed Lupedo to draw up her Will. The Will was to include a gift of six acres of beachfront property in Baha Bay to her niece, Luca. Blanca died two weeks ago and the Will had not yet been drafted. Delia, who had been developing Grande Builders' business abroad, has returned home and found out that Coastal Commission had secured an injunction against Grande Builders, prohibiting further building at Baha Bay. This was a consequence of Lupedo's failure to obtain the permit. Grande Builders has been forced to abandon the project.

Explain the liability Lupedo and the Firm may face in the circumstances.

Your answer should not exceed **600 WORDS**.

- (viii) Claudio wishes to retain the Firm to establish a number of offshore trusts and offshore companies in The Bahamas and The Cayman Islands. He informs Remi Castle that he is a successful entrepreneur and that he wants to keep his assets safe from his competitors and "the taxman". Claudio also wants Remi to deposit a cheque in the sum of US\$10 million to the Firm's clients' account until the offshore entities have been established.

Discuss the ethical issues that Remi and the Firm may encounter, should they comply with Claudio's instructions.

Your answer should not exceed **300 WORDS**.

- (ix) Pato is charged with trafficking illicit drugs and illegal possession of firearms. The allegation is that Pato used his fishing boat to deliver drugs to Karlos, a rogue coast guard officer, in exchange for guns. The two would allegedly meet at a rendezvous point located near Sheep Island.

Busola, Pato's attorney and an associate of the Firm, visited him in prison to take instructions. Pato told Busola that he was afraid of water and never went boating or swimming, and so he was not in the area where the drug deals were alleged to have occurred.

Busola discovers that the only substantial evidence that the prosecution has is a statement from Chapo, a goat farmer on Sheep Island. According to that statement, Chapo said that he would see Pato and Karlos meet on several occasions, just offshore of Sheep Island, and that they would exchange large bags.

As a result of her own investigation, Busola also discovered that Pato was a licensed fisherman and a member of the Nautical Boat Club (NBC). When she checked the log at the NBC, she realised that on each occasion that Pato was alleged to have made a drug deal, his boat was logged as being “at sea” and Pato was named as the captain.

How should Busola proceed in defending Pato, in light of the results of her investigation?

Your answer should not exceed **300 WORDS**.

- (x) Desema, a young associate who represents Paola de la Mora in her pending divorce case, in a recent hearing by ZOOM, a videoconferencing platform, before a judge in chambers, allowed several of her room-mates to observe the proceedings as well as read the contents on Paola’s file.

Desema is concerned about the implications of her actions and whether she may be in breach of any duties to the client.

(a) Are Desema’s concerns legitimate? Give reasons.

(b) Could disciplinary proceedings be brought against her and, if so, what are the sanctions that a panel might impose and the factors that it is likely to take into account?

Your answer should not exceed **500 WORDS**.

END OF PAPER