

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1994
STATUS, RIGHTS AND OBLIGATIONS
OF THE LEGAL PROFESSION
(Wednesday, May 18, 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.

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MONA, KINGSTON, 7. JAMAICA

QUESTION 1

In August 1989, a firm of attorneys-at-law, Maverick and Mason, were entrusted with the sum of \$1,500,000 by their clients, Caribbean Insurance Company, for payment to Ibis Commercial Bank. The sum was not paid.

In April 1990, the Company withdrew its instructions and demanded immediate repayment of the \$1,500,000. However, despite repeated verbal and written requests, the firm failed to repay the amount.

On March 3, 1994, the Company filed a writ of summons against the firm, claiming, inter alia, wrongful conversion of the Company's money and repayment of the said amount together with interest thereon.

On April 21, 1994, the Company obtained summary judgment against the firm for the sum claimed. The application was heard before Mr. Justice Richards.

Write an opinion as to the course of disciplinary action which can be taken against Maverick and Mason in respect of these proceedings.

QUESTION 2

Lloyd, an attorney-at-law appearing in a matter in the Supreme/High Court, wanted the judge to rule whether or not certain evidence was admissible but the judge refused, stating that the question was not for him to decide.

The discourse continued as follows -

Lloyd: "Your Lordship, with great respect, I wish your Lordship...."

Judge: "Carry on with your case."

Lloyd: "I cannot carry on with my case unless your Lordship informs me whether you propose to rule"

Judge: "I have had enough of your impertinence. You're"

Lloyd: "Would your Lordship just hear me?"

Judge: "You're fined \$100 for contempt of court. If you do anything more I will commit you."

Lloyd: "Your Lordship, if you would just hear"

Judge: "You're committed. Constable, remove that man and place him in the lock-up."

Lloyd wishes to appeal.

Advise him.

QUESTION 3

Raven, an attorney-at-law, has been retained by Johnson to collect \$100,000 owed to him by Smart which was due to be paid on March 31, 1993. Raven agreed to deal with the matter but informed Johnson that his fee would be 20% of whatever is collected. Johnson agreed.

Raven wrote a letter of demand to Smart for the \$100,000 with costs of \$500. Soon thereafter, Smart paid the amount plus

the cost to Raven. Raven then paid Johnson \$80,000 having deducted the \$20,000 as his fee.

Johnson feels that the fee charged by Raven was exorbitant and seeks your advice.

Advise Johnson.

QUESTION 4

Nancy retains Michael, an attorney-at-law, to prepare her will. Among the gifts she wishes to make by her will is a devise of certain premises to Raphael and Gloria as joint tenants. Raphael and Gloria, who are husband and wife, are friends of Nancy and live in the same house as her.

Michael receives his instructions, prepares the will and sends it to Nancy. It is signed by Nancy and attested to by two witnesses, one of whom is Raphael, and returned to Michael for safe keeping.

There is a provision of the statute dealing with wills which states, inter alia, that "if any person shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise... shall thereby be given... then such devise to such person or wife or husband shall be utterly null and void."

Nancy dies and when Raphael and Gloria go to Michael for the will he advises them that the gift to them is null and void as Raphael had attested the will.

Advise Raphael and Gloria if they have any, and if so what, cause of action against Michael, setting out clearly the legal principles involved.

QUESTION 5

On February 15, 1991, an application was made by a member of the public to the disciplinary tribunal 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 tribunal may think fit should be made.

The facts are that Rogers' car had collided with another motor vehicle on the highway and when 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 tribunal.
 - (b) Would your advice be different if Rogers, as a result of the accident, was prosecuted and convicted for driving a motor vehicle dangerously?
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QUESTION 6

In May 1993, Albert, a prospective purchaser of the property of James, agreed orally that James' attorney-at-law, Paul Newman, should be instructed to act for both parties in the proposed sale. In June 1993, Paul Newman took instructions from the parties to prepare a written agreement and to complete the transaction. Completion date with vacant possession was to be September 30, 1993. In June 1993, a written contract was drawn up and sent to Albert for his signature. Albert signed the document and left it with James for his signature.

James signed the document and returned it to Paul Newman, but told him to "hold it" for the time being. In July, James telephoned Paul Newman and told him that he was not going through with the sale with Albert as he had found another purchaser. Nothing was communicated to Albert who went ahead and negotiated a mortgage loan with a building society and expended a certain sum of money for the valuation and inspection report. In the meantime, due to devaluation of the dollar, the price of property has escalated considerably.

In September, Albert learnt that James was not proceeding with the sale. He was annoyed over the whole affair and seeks your advice.

Advise Albert.

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QUESTION 7

James owns a house in your country but resides in Canada. He retained Junor Thomas, an attorney-at-law, to act on his behalf in the sale of the house. Junor Thomas was to find a purchaser.

James subsequently received a letter from Junor Thomas enclosing a copy Agreement for Sale for his signature. The Agreement stated the purchase price to be \$2,000,000 and the purchaser as "R & B Ltd. or its nominee". James signed the Agreement and returned it to Junor Thomas.

Junor Thomas is the principal shareholder and sole director of R & B Ltd., but this was not made known to James. It was not until a year later that James learnt of this when the Instrument of Transfer was sent to him for execution containing Junor Thomas as the Transferee.

James became suspicious, and on making enquiries, learnt from a real estate friend of his that the property at the time of the sale was worth at least \$4,000,000.

Advise James who wishes to set aside the transaction and to take disciplinary proceedings against Junor Thomas.

QUESTION 8

Blade and Cutteridge were the sole partners in a firm trading under the name of Blade and Co. Violet Rose has obtained a judgment against the firm for a substantial sum of money.

Execution of judgment was issued by Rose against the goods of Blade and Co. but was stayed by interpleader proceedings at the instance of Cutteridge who swore in an affidavit that the partnership was dissolved at the time of the judgment and that the goods were his by a bill of sale.

The affidavit was prepared by Oscar Neek, a senior clerk of Shane, who is an attorney-at-law and who was consulted by Blade and Cutteridge as to how they could avoid Rose's judgment. At the time of consultation, Shane was very busy and had referred Blade and Cutteridge to Oscar Neek to look into the matter.

Blade, Cutteridge and Neek are now being prosecuted upon a charge of conspiracy to defraud Violet Rose.

Shane is being called as a witness for Neek. The attorney now appearing for Cutteridge seeks your opinion as to whether any objection can be taken on Shane giving evidence on any matters communicated to Shane by Blade and Cutteridge.

Write an opinion.
