

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

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COUNCIL OF LEGAL EDUCATION
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LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS 1979

STATUS, RIGHTS AND RESPONSIBILITIES OF THE LEGAL PROFESSION

Friday, June 8, 1979

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 Jamaica, the Bahamas, or Belize, 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 January 1975, Boyle Rice, on behalf of his sisters, Olga and Olive Rice, consulted an attorney, Rufus Cane, about an investment of trust property. At the interview, Mr. Cane advised Mr. Rice not to advertise the houses in question for sale, promising to endeavour to obtain a purchaser. A few days afterwards Mr. Cane presented his brother, Dr. Reuben Cattle, as a purchaser and his offer of \$40,000 was accepted by the trustees, Misses Olga and Olive Rice, they believing that Dr. Cattle was the only and true purchaser and that Rufus Cane was acting in the matter as their attorney whereas, in fact, Rufus Cane had previously arranged with his brother, Dr. Cattle, that he should have, at half the price, two of the four houses, which he afterwards disposed of at a profit.

Advise the trustees whether the sale to Dr. Reuben Cattle can be set aside.

QUESTION 2

In her capacity as a lecturer in the extra-mural department, G met H, a public servant in the Customs Department. On two occasions, G invited a group of students, including H, to her home which she owned in Hope Pastures. Thereafter, H visited G's home intending to establish an intimate relationship; but G demurred and asked him not to return. Thereafter, H telephoned G late at nights and two or sometimes three times a week in the early evening H would park his car in her unfenced driveway and molest her if she appeared. H's conduct angered G and caused her considerable annoyance and mental distress. G consulted Messrs. J & B, a firm of attorneys and was introduced to R who was a fourth-year law student. G believed that R was an attorney and accepted his advice to commence an action in the High Court for the purpose of preventing H from trespassing, telephoning or otherwise molesting her. G paid \$500 on account of fees, and was advised by R that an injunction would be obtained in four weeks. An action was commenced against H claiming damages, but did not include a claim for an injunction. In the ensuing three months H's conduct continued and worsened. G was hospitalised and treated for severe mental strain and nervousness. She now consults you and wants to know what redress she may seek and against whom.

QUESTION 3

- (i) Define a Retainer, explaining the various modes of being retained;
- (ii) Distinguish between a special contract and an entire contract of Retainer;
- (iii) Four actions were brought against Smith at the instance of four different plaintiffs, alleging four separate causes of action. Smith retained Mr. Alfred Thorpe to act as his attorney in the conduct of his defence to all the actions respectively. While the actions were respectively pending, Thorpe declined to act further for Smith and subsequently brought an action for the amount of his bill of costs in respect of the conduct of Smith's defences to the respective actions, previously to his declining to act further.

Advise Smith.

QUESTION 4

On the date fixed for the hearing of an action before the High Court, the plaintiff and the defendant were present. 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) a witness for the plaintiff was unable to attend Court because of a taxi drivers' strike which prevented him from being transported to the Court from a rural district.

The attorney appearing for the defendant was agreeable to an adjournment on those grounds, so when the application was made she supported it. The judge refused to grant the application for an adjournment. The evidence of the absent witness was crucial to the plaintiff's case, and the attorney said the case could not properly be conducted without it. The judge, without hearing the plaintiff directly, dismissed the action and awarded costs to the defendant. The attorney who held the brief for the plaintiff became highly incensed by what appeared to her to be a denial of justice to the plaintiff. She told the judge that he was guilty of unjudicial conduct and that his decision was a travesty of justice. The judge informed the attorney that she was being formally charged with contempt of court, specifically, that she was being charged for making a vicious attack on the integrity of the Court. He called upon the attorney to answer the charge. The attorney said that she had not imputed bias or dishonesty or corrupt conduct to the judge. She pleaded not guilty, and asked for an adjournment to retain a lawyer. The application was refused. The judge said that he found the attorney guilty of contempt on the ground that she made a vicious attack on the integrity of the Court, and ordered her to pay a fine of \$250 or in default, three months imprisonment. The attorney has consulted you. She wishes an opinion as to the merits of an appeal.

QUESTION 5

"A barrister [an attorney] cannot be sued for negligence in any preliminary advice that he gives as to the parties to litigation or the prospects of success or any other matter connected with litigation pending or contemplated".

Discuss this statement having regard to decided cases.

QUESTION 6

In January 1966, in consideration of \$10 paid by Jonas to his father Ezekiel, Ezekiel agreed to grant Jonas an option to purchase a 50-acre farm at \$100 per acre and exercisable within 10 years. At the time the farm was let to Jonas at a rent of \$1,200 per annum. The formal option agreement was prepared by Mr. Boottoo, senior partner in the firm of Boottoo, Spengeh & Co., Jonas' attorneys. However, Boottoo inadvertently omitted to have the option registered under the appropriate statutory provisions which render the option unenforceable in the absence of registration. In 1972, after Jonas and Ezekiel had had a violent disagreement over other family matters, Ezekiel discovered that the option had not been registered and promptly took his revenge on Jonas by selling the farm to his second wife, Jonas' stepmother, Hannah, by a conveyance bearing date June 17, 1972. Mr. Boottoo had by this retired and Spengeh, now the senior partner in the firm, upon reviewing Jonas' file, discovered the omission and sought to correct it by registering the option in July 1972. Jonas, who knew nothing of all this, now sought to exercise the option. In proceedings against Ezekiel brought by Jonas it was held that the option had been defeated by virtue of the sale to Hannah.

On May 21, 1976, Jonas commenced proceedings against Boottoo, Spengeh & Co. claiming damages for breach of their professional duty. The firm has pleaded the Statute of Limitation by way of defence.

You have been briefed as Junior Counsel for the plaintiff and your leader has asked you to advise him whether the pleading is tenable in these circumstances.

Write an opinion.

QUESTION 7

Herb Mann was charged with possession of ganja contrary to the Dangerous Drugs Act. He retained an attorney, Paul Whisky, who advised him that in view of the quantity which he was alleged to have had it was not unlikely that the Court would, if he was convicted, take the view that he was a "pusher" and impose a custodial sentence. He suggested to Mann that it might be otherwise if he were to plead guilty.

Mann, nevertheless, pleaded not guilty and during the course of the trial, Whisky went to see the Resident Magistrate in his Chambers to ascertain what sentence he had in mind. The Magistrate said that he was minded to impose a sentence of 18 months if Mann persisted in his plea of not guilty, but would consider a fine if Mann changed his plea.

QUESTION 7

Whisky conveyed the substance of this to Mann and added in strong terms his own recommendation that he change his plea, though he did tell Mann that the ultimate choice was his. Mann, after some hesitation, changed his plea to one of guilty, and was fined \$2,000.

Mann has been talking it over with some of his brethren and they have persuaded him that he was not treated fairly. He consults the Norman Manley Law School Legal Aid Clinic with a view to appealing and the Director seeks your advice.

Write an opinion.

QUESTION 8

Oyle and Pitch were advertising agents, who had placed substantial forward advertising orders for a company on terms by which they were personally liable for the cost of the orders. They asked their attorneys, Pimento and Coffee, to enquire into the company's financial stability, and their attorneys made enquiries of Wood and Fish, who were the company's bankers. Wood and Fish gave favourable references. In reliance on those references, Oyle and Pitch placed orders which resulted in a loss of \$50,000. The references now appear to have been carelessly prepared. They have consulted you about an action to recover their loss.

Write an opinion.
