

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

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COUNCIL OF LEGAL EDUCATION
MONA. KINGSTON, 7 JAMAICA

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1985

STATUS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(Monday, May 20, 1985)

Instructions to Students:

- a) Time: 3½ hours.
- b) Answer FIVE 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

(a) Examine with references to decided cases, the duties owed by an Attorney:

- (i) to the state;
- (ii) to the public.

(b) Advise as to whether any action may be taken to remove an Attorney-at-law from the roll of Attorneys in Jamaica where he was convicted in Barbados of being in possession of marijuana and has been unsuccessful in an appeal to the Court of Appeal of Barbados.

QUESTION 2

- (a) Explain the meaning of:
- (i) contingency fee;
 - (ii) brief fee;
 - (iii) refresher fee.
- (b) What are the main reasons advanced against the use of the contingency fee?
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QUESTION 3

- (a) Define "Retainer" and comment briefly on the various modes of retainer in the relationship of attorney and client.
- (b) Advise on:
- (i) the confidentiality of the client's business by an attorney when retained;
 - (ii) the scope of an attorney's authority when retained in contentious business;
 - (iii) the termination and effect of termination of a retainer.
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QUESTION 4

"I am not too certain that advocacy can ever be taught. You can improve, but your real advocate, is born, and not made" Sir Norman Birkett.

What do you consider to be the essential requirements in the cultivation of the art of advocacy?

QUESTION 5

The following statements were made by Lord Green, MR in Groom v Crocker [1935] 2 All E.R. 394:

"The relationship of solicitor and client is a contractual one. It was by virtue of that relationship that the duty arose, and it had no existence apart from that relationship".

"In my opinion, the cause of action is in contract and not in tort".

Discuss, with reference to the decided cases, whether the statement describes accurately the nature of the cause of action which a client may have against an attorney whom he alleges to have been negligent.

QUESTION 6

On March 1, 1983, Homeowners Development Company brought an action against Earth Movers Ltd. alleging various torts and/or breaches of contract extending from September 15, 1980, to December 31, 1982. The defendant retained, as their attorney, Miss S. George.

It became clear to Miss George at a very early stage of her preparation of the case that the proceedings would be a rather lengthy and complicated affair.

On May 5, 1983, Miss George requested the defendants to pay her some money and she sent a bill for the work she had already done together with the request. The defendant disputed the amount of the charges although they paid some money.

On May 17, 1983, Miss George wrote to the defendant stating that unless her costs were met by May 31, 1983, she would issue a summons applying to be removed from the record. There was no response from the defendant. By letter dated June 29, 1983, Miss George again notified the defendant that unless she was paid she would apply to the court to be removed from the record and again there was no response.

On July 9, 1983, Miss George issued a summons applying for such an order. On July 13, 1983, the defendant instructed another attorney who duly gave notice of change of attorney.

Earth Movers Ltd. now seeks the delivery of their documents from Miss George in order to hand them over to their new attorney, but Miss George refuses to deliver claiming a lien on the documents for her unpaid costs. The company consults you.

Advise Earth Movers Ltd.

QUESTION 7

On the first date fixed for the trial of an action in the Supreme Court, the attorney representing the plaintiff was absent but his brief was being held by another attorney who knew nothing about the facts of the case and was asked only to apply for an adjournment on the grounds that:

- (i) the attorney representing the plaintiff was engaged in the Court of Appeal; and
- (ii) the chief witness for the plaintiff was unable to attend court because he was ill (the medical certificate was tendered).

The attorney for the defendant did not oppose the application for the adjournment but the judge refused to grant it, proceeded with the conduct of the case before him and dismissed the action with costs to the defendant.

The attorney holding brief for the attorney for the plaintiff was highly incensed by what appeared to her to be a denial of justice to the plaintiff and she told the judge he was guilty of unjudicial conduct. Thereupon the judge informed the attorney that he was being formally charged with contempt of court for making a vicious attack on the integrity of the court.

In answer to the charge, the attorney asked for time within which to retain a lawyer. This application was refused. Despite a plea of not guilty and the attorney's statement that he had not imputed bias or dishonesty or corrupt conduct to the judge, a finding of guilty was made by the judge and a fine or term of imprisonment imposed.

Advise the attorney on the merits of an appeal.

QUESTION 8

"Practising attorneys, like all businessmen, are free to advertise their services as they please".

Critically examine this statement in relation to lawyers in the Commonwealth Caribbean today, making comparative reference to advertising by lawyers in other common law jurisdictions.
