

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2000

STATUS, RIGHTS & OBLIGATIONS

OF THE LEGAL PROFESSION

(Wednesday, May 17, 2000)

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

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 on the ground that Joseph had no authority to institute the proceedings.

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 instituting the action, he now wants the matter to proceed?
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Question 2

On October 5, 1999, Selwyn Douglas retains Curtis Scott to represent him in a number of legal matters, all of which involve Douglas in the management of his business affairs.

Scott successfully resolves some of these matters and submits a bill of costs covering his fees and expenses for the transactions which he has completed. Douglas refuses to pay anything on the bill, insisting that Scott is not entitled to payment until all the transactions for which he has been retained are completed. Thereupon Scott terminated the retainer and sued for his costs.

Douglas has consulted you in the matter and instructs you to obtain from Scott all the documents and other papers which relate to his matters and are in the possession of Scott.

Advise Douglas as to the likelihood of Scott succeeding in the action for his costs and your obtaining the documents and other papers from Scott.

Question 3

John Doe, a member of a firm of attorneys-at-law prepared a Will for one of their clients, Xavier. Most of Xavier's estate was left to Yohann, his son. The Will was executed by Xavier in the presence of John Doe, who had prepared the Will and Yohann's wife, both of whom acted as witnesses.

By virtue of the provisions of the Wills Act in your jurisdiction all the benefits to Yohann were void because his wife was a witness. As a result, most of the father's estate passed on an intestacy and Yohann received a share on the intestacy with three brothers and two sisters.

Yohann has sought your advise on the matter.

Advise him.

Question 4

Kenrick Alphanso, attorney-at-law, represents the defendant George Lamont. The matter was adjourned on several occasions. On the last occasion Lamont was present but Alphanso failed to appear. The matter was further adjourned and the presiding judge instructed Lamont to advise Alphanso to be present on the adjourned date. On the adjourned date, Lamont attended but Alphanso again failed to appear.

The presiding judge thereupon instructed Lamont to inform his attorney to attend before him the next day. Despite being duly informed by his client of the judge's instructions, Alphanso again failed to attend court. The presiding judge thereupon issued a bench warrant for Alphanso's arrest and for him to be brought before the Court.

Alphanso was arrested and brought before the judge later that day. The judge then informed Alphanso that he was in contempt of court and, without more, sentenced him to seven days imprisonment. Alphanso wishes to appeal the judge's order and seeks your advice.

Advise Alphanso.

Question 5

Brown, an attorney-at-law, acted 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 to the purchaser.

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 documents 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:

- (i) the purchaser, and
 - (ii) the purchaser's prospective mortgagee.
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Question 6

Allison Lewis, an attorney-at-law, has acted for Jennifer Basant in several legal matters. Basant is an elderly client, whose health has been declining, but is mentally alert.

On one of her several visits to Lewis' chambers, Basant tells Lewis that she wanted to sell one of her properties as she was experiencing some financial difficulties. Basant says she believed the property is worth \$250,000.

Lewis offered to purchase the property for \$230,000. Basant accepted her offer and, in accordance with her instructions, Lewis prepared the necessary transfer documents on behalf of Basant and herself.

Seven months later, Basant learnt from a real estate agent that she could have obtained a much better price had she advertised the property for sale. Basant now consults you and wishes to be advised as to any rights and remedies which she may have against Lewis.

Advise Basant.

Question 7

In February, 2000, Martin Lexington, a partner in the law firm of Lexus and Lexus, was consulted by Braw Bolton with a view to bringing an action for breach of contract against Diana Ferguson. Before proceedings were commenced, Bolton decided to retain the services of another firm of attorneys-at-law, Price and Sanderson, and on March 14, 2000, Price and Sanderson caused a Writ to be issued which was duly served on Diana Ferguson. The following day Rex Marshall, a senior partner with Lexus and Lexus was instructed by Ferguson to defend her in the proceedings brought against her by Bolton.

Write a legal opinion as to;

- (i) whether Bolton can succeed in his objection to Rex Marshall acting for Ferguson; and
 - (ii) the steps, if any, which might have been taken by Lexus and Lexus to deal with any such objection.
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Question 8

Albert is a young attorney-at-law who was recently admitted to practise. He is appearing before the High/Supreme Court for the first time and is representing John Jones on a charge of unlawful wounding and rape.

In cross-examinations of the main witness for the prosecution Albert asked certain questions of her when he was stopped by the judge who accused Albert of attempting to mislead the court by his line of questioning. He said that Albert could not have received such instructions from his client and demanded to see the client's instructions. Out of deference to the judge, Albert handed the judge the written statement of his client which was in his file. The judge read the statement then handed it back to Albert. At the end of the trial, the judge found John Jones guilty and sentenced him to five years imprisonment.

Albert seeks your opinion:-

- (i) on whether he should have refused to give the written statement of his client to the judge; and
 - (ii) on whether he should advise his client to appeal the conviction.
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