

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 1996

STATUS, RIGHTS AND OBLIGATIONS

OF THE LEGAL PROFESSION

(Monday, May 20, 1996)

Instructions to Students

- (a) Time 3½ hours.
- (b) Answer **FIVE** questions
- (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 territory.**
- (d) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Rob was in occupation of land as squatter, and was making a profit for himself by leasing parcels of the land as "beneficial owner."

Hurt, who was the true owner of the land, sued and obtained an order for possession, and an injunction against Rob in respect of any further dealing with the land.'

Rob wished to defeat this judgment by remaining on the land. He retained the services of his attorney-at-law Shyster, who informed Rob that it was easy to get around the order of the court just by forming a company. A company, Shyster explained, was a distinct entity from the persons who formed it, so that he could continue dealing with the land without breaching the order.

As a result of this advice, Shyster formed a company entitled Investment Enterprises Limited, on Rob's behalf, of which Rob and his wife were the only shareholders and thereafter this company proceeded to advertise lots for sale and lease of the land.

Hurt then brought an action against the company for possession and an injunction against Rob and his wife and Shyster, alleging contempt, fraud and conspiracy. As part of the evidence, Hurt's attorney-at-law sought to introduce a conversation between Rob and Shyster which took place in Shyster's office in the presence of his clerk. The clerk was subpoenaed to say that he heard Shyster's advice to Rob that he should form a company so as to defeat the judgment against Rob, and that Shyster, gave him instructions to prepare the necessary documents.

Shyster objected to any evidence being led as to the conversation between himself and Rob in his chambers.

How should the Judge rule?

QUESTION 2

Peters carried on the family business of a hardware store under the name of Peter & Sons. Jones, an attorney-at-law, had been his regular legal adviser over the years, and the business, a multi-million dollar concern, was in a very healthy financial state.

Peters now wished to retire from business, and to let his sons, Frank and Bill run the family concern. Peters sought legal advice from Jones for the establishment of a trust, whereby Frank, Bill and Jones were to be named trustees over all the family property upon trust to pay Peters an annuity for life of a certain sum, and after his death, his estate was to be divided between Frank, Bill and Jones in equal shares.

What are the principles that should apply in the carrying out of such a transaction? Can such a transaction ever be ethically correct so far as Jones is concerned?

QUESTION 3

Hardup has a case for damages following injuries received in a road traffic accident.

Hardup persuades John, an attorney-at-law, to take the case on the oral understanding that he would pay John 30% of the damages recovered. On this basis, John consents to act for him.

John is successful in obtaining a substantial award of damages, and also his taxed costs from the defendant, but Hardup now objects to any deduction from the award of damages, saying that John is limited to the recovery of the costs only.

Hardup sues John to recover 30% of the damages which John has retained.

John seeks your advice.

Write an opinion.

QUESTION 4

Wolfe is an attorney-at-law and Lamb had been his client in a number of contentious matters. After inordinate delays by Wolfe in bringing these matters to finality, Lamb transferred his retainer to Upright.

On Upright's approach to Wolfe for the handing over of all the relevant documents, Wolfe said that there were fees due to him, and would not release any documents until he was paid \$10,000 for the balance of money due to him.

Lamb, however, produced to Upright his cheque book to show that an amount of \$10,000 had been paid, as reflected in the stub of his cheque book, but Wolfe had not acknowledged it.

Upright brought proceedings against Wolfe for an account, and for an order that Wolfe should hand over all the relevant documents.

It was shown further, that a sum of \$100,000 which Lamb had paid to Wolfe in order to discharge one of Lamb's commitments, could not be accounted for, as Wolfe had placed this sum into a clients' account in which he mixed his own funds. There was now an insufficient balance in this account to meet this sum.

How should this matter be dealt with?

QUESTION 5

Brown, an attorney-at-law, was acting for the vendor and Black, an attorney-at-law, for the purchaser in the sale of property. Brown completed all the necessary documentation in the transaction, and gave an undertaking to Black that on the handing over by the purchaser of the purchase price to him (Brown) he would procure the execution of the necessary documents to convey the property by the vendor at a later stage.

On the strength of that undertaking Black handed over the purchase price to Brown, which Brown duly remitted to the vendor, notwithstanding the usual practice that the handing over of money and the execution of the document of conveyance should be simultaneous transactions.

The vendor thereafter disappeared without executing the necessary documents. The purchaser's prospective mortgagee is left without any security for his loan and the purchaser himself is left without a legal title to the property.

Brown seeks your opinion as to his liability to:

- (a) the purchaser, and
- (b) the purchaser's prospective mortgagee.

Advise Brown.

QUESTION 6

Fran retained Bill, an attorney-at-law, to conduct divorce proceedings against her husband, Ron. Bill successfully presented an uncontested petition for divorce and obtained a decree nisi.

Bill then made an application in chambers for maintenance in respect of Fran and her two children, aged 10 and 6; but Ron was most uncooperative on this score, and, although he came from a wealthy family, and enjoyed a high life-style, he presented a picture that he was unemployed (which indeed was the case) and had no assets from which any provision could be made for his family.

Bill's handling of the case in court left much to be desired, as his cross-examination of Ron was weak and ineffectual, and his knowledge of divorce law showed that he had ill-prepared himself for the trial, the result being that Fran was left without any monetary provision being made for herself and her family.

Fran pursued her own enquiries, and subsequently discovered that Ron owned a Mercedes Benz car valued at \$900,000, that his wealthy family had made provision for him of a large condominium, which he rented and obtained the monthly sum of five thousand dollars, and that they had also made provision for him of an annuity which yielded \$10,000 per month; and on their death he would inherit their multi-million estate.

Fran seeks your advice as to whether she has any recourse against Bill.

Advise her.

QUESTION 7

Six months ago while Joseph, an attorney-at-law, was having a discussion with his friend, Peter, Peter informed him 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.

- (a) Advise Joseph and consider whether the Judge is likely to make any order against him personally.
 - (b) 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 the matter to proceed?
 - (c) 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 what advice would you give to Joseph if Payne's counsel had made a similar application?
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QUESTION 8

Justice Stern had the reputation for being an irascible Judge who never suffered fools gladly, and was known for his summary way of "getting to the root of the matter". This often involved taking the examination or cross-examination of a witness out of the hands of counsel, so as to "arrive at the truth of the matter."

Marvin, a recently admitted attorney-at-law, was completely thrown off balance in the case he was presenting by this behaviour of the learned Judge, and soon found himself floundering in his presentation of the case. The predicament in which Marvin found himself drew a sarcastic comment from the Judge upon the quality of lawyers being let loose on the public.

This remark provoked Marvin to stammer that if the learned Judge would 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"

Marvin realized that he hadn't chosen his words wisely, but made matters worse by saying that because of the constant interruption by the Judge, he was not able to carry out any proper defence of his client.

The Judge then said: "In other words, you are saying that I am not acting judicially, are you not?" To this Marvin remained silent in utter confusion.

The Judge continued: "Mr. Marvin, you are not only incompetent as an advocate, but you are also in contempt of court, and I so find. What do you have to say for yourself now?"

Marvin replied: "My Lord, I wish to ask for an adjournment to consult counsel."

The Judge said: "Your application is refused. I fine you \$1,000 or in default you will do thirty days in prison."

Marvin now consults you.

What is your advice?