

NOT TO BE TAKEN AWAY

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NORMAN MANLEY LAW SCHOOL

COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 1988

STATUS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(Monday, May 16, 1988)

Instructions to Students

- a) Time: 3½ hours
- b) Answer any 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.

QUESTION 1

In 1984, Jim, a farmer, for whom Cyril, an attorney-at-law had acted on a number of occasions in legal matters found himself in financial difficulties and offered to sell his farm, Greenlush, to Cyril.

Cyril offered Him \$200,000 for the farm and Jim, who considered that he had made a reasonable offer, readily agreed to sell. The sale was concluded and Jim received the purchase money. Cyril was the attorney-at-law in the matter. Two months after Cyril purchased the farm he sold it for \$275,000.

In 1986, Jim, having paid off his debts, decided to purchase another farm, Newlands, and he applied to several banks and other financial institutions for a loan but was unsuccessful due to the scarcity of funds on the financial market. He, therefore, approached Cyril, who had since buying Greenlush from him also acted for him in a few debt collection suits, and asked him to assist him in obtaining a loan. The purchase price of Newlands was \$400,000 and Cyril offered to lend Jim \$250,000 to be secured by a mortgage of Newlands repayable over 20 years at a rate of interest 2% above the current rate being charged on mortgage loans. Having regard to the difficulty in obtaining money Jim readily agreed. Jim duly purchased Newlands, Cyril acting as his attorney-at-law in the matter.

In January, 1988, Jim found that he was having difficulty meeting his instalments on his mortgage and spoke to a friend who was a real estate agent, telling him of his efforts to solve his financial problems over the past five years. His friend told him that in 1984 Greenlush was worth at least \$300,000.

Jim wishes your advice as to what rights, if any, he has against Cyril in respect of the sale of Greenlush and the purchase of Newlands.

Write an opinion referring to decided cases.

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QUESTION 2

Six months ago while Joseph, a legal practitioner, was having drinks 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 to ratify what was done?
- 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 and Joseph had continued with the action, what advice would you give to Joseph if Payne's counsel had made a similar application?

*Danish, MacArthur  
Beaumont*

*Songe & Toyne*

QUESTION 3

- (a) Discuss the principles governing the liability of an attorney-at-law to his client for professional negligence.

(b) 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 who 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 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.

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QUESTION 4

(a) What is the object of the power to punish for contempt?

(b) Agdan, a legal practitioner, was appearing before the Rent Tribunal at its regular sitting in Les Pointes on behalf of Black, his client. The Rent Tribunal is not a Court of record.

During the hearing Agdan was very ✓ abusive of the Chairman of the Tribunal. He persisted in his abuse even after he had been warned

about his conduct, whereupon the Chairman, a Queen's Counsel, sentenced him to 5 days imprisonment for contempt.

Agdan consults your partner from his prison cell with a view to filing an appeal from the Chairman's decision. Your partner now seeks an opinion from you on all relevant points.

Write the opinion.

(c) Matthias is a legal practitioner with offices in Mahaut. He was acting on behalf of his client, Handel who brought certain documents and cash to his office. Neither Matthias nor his clerk was in office at the time. However, Elizée, a friend of Matthias who regularly frequents the office and who had to Handel's knowledge, on many occasions accepted documents on Matthias' behalf when neither Matthias nor his secretary was present, accepted the documents and cash.

Elizée forged Handel's signature and misappropriated the money, as a result of which Handel has suffered loss.

Handel now consults you with a view to instituting legal proceedings against Matthias.

Advise Handel.

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#### QUESTION 5

His Lordship, Mr. Justice Decidendi was trying a case in which Bill Derr, a building contractor, had sued the Sunlands Local Authority for breach of contract in respect of work done on a number of schools operated by the Local Authority.

The judge, a very civic minded person, was Chairman of the Parent Teachers Association of one of the schools on which work was done by the building contractor.

During the course of the plaintiff's case, the judge, on several occasions, stopped counsel's cross-examination and asked the witnesses numerous questions. At times he took over the cross-examination himself.

At one stage when counsel for the plaintiff was about to call a witness the judge suggested that the witness was not necessary and suggested that he called another. Counsel acceded out of deference for the judge but with great reluctance. In spite of the objections of counsel for both parties the judge also recalled a witness who had already given evidence for the plaintiff.

During the course of the defendant's case the judge continued to interrupt counsel in the conduct of their cases and there were verbal clashes between the judge and both counsel.

After hearing addresses from counsel the judge gave judgment for the plaintiff but for a very small portion of the amount claimed. Counsel for the plaintiff, Forth Wright, thereupon told the judge that he considered his conduct during the case as being "arrogant, offensive and injudicious". The judge told him that he was guilty of contempt of court and fined him \$500 or in default of payment 3 months imprisonment.

Both Forth Wright and counsel for the defendant, Stan Upp, are dissatisfied with the judgment and with the judge's conduct of the case. In addition, Forth Wright is dissatisfied with his conviction for contempt of Court.

Advise, referring to decided cases:

- (i) whether the parties can successfully challenge the judgment, and if so, on what grounds;
  - (ii) whether Forth Wright may successfully appeal against his conviction for contempt.
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QUESTION 6

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 or against the interest of his client.

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

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QUESTION 7

C.D. is charged with murder and you have been retained to represent him.

He informs you that he did commit the crime but does not wish to plead guilty.

Can you properly represent C.D. at the trial, and if so, what are the restrictions, if any, on your conduct of his defence?

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QUESTION 8

Martin graduated from Law School ten years ago and immediately started to work as an associate of Joe, an established attorney-at-law. Soon after he misappropriated funds entrusted to the firm by one of Joe's clients. Eight months later, at Joe's suggestion, Martin replaced those funds and has not since committed any similar act of dishonesty.

Martin subsequently set up office on his own. Practice was somewhat slow so he unhesitatingly accepted a proposal put to him by

Junior, an attorney who had been struck off the Roll six months previously. By that proposal Junior would accept legal work, sign Martin's firm's name to documents, collect fees due and remit fifteen percent thereof to Martin. Martin would appear in any matter which went to Court.

Three years ago Martin resiled from the agreement.

Last month while appearing before the High Court/Supreme Court, Martin made a number of submissions which the learned judge considered were without any merit. Further he was of the view that disciplinary proceedings ought to be taken against Martin for having made such submissions and stated that he would give his decision thereon shortly.

Reports of what happened in the High Court/Supreme Court were published in the newspapers, and Junior and Joe's clients have indicated their willingness to disclose details of Martin's past conduct.

Advise Martin on:

- (a) what grounds, if any, the learned judge could take action against him for the submissions made in court;
  - (b) what action can be taken against him in respect of his misappropriation of funds entrusted to him by Joe's client;
  - (c) what action can be taken against him in respect of his agreement with Junior;
  - (d) the standard of proof required.
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