

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1991

STATUS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(Monday, May 20, 1991)

Instructions to Students

- a) Time: 3 1/2 hours
 - b) Answer FIVE questions only
 - c) In answering any question a candidate 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.
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QUESTION 1

On February 15, 1991, an application was made by a member of the public to the Disciplinary Committee that Rogers, an attorney-at-law, should be required to answer a complaint that he had committed the offence of insulting and threatening behaviour in a public place amounting to conduct unbecoming an attorney-at-law and as a result his name should be struck off the Roll of Attorneys-at-law or such other order as the Disciplinary Committee may think fit should be made.

The facts are that Rogers' car had collided with another motor vehicle on the highway and when then the complainant came out of his vehicle to speak to Rogers he became very abusive and threatened to injure the complainant. This he would have achieved save that he was restrained by others.

(a) Advise the Disciplinary Committee.

(b) Would your advice be different if Rogers as a result of the accident was prosecuted and was convicted for driving a motor vehicle dangerously?

QUESTION 2

Handel was retained by Emile to institute a civil action in the Supreme/High Court on his behalf. He filed the statement of claim promptly, but took such a long time to file a defence to the counter-claim that Heart, the attorney-at-law for the defendant, obtained judgment in default on the counter-claim. Although Handel

succeeded in setting aside that judgment Emile was ordered to pay the costs thus incurred.

The matter took a number of years to be listed for hearing and thereafter because of Handel's dilatory tactics the action progressed extremely slowly. In the meantime Emile was ordered to pay the following costs:

- i) the costs of a failed application by Heart to dismiss the action for want of prosecution;
- ii) the costs for two separate days when adjournments were granted at Handel's request.

Emile has just received a bill of costs from Handel. He is incensed and consults you with a view of obtaining an order to have Handel pay all the costs which he had been ordered to pay. He is also very concerned about the inclusion in the bill of a sum incurred by Handel for travelling to a distant village to collect evidence.

Advise Emile.

QUESTION 3

X is a widow, 65 years of age, and is unversed in business matters. Her late husband died many years ago. X has a daughter 20 years of age who is away at University. She was helped in the conduct of her affairs by her brother but he has recently died.

She was advised to seek the assistance of a lawyer and had consulted Z and Associates. Z was the only attorney-at-law with this body. Z had acted for X's late husband in the past in some small matters.

Z advised X, among other things, to make out a will in order to protect her daughter. This she agreed to and told Z that she wanted her daughter to be the sole beneficiary except for a small amount which she wanted him to get for his [kind assistance].

He then advised her it would be in the interest of the daughter if the estate was left in the [firm's name] and, in addition, he ~~be appointed the sole executor~~. This she agreed to and the will was prepared and duly executed. Included in the will was a charging clause in favour of the executor.

X suffered a heart attack and died.

Her daughter has now learnt of the contents of the will and has consulted you regarding the propriety of Z's conduct, the validity of the gift to the firm and the charging clause in Z's favour.

Advise her.

QUESTION 4

Remus, an attorney-at-law successfully defended himself in a civil action brought by Desmond. He wishes to claim the following sums as costs:-

- i) \$5,000 paid to his partners for written legal advice on the matter;
- ii) \$250 paid to his clerk for searches;
- iii) \$400 for instructing himself in the matter;
- iv) \$2,000 for conducting the matter himself in court.

Remus is satisfied that the sums claimed are reasonable but is not sure if he is legally entitled to any of them. He consults you.

(a) Advise Remus.

(b) What would have been your advice

- i) if Remus were an attorney-at-law/mortgagee and the sum of \$2,000 was to be paid to the partnership after his partner had represented him at the trial;
- ii) if Remus were an attorney-at-law/trustee yet wished to claim the sums of \$5,000 and \$2,000?

QUESTION 5

Angus was the owner of certain commercial premises. Baldo was the lessee of the premises and claimed that following certain negotiations an oral agreement had been reached for the grant of a new lease on the expiration of the existing lease.

Angus has denied this and Baldo has brought an action for specific performance of the new lease. In order to establish his case the attorney-at-law for Baldo is seeking discovery of the following documents:-

- i) all written communications between Angus and his attorney-at-law;
- ii) drafts of the proposed lease, attendance notes and working papers relating to the proposed lease as prepared by the attorney-at-law;
- iii) the valuation report obtained for the property from a valuator.

Write an opinion for counsel for Angus on whether discovery would be granted of the above documents.

QUESTION 6

An attorney-at-law may at any time enter into any agreement with his client as to his remuneration.

By reference to decided cases and any relevant statutory provisions, discuss the extent by which this statement may represent the law.

QUESTION 7

On the date fixed for trial of an action in the Supreme/High Court the attorney-at-law representing the Plaintiff was absent because he was engaged in court. His brief was held by another attorney-at-law who knew nothing concerning the facts of the case and who was only asked that morning to hold the brief and ask for an adjournment.

The judge refused to grant the adjournment stating that in the circumstances another attorney-at-law could have been briefed long before in order that he could have been acquainted with the case. He stated that he was proceeding with the case.

The attorney-at-law holding the brief was embarrassed and became highly annoyed by the refusal and exchanged heated words with the judge. He threw his hands into the air and said that this was a denial of justice and that the judge was acting unjudicially.

He then picked up his documents and was about to leave the court. Thereupon the judge informed him that he was guilty of contempt of court and committed him to imprisonment for five days.

Advise the attorney on the merits of an appeal explaining the principles by which the court should be guided in exercising its power to punish an attorney-at-law for contempt.

QUESTION 8

Discuss the principles involved in the exercise of the court's jurisdiction to order a legal practitioner to pay costs for misconduct or for acting without authority of his client or against the interest of his client.

Is the jurisdiction exercisable if the legal practitioner has ceased to be on record or on the roll?
