

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

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&
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LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 1993

STATUS, RIGHTS AND OBLIGATIONS OF THE
LEGAL PROFESSION

(Wednesday, May 19, 1993)

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.

Q4 1973

QUESTION 1

Joseph, an attorney-at-law, had received two cheques from Handel for the account of Cecil, Joseph's client, which Joseph immediately applied to his own use. Joseph was charged on two counts of defrauding his client. Soon after the trial started and after he had been asked to plead the trial was aborted. The disciplinary committee is minded to take proceedings against Joseph but is not sure if they can now properly do so.

(i) Advise the committee indicating in such advice any canons of the profession which Joseph has broken.

(ii) Would your advice be any different if Joseph had received the cheques after he had ceased to be on the Roll?

QUESTION 2

(a) Are the responsibilities of an attorney-at-law for the prosecution any different from those of an attorney-at-law for the defence?

Discuss.

(b) Boggy who has been charged with the offence of larceny informs you that though he did commit the crime he does not wish to plead guilty.

Would you be in breach of any law including any applicable canons of the profession if you were to decide to continue to represent Boggy at his trial? Further, if you decide to represent him, would there be any restrictions on your conduct of his defence?

QUESTION 3

Myrtle, an elderly widow, had \$200,000 which she wished to invest. She consulted Handy a partner in a firm of attorneys-at-law. Handy advised Myrtle to invest that sum in a company in which he had a controlling interest. Soon after that the company went into liquidation and Myrtle's investment was completely lost.

Meanwhile, Myrtle, who died of shock on hearing of the news of such loss, had made a will prepared by Handy in which she had left her entire estate to her niece, Jane, who is the sole executrix of her will.

Jane consults you. She is particularly concerned as Handy has just been adjudicated bankrupt. She understands, however, that Paddy and Richie, the two other partners, in the firm, have substantial resources.

Advise Jane as to whether she may be able to recover from Paddy and Richie and the capacity in which she may be able to do so.

QUESTION 4

Hamid had embarked upon a number of highly speculative transactions. He orally retained Bernard, an attorney-at-law, to prepare various agreements and to represent him in a number of actions which had been filed against him. Having successfully dealt with some of the matters Bernard presented a number of bills of costs to Hamid. Hamid refused to pay any of the bills claiming that Bernard was not entitled to payment until all the matters had been completed. Bernard immediately terminated the retainer and brought an action to recover the sums claimed in the bills.

Hamid has just consulted you.

Advise him on all relevant matters.

QUESTION 5

Marcia is a very successful, though not well educated businesswoman who is constantly in need of legal services. For the past five years she has retained Jagdeo, a very shrewd attorney-at-law, to represent her in all matters, contentious and non-contentious. Recently, Jagdeo has been insisting that they enter into agreements with respect to his remuneration in respect of all the matters. He says that these agreements could be arrived at over the phone or at a conference regardless of the stage of the proceedings of any of the matters.

Marcia is prepared to enter into those agreements but is a little concerned and somewhat wary of Jagdeo. She is concerned that she may be forced to agree to terms that she might not otherwise like especially as Jagdeo is well aware that she has just suffered severe setbacks in her business.

She wishes to know the law with respect to agreements for remuneration of an attorney-at-law, especially in the light of the above facts.

Advise Marcia.

QUESTION 6

Excelen, an attorney-at-law, offended by the difficulty experienced in getting the Registrar to accept for filing an action on behalf of a client, writes the judge to whom the matter is eventually assigned complaining about the obstruction to the course of justice by some "mindless court official" and otherwise expressing his disgust with the performance of the Registrar.

The judge summons Excelen before the court and asks him if he realizes that his letter constitutes contempt of court. Excelen protests but is immediately sentenced to five days imprisonment.

Excelen files another action on behalf of his client Pooloo who is claiming \$5,000 from Fenti for arrears of rent. However, as Excelen well knows, this sum represents Pooloo's share of the profits from the operation by Pooloo and Fenti of a house of prostitution.

The local Bar while wanting to institute disciplinary proceedings against Excelen for filing the latter action is concerned about the action taken by the judge against Excelen. The Bar has asked you for your opinion on both matters.

Write an opinion.

QUESTION 7

Six months ago Joseph, an attorney-at-law, was having drinks with his friend, Peter, who informed Joseph that he wished to take legal action against his neighbour Payne. The next day Joseph filed an action against Payne in which he named Peter as the plaintiff.

When the matter came up for hearing Peter was absent from court. On enquiries by the judge, Joseph stated that he was surprised at Peter's absence as the action was instituted at his express request, albeit verbal. Counsel for Payne immediately objected and requested that the action be set aside.

The learned judge reserved his decision on the application and Joseph consults you as to the likely outcome.

- (i) Advise Joseph and consider whether the judge is likely to make any order against him personally.
- (ii) Would your answer be different if Peter appears on the adjourned date and informs the court that, though he had given no approval for the institution of the action, he now wants to ratify what was done?

- (iii) Assuming that Joseph had in fact been retained by Peter but that, unknown to Joseph, Peter had died two days before the matter came up for hearing and Joseph had continued with the action, what advice would you give to Joseph if Payne's counsel had made a similar application?
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QUESTION 8

(a) Discuss the principles involved in the exercise of the court's jurisdiction to order an attorney-at-law to pay costs for misconduct or for acting without authority or against the interest of his client.

(b) XY, an attorney-at-law, was engaged by CD to take legal proceedings in a particular matter. XY failed to act promptly in proceeding with the matter to trial and as a result the other party was able to get the matter struck out for want of prosecution and an order was made against CD to pay the costs in the matter.

CD is annoyed at the outcome and has consulted you with a view to taking action against XY.

Advise CD.