

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1988

STATUS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(Monday, August 8, 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

What principles should an attorney-at-law consider before acting for persons with different interests in the same matter and what problems are likely to arise where he so acts?

QUESTION 2

Ambrose Bishus, a young and enthusiastic attorney-at-law who graduated from Law School in 1987, was admitted to practise in January, 1988 and having obtained a practising certificate in the same month immediately set up practice in Second City.

On Saturday, the 30th January he gave a party to which he invited members of the police force, the local Justices of the Peace, a cross-section of the citizens of the community and members of the news media. He arranged with a reporter from the local newspaper to have an item headed "Attorney opens office - throws party" with his photograph published in the newspaper.

On the following Monday afternoon he attended at the local bank where he opened an account in which he deposited fees collected from civil and criminal cases in which he had been retained, purchase money which he had in hand for a client and money belonging jointly to his wife and himself.

On Tuesday he was in the Magistrate's Court and the Magistrate offered him a Legal Aid assignment in a preliminary examination into a charge of murder. He told the Magistrate that he regretted that he had to refuse the assignment as the fees were too small.

On Wednesday he defended a man on a charge of larceny. The man admitted to Ambrose Bishus that he was guilty of the offence but said he did not wish to plead guilty. A plea of not guilty was entered, the defence was an alibi, and the accused was acquitted.

On Thursday the young attorney-at-law defended a man, whom he had known from school-days, on a charge of assault in the Circuit Court. In an impassioned speech to the jury he told them that he had known the accused for many years, that the accused was not a man given to violence, and that he was certain the accused was innocent. The man was acquitted.

On Friday morning Ambrose Bishus went to the office of the Magistrate's Court where he filed legal proceedings against two clients in respect of legal work which he had done for them in March 1987.

You have been asked to advise your local Disciplinary Committee on any breach of any statute and/or code of ethics committed by Ambrose Bishus.

Advise.

QUESTION 3

"Patience and gravity of hearing is an essential part of justice and an over-speaking Judge is no well tuned cymbal." BACON L.C.

Discuss the above statement and list the qualities which should be possessed by a judge.

QUESTION 4

Discuss the circumstances in which an attorney-at-law may properly terminate his retainer.

QUESTION 5

N.M. is an attorney-at-law acting for O.P. in prosecuting a claim for damages for negligence arising out of a motor vehicle accident. Matters are proceeding slowly due to a number of reasons over which N.M. has no control.

O.P. decides not to use N.M.'s services and discharges him. He then contacts and retains Q.R. N.M.'s name is duly removed from the record as attorney-at-law acting for O.P.

Q.R. writes to N.M. requesting that he sends him all papers belonging to O.P. Fees in the matter are still owing to N.M. by O.P.

- a) Advise N.M. whether he is legally bound to send the papers.
- b) Would your advice to N.M. be different if he had discharged himself?

QUESTION 6

(a) George, an attorney-at-law, is one of two trustees under a will in which there is no charging clause.

Advise whether he may charge the estate for the following:

- i) George is employed by his co-trustee to do legal work under the trust.
- ii) George employs his partner to do legal work under the trust.
- iii) George employs his partner to do legal work under the trust but before the work is undertaken an agreement is made providing that George is not to receive any part of the remuneration paid to the partner.

iv) There is a suit against the trust estate and George appears on behalf of himself and his co-trustee.

(b) If George should employ another attorney-at-law, James, to do legal work for the trust on condition that he, George, receive a commission, would James be able to charge the estate, and if so, would George be entitled to retain his commission?

QUESTION 7

Section 22 of the Legal Profession Act 1986 (Trinidad and Tobago) provides:

"22: (1) Subject to subsection (2) an attorney-at-law shall enjoy no special immunity from action for any loss or damage caused by his negligence or lack of skill in the performance of his function.

(2) An attorney-at-law is immune from suit in negligence in respect of his conduct of litigation only.

(3) The immunity referred to in subsection (2) is not confined to proceedings in court but extends to such pre-trial work as is so intimately connected with the conduct of the cause in court that it could fairly be said to be a preliminary decision affecting the way the cause is to be conducted at the hearing.

(4) In this section "function" means a function undertaken by an attorney-at-law in relation to the conduct or management of litigation or prospective litigation, whether performed in or out of court or before, during or after any Court proceedings."

Explain with the aid of case law and illustrate what is meant by "pre-trial work as is so intimately connected with the conduct of the cause in court that it could fairly be said to be a preliminary decision affecting the way the cause is to be conducted at the hearing."

QUESTION 8

Jo-Anne is an attorney-at-law. She was retained by Vera to appear in a civil matter in which Vera was the defendant.

Lena, one of the witnesses who had custody of certain documents which were vital to Vera's defence has recently migrated to Canada.

While Jo-Anne was on vacation in New York, she learnt of Lena's address in Canada. She hurriedly purchased a ticket to Canada where she spent three days in an hotel. She was successful in obtaining some of those documents from Lena.

Two months later, while the matter was in progress, Jo-Anne received a telephone call from Lena. She informed Jo-Anne that she was spending a few days in Bermuda, that she had the other documents with her and was willing to come to give evidence if her passage and other expenses were met. Jo-Anne considered those documents and Lena's evidence to be vital to Vera's case and so informed Vera. Vera was very happy when Jo-Anne informed her that she, Jo-Anne, would meet those costs and include them in her bill later.

During discussions prior to the start of the proceedings the plaintiff's attorney-at-law had admitted that certain of the plaintiff's claims were untenable and that he was prepared formally to admit such. However, Jo-Anne, who had a rather busy practice had failed to get those admissions in writing and so they were not made at the trial. Much expense was incurred by Vera in proving that certain of the plaintiff's claims were untenable.

To compound matters, Jo-Anne made certain admissions at the trial which were not in accordance with the facts.

The trial is expected to end next week and Vera, in great anxiety, has consulted you.

Advise Vera on all relevant points.
