

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1989

STATUS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(Wednesday, June 7, 1989)

Instructions to Students

- a) Time: 3½ hours
 - b) Answer 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.
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QUESTION 1

Compare and contrast the duties and responsibilities of prosecuting counsel with those of a defence counsel, referring to any relevant canons of professional ethics.

QUESTION 2

Rury Lawton, an attorney-at-law, has on several occasions handled legal matters for Bodkin Luck. The most recent was appearing for him at a preliminary examination into a charge of manslaughter arising out of a motor vehicle accident.

Luck has been committed to stand trial at the Circuit Court and Lawton advises him that having regard to previous commitments he will not be able to represent him at the trial. Luck consults Winston Handsdown, an attorney-at-law who specialises in advocacy, and Handsdown agrees to represent him. However, Luck does not have enough money to pay the fees.

Luck owns a parcel of land at Brimstone Ridge which is in a remote and inaccessible rural area. He tries without success to obtain a loan using the document of title for this land as security. He goes to Lawton and explains his predicament to him and Lawton offers to buy the land from him at a price which Luck considers reasonable. The sale is duly effected.

At the time when he offers to buy the land Lawton has information that the government has certain plans to develop the area in which the land is situated and that an arterial road is proposed going through the land.

The charge against Luck is tried and he is acquitted.

Two years later news of the proposed development in Brimstone Ridge becomes public and Luck hears of it. The market value of the land is now at least twenty times what it was when he sold it to Lawton.

- (a) Write an opinion as to whether Luck can successfully challenge the sale of the land to Lawton.
- (b) Would it make any difference to your opinion if Lawton had not known of the proposed development at the time when he offered to purchase the land?

QUESTION 3

Explain, giving reasons, what you would do in the following situations:

- (i) You are counsel for the petitioning husband in a petition for divorce on the ground of adultery. No discretion statement has been filed. During the hearing your client tells you that he has been living with a woman who has borne him a child;
 - (ii) you are representing a man charged with murder. He tells you that he committed the offence but that he does not wish to plead guilty;
 - (iii) you are in private practice and have been retained to appear in a matter in which the main issue is the interpretation of a regulation. You were once a Parliamentary Counsel and had substantial responsibility for drafting this regulation.
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QUESTION 4

"It may be that a solicitor[attorney-at-law] who tries to act for both parties puts himself in such a position that he must be liable to one or other whatever he does....."

Scrutton, L.J. in Moody v. Cox and Hatt[1917]2 Ch 71 at p91.

Discuss the above statement and explain and illustrate by referring to decided cases and other sources.

QUESTION 5

(a) What is contempt of court and by what principles should a court be guided in exercising its summary power to punish for contempt?

(b) Arising out of a recommendation by Parliament that a Judge of the Supreme Court/High Court should be appointed to enquire into the award of contracts by certain government agencies to Overseas Entrepreneurs Inc., a Commission of Enquiry is set up headed by Mr. Justice Stern.

In the course of the Commission's deliberations, held at the Supreme Court/High Court Building during the legal vacation, objections are taken by Peter Principle, Q.C., who represents Carib Enterprises Ltd., one of the parties involved in the Enquiry, to several questions asked by Damion Fearless, Q.C., who represents Overseas Entrepreneurs Inc. and on each occasion Mr. Justice Stern rules in favour of Principle. After a number of verbal exchanges between Fearless and Mr. Justice Stern an early adjournment for lunch is taken.

When the Enquiry resumes Fearless rises and addresses Mr. Justice Stern as follows:

"May it please your Lordship, I have been in consultation with my clients and they have asked me to indicate to you that as a result of your obvious prejudice against them in this matter they do not think that any useful purpose can be served by continuing to participate in this farce...they hope for justice but they do not expect to receive it. In the circumstances my clients and I will take no further part in these proceedings. Your Lordship pleases."

Mr. Justice Stern replies:

" I am obliged to you Mr. Fearless. I find you guilty of contempt. You will pay a fine of \$1000 or be imprisoned for 10 days at hard labour. Good afternoon, Mr. Fearless."

Write an opinion as to whether or not Damion Fearless has been properly convicted.

QUESTION 6

(a) In what circumstances may a retainer be terminated without giving rise to a claim for breach of contract by either party?

(b) Michael Grate, an attorney-at-law, was retained by and has been acting for Laura Knock in a suit for negligence arising out of a motor vehicle accident in which Miss Knock was injured. Action has already been filed in the Supreme Court/High Court.

Due to failing health Mr. Grate has decided to migrate to the United States of America where the other members of his family reside permanently.

What are his rights with regard to terminating the retainer and what are his obligations if he does so?

QUESTION 7

(a) "The fees that an attorney may charge shall be fair and reasonable..."

What factors may be taken into consideration in determining the fairness and reasonableness of a fee?

(b) Tom Owen has represented Ian Freeman in several suits in the Supreme Court/High Court. Fees are due and owing to Owen for work done in connection with these matters. Several letters have been written by Owen to Freeman requesting payment of the fees. Freeman has ignored the letters.

Owen files a writ in the Supreme Court/High Court against Freeman to recover the fees.

Freeman consults you and seeks your advice as to whether Owen is entitled to commence suit against him.

Advise Freeman.

QUESTION 8

- (a) What is an undertaking as it relates to an attorney-at-law?
 - (b) Discuss the importance and give examples of undertakings --
 - (i) in matters not the subject of litigation, and
 - (ii) in matters the subject of litigation.
 - (c) What are the consequences to an attorney-at-law of his failure to honour an undertaking?
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