

NORMAN MANLEY LAW SCHOOL  
Council of Legal Education

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1983

STATUS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

Tuesday, August 16, 1983

INSTRUCTIONS TO STUDENTS

- a) Time: 3½ hours.
- b) Answer FIVE (5) questions only.
- 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 relevant territory.
- d) It is unnecessary to transcribe the questions you attempt.

QUESTION 1

Ford, who wished to buy a house suitable for conversion into flats, instructed Maxwell, an attorney-at-law, to obtain for him particulars about premises suitable for that purpose. Shortly afterwards, Maxwell inspected a house owned by another of his clients and ascertained that it could be purchased for \$75,000. He thereupon procured Vincent, his brother-in-law, to be his nominee to purchase the house for himself for \$75,000 and then entered into a fictitious transaction with Vincent under which he purported to buy the house from Vincent for \$120,000. Maxwell told Ford that he had bought the house for \$120,000 and that he would sell it to him for \$125,000. Ford agreed and purchased the house from Maxwell for \$125,000.

Ford has discovered the facts and has consulted you as to what action or proceedings may be taken against Maxwell. Advise him.

QUESTION 2

What does actionable negligence involve in the case of an attorney and his client?

A's husband died as a result of negligence on the part of the Jamaica Public Service Company when he was electrocuted while using domestic electrical equipment in the kitchen of his home. A retained Holders and Company, a firm of attorneys. Holders and Company failed to pursue proper enquiries how it had been possible for the accident to have happened and allowed the period of limitation for filing an action to expire. Subsequently, Holders and Company unsuccessfully attempted to persuade the Jamaica Public Service Company to make an ex gratia payment to A.

A personally wrote the Jamaica Public Service Company and as a result of her letter, the company approached Holders and Company and offered to make a donation of \$1,000 to be used for the benefit of A and her family, it being agreed that A should not be informed who the donor was.

Holders and Company deducted \$100 from the donation as their charges and the remainder was applied in assisting A without disclosing the source of the money.

A is dissatisfied with the conduct of Holders and Company and has discovered that she might have recovered a substantial sum, say \$10,000, in the event her action had been brought against the Jamaica Public Service Company.

A has consulted you for an opinion as to the liability of Holders and Company.

Write an opinion.

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QUESTION 3

(a) In what way have the countries of the Commonwealth Caribbean associated themselves with the observance and protection of fundamental human rights and freedoms?

QUESTION 3 cont'd

(b) On January 10, 1980 Police Inspector Marcelto and Corporal Lewis were on night duty patrol on the look-out for smugglers. As they lay in ambush at a particular location, they saw four men putting in a boat. They sprang a surprise on the men who appeared quite subdued. As the policemen were off-guard momentarily the four men viciously attacked and killed the policemen, dumping their bodies in the sea. Information as to the events was slow in coming but there was much rumour involving the news media.

At an inquest held in July, 1980, three of the men gave evidence. The jury returned a verdict of wilful homicide by persons unknown. The Police Welfare Association was indignant at the verdict. In its monthly bulletin for September, 1980, the three men were openly accused of causing the death of the officers. The Association demanded that they be brought to trial. In January, 1981, the Director of Public Prosecutions prepared a charge of murder against the men. They were arrested and charged but on the same day they were released on bail. A date for the preliminary enquiry was to be arranged later. The Police Welfare Association not being satisfied with this development, since it was thought that bail should not have been granted, continued a vigorous campaign of condemnation against the three accused.

In May 1981, the three accused made an application to the Court contending that their fundamental right to a fair trial was adversely affected by the wide pre-trial publicity and by prejudice generated by the actions of the Police Welfare Association. They requested and were granted an adjournment of the preliminary enquiry into the murder charge. They then made their own application with a view to aborting the proceedings but they chose the wrong procedure. Their application was accordingly dismissed in August, 1981.

The three men now consult you. They seek your advice specifically on:

- (i) the effect of the wide publicity given to the incident;
- (ii) their right to be afforded a fair hearing;
- (iii) the conduct of the Police Welfare Association; and
- (iv) the consequence of the long period between the events which gave rise to the charge and the preliminary enquiry.

Advise the accused.

QUESTION 4

Leo and Titus were two shady characters who had attempted together several unsuccessful ventures in the past. On this occasion they were jointly charged with fraud and were defended by Miss Cornwall. On the first occasion they were reprimanded and on the second occasion, which was four years after the first, they were fined heavily.

Their latest enterprise was to extract \$25,000 from Mrs. Botham, a 61-year old widow who owned large estates. They led Mrs. Botham into thinking that they were setting up a saw mill which would present an opportunity for selling all the valuable unfelled trees on her estate. She lent them the money which was to be repaid within nine (9) months with interest at seven percent. A year elapsed and the men paid neither the capital nor interest. On making enquiries, Mrs. Botham was informed of the past history of Leo and Titus. She immediately brought an action to recover the money. Miss Cornwall was the legal practitioner on the record in the action. Miss Cornwall did not personally handle the matter but she left the preparation of the case in the hands of Mr. Solomon, her managing clerk of ten years experience.

In the course of the case it became necessary to obtain affidavits of documents from the defendants. Mr. Solomon prepared the necessary affidavits on the instructions of the clients. He included in these affidavits statements which he and the defendants knew to be false and inadequate. He also filed a defence putting the plaintiff to proof of her allegations well knowing that the defence was unlikely to succeed. Miss Cornwall saw the affidavits prepared by Solomon and her suspicions were aroused. She questioned him and although she was not satisfied with the answers given she did nothing further. The matter went to trial and judgment was given in favour of Mrs. Botham but nothing could be recovered from the defendants.

Mrs. Botham consults you. She would like to know in particular what action can be taken and what remedies are available against Miss Cornwall and/or Mr. Solomon for their misconduct in acting for known crooks and for the unnecessary expense caused her by the unsupportable defence entered to her claim.

Advise Mrs. Botham.

QUESTION 5

(a) Discuss the role of judges in society and indicate how the methods of their selection in the Commonwealth Caribbean facilitate the exercise of their functions.

(b) What ethical attributes should a judge possess?

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QUESTION 6

Money won by betting is statutorily irrecoverable. With a view to recovering money which he alleged he had won on bets made by him with Copes Limited, a firm of bookmakers, Keane consulted his attorney, Smartt, informed him fully about the facts and instructed him to take proceedings to recover the sum of \$2,000. The endorsement on the writ which was settled by Smartt although not seen by Keane, was in the following terms:

"The plaintiff's claim is for the sum of \$2,000 being the balance found to be due from the defendant to the plaintiff on accounts stated between them in writing and contained in a letter dated April 1, 1983."

In fact there never had been an account stated between the parties but the defendant by a letter dated April 1, 1983, had merely acknowledged receiving a letter from Keane demanding payment of the money he won on the bets.

Messrs. Copes Limited, moved the Supreme Court for a Writ of Attachment against Keane and Smartt on the ground that the endorsement was fictitious and merely a device to conceal from the Court that the action was statutorily prohibited and, therefore, was a contempt of Court.

Advise Smartt.

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QUESTION 7

An attorney practising under a firm name as an attorney-at-law conducted the business of buying and selling property on behalf of clients, and made loans to clients from clients' funds. In the course of his professional work he received moneys for and on behalf of clients. The moneys, save for those put on deposit in the names of particular clients, were paid into the clients' current bank account kept in the firm name.

QUESTION 7 cont'd

When the amount to the credit of this account approached \$50,000 the attorney would place \$30,000 on deposit receipt in the firm name with the words "for clients" added. Such deposits were not ear-marked for a particular client or clients. When interest was paid on the sums so deposited the attorney treated the interest as money to which he was entitled as his own. Such practice had been followed for a long time by other attorneys in the other parts of the West Indies but was not universal.

The attorney similarly treated as his own, interest which was the excess of interest received by the attorney from loans made by him to reliable clients over the amount of interest paid by him to clients whose money it was that was lent. It had been the attorney's practice to lend individual clients money out of the moneys of other clients in his hands, the interest payable by the borrower or to the lender being a matter of the attorney's discretion and more often than not was higher than the rate approved by the Central Bank.

There was no agreement between clients and the attorney that either category of interest should be his and no evidence from which such an agreement could be implied or that the clients knew anything about the retention of interest.

The Jamaican Bar Association has asked you for an opinion as to the rights and obligations in relation to the two categories of interest.

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QUESTION 8

(a) What factors should be taken into account in arriving at a proper fee for an attorney?

(b) Mr. Sebastian, the principal of the village school, reported to the police that he had lost brown goats which were tethered at the back of his home. As a result of the report the police made investigations and charged Toni. The next week Toni met Mr. Sebastian and an argument ensued in the course of which Mr. Sebastian called Toni a 'notorious thief'. Toni engaged Mr. Adrien on the larceny charge and instructed him to sue Mr. Sebastian for slander. Toni was not regularly employed. He made an oral agreement with Mr. Adrien that he would give him \$200 immediately to represent him in the Magistrate's Court on the larceny charge but that if he were acquitted he would pay a further sum of \$200. As regards the suit for slander, it was agreed that Mr. Adrien would initiate the proceedings

QUESTION 8 cont'd

on the understanding that if Toni was successful, Mr. Adrien would receive thirty percent of the damages awarded but if Toni lost the suit he would be liable to Mr. Adrien for only disbursements.

The matters were duly heard. The case of larceny was dismissed and in the slander suit Toni was awarded damages of \$10,000. Toni made one payment of \$500 to Mr. Adrien and refused to pay anything further and when Mr. Adrien pressed for payment Toni threatened to report him to the Disciplinary Committee.

Mr. Adrien seeks your opinion as to the propriety of his dealings with Toni. Advise Mr. Adrien.

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