

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1994

STATUS, RIGHTS AND OBLIGATIONS
OF THE LEGAL PROFESSION

(Tuesday, August 9, 1994)

Instructions to Students

- (a) Time 3 1/2 hours
- (b) Answer FIVE questions.
- (c) In answering any question, a student may reply by reference to the law of any Commonwealth Caribbean territory, 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

N.M. is an attorney-at-law acting for O.P. in prosecuting a claim for damages for negligence arising out of a motor vehicle accident. Matters are proceeding slowly due to a number of reasons over which N.M. has no control.

O.P. decides not to use N.M.'s services and discharges him. He then contacts and retains Q.R., another attorney-at-law. N.M.'s name is duly removed from the record as attorney-at-law acting for O.P.

Q.R. writes to N.M. requesting that he sends him all papers belonging to O.P. in the matter. Fees in the matter are still owing to N.M. by O.P.

- (a) Advise N.M. whether he is legally bound to send the papers.
- (b) Would your advice to N.M. be different if he had discharged himself?

QUESTION 2

Tom Owen has represented Ian Freeman in several suits in the Supreme/High Court. Fees are due and owing to Owen for work done in connection with these matters. Several letters have been written by Owen to Freeman requesting payment of the fees. Freeman has ignored the letters.

Owen files a writ in the Supreme/High Court against Freeman to recover the fees.

Freeman consults you and seeks your advice as to -

- (a) whether Owen is entitled to commence suit against him;
- (b) the factors which would be taken into account in determining the fairness and reasonableness of the fees charged.

Advise Freeman.

QUESTION 3

P's husband died in 1985 when she was 65 years of age. She became very depressed and started drinking heavily. She fell under the influence of X, who is a relative of hers. X took her to her husband Z, an attorney-at-law. Z prepared a will for her leaving her entire estate to X. On P's death in 1990, her children learnt of the will for the first time. They would like to challenge the will and take proceedings against Z.

Advise the children as to what proceedings can be taken against Z.

QUESTION 4

Gregory is the owner of a piece of land. He found himself heavily in debt with a number of actions being brought against him by his creditors.

Davidson, an attorney-at-law, has always acted for Gregory. He advised Gregory to sell the land and pay off the debts. Gregory agreed to this and instructed Davidson to sell the land for him.

Davidson decided to purchase the land for himself and offered Gregory \$300,000 which was accepted by Gregory as a reasonable price. Davidson prepared the transfer documents and these were executed by Gregory.

Six months after he bought the land, Davidson sold the property at a profit of \$100,000.

Gregory learnt of this and seeks your advice as to whether any proceedings can be taken against Davidson with regard to the sale to Davidson.

Advise Gregory.

QUESTION 5

In January 1976, in consideration of \$10 paid by A to his father B, B agreed to grant A an option to purchase a 50-acre farm exercisable within 10 years at \$100 per acre. Prior to the agreement, the farm was let to A at a rent of \$1,200 per annum.

M, a partner in a firm of attorneys-at-law acting on behalf of A, drew up a formal option agreement, but omitted to get it registered under the appropriate statutory provisions which prescribe the procedure for the registration of interests and encumbrances on land.

In 1982, B, having apparently regretted the grant, and having discovered that the option had not been registered, sold the farm to his wife C for \$800, and it was conveyed to her on June 17, 1982. N, another partner of the firm, registered the option in July 1986 without informing A, who then sought to exercise it. In proceedings against B brought by A, it was held, inter alia, that the option had been defeated by virtue of the sale to C.

On May 21, 1993, A commenced proceedings against the firm of attorneys who acted on his behalf in the preparation of the option, claiming damages for breach of their professional duty. The defendant firm pleaded the limitation period.

Write an opinion as to the firm's liability.

QUESTION 6

XY, an attorney-at-law, acted in a transaction for the sale of a property by LM to AB. CD & Co. Ltd., a financial institution, were the mortgagees of the property being sold.

The attorney-at-law for CD & Co. Ltd. forwarded the mortgage money to XY on the basis that he received it on his undertaking to forward the executed documents of title in due course. No reply was made to this by XY. However, an associate of XY, to whom the conduct of the transaction had been delegated, disbursed the whole sum of the money to LM at the time he sent the relevant documents for her to execute. The documents were never executed and LM cannot be located. It is believed that she has left the country.

Advise CD & Co. Ltd. as to what proceedings can be taken against XY.

QUESTION 7

Jonathan, an attorney-at-law, was summarily convicted of allowing premises of which he was the landlord to be used by the tenant as a brothel. As a consequence, an application was made to strike his name off the Roll on the ground that he was not fit to practise as an attorney-at-law. You are retained to advise Jonathan.

- (a) Write an opinion.
 - (b) Would your opinion be the same if Jonathan had been convicted of driving a motor vehicle while under the influence of alcohol?
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QUESTION 8

In 1992, Bruce McGregor, an attorney-at-law, was retained by Carlos Maynard to defend him in an action for breach of contract brought against him by John Samuels.

McGregor left the conduct of the proceedings in the action largely to his managing clerk, Joseph Peters, a man of ability and long experience. The affidavit of documents which was prepared by Peters proved to be wholly inadequate and contained misleading information, as a result of which unnecessary costs were incurred by both parties.

McGregor wishes to be advised as to his liability in respect of the excessive costs.

Advise him.
