

NORMAN MANLEY LAW SCHOOL - HUGH HOODING LAW SCHOOL

Council of Legal Education

LEGAL EDUCATION CERTIFICATE  
SUPPLEMENTARY EXAMINATIONS, 1977

STATUS, RIGHTS AND RESPONSIBILITIES  
OF THE LEGAL PROFESSION

Instructions to Students

- (a) Time: 3½ hours.
- (b) Answer FIVE questions only.
- (c) Questions may be answered according to the law applicable in any West Indian country of your choice.
- (d) It is unnecessary to transcribe the questions you answer.

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QUESTION 1.

A, who was the beneficiary of a future interest in land, came of age and immediately afterwards joined his father B, who held a life interest, in applications to the Court -

- (a) to mortgage the property; and
- (b) a year later, to sell the property and hold the proceeds on trust.

C, who was the legal adviser of B, was first the mortgagee and then the vendee. There was no reason to believe that the sale had been effected at an under-value. It was evident that C was the only legal adviser of A and B in the transactions.

A has refused to complete the sale and C intends to bring an action for specific performance. Advise C.

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QUESTION 2.

The managing clerk of Mr. Green, a legal practitioner, obtained an advance of \$3,000 upon a mortgage of property by producing a fictitious deed to the legal representatives of the Caribbean Mutual Building Society. It could not be proved that the managing clerk actually forged the deed, but the circumstances indicated that he must have known that the deed was a forged instrument.

The Building Society wishes to recover the sum of \$3,000. What will be the cause of action and against whom? Write an opinion.

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QUESTION 3.

A legal practitioner, under a firm name, conducted buying and selling property for clients and making loans to clients from clients' funds, and in the course of his professional work received money from 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. When the amount to the credit of this account approached \$20,000 the legal practitioner would place \$10,000 on deposit receipt in the firm name with the words "for clients" added. Such deposits were not earmarked for a particular client or clients. When interest was paid on the sums so deposited the legal practitioner treated the interest as money to which he was entitled as his own. Such practice had been followed for a long time by other legal practitioners in the West Indies, but was not universal.

The legal practitioner similarly treated as his own, interest which was the excess of interest received by him 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 his 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 his discretion.

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

Write an opinion for the Bar Association about the ownership of the interest.

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QUESTION 4.

A was injured in a collision involving a truck owned by a local authority against which no action for negligence could be brought unless it was commenced before the expiration of one year from the date on which the cause of action accrued. The collision was due to the negligence of the driver of the truck.

A retained B to act as his legal representative and several letters were exchanged between B and the local authority. A suffered a comminuted fracture of the right thigh and was hospitalised for several months; B claimed on his behalf \$2,500 special damages and \$25,000 general damages.

Although properly retained and instructed, B failed to file an action against the local authority within the prescribed time. A has consulted you. Write an opinion.

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QUESTION 5.

By a deed duly executed and delivered, Mrs. Donna Tree, the grandmother of Mrs. Blossom Fish, in consideration of the natural love and affection she had towards her, conveyed to Mrs. Fish a coconut estate for her separate use and benefit absolutely. The Deed of Gift was prepared by Mr. Jack Fish, the husband of Blossom Fish, on the understanding that he would act in the matter as attorney for Mrs. Tree without making any charges. Mrs. Tree and her grand-daughter have quarrelled and she wishes to set aside the Deed. Mrs. Fish has consulted you. Write an opinion.

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QUESTION 6.

Rufus Rice, a man of considerable means and the father of several adult children by two marriages consulted A, a legal practitioner, about the preparation of a will. He informed A that his legal business was usually transacted by a firm of which B was a junior partner and that he did not consult the firm on this occasion because he wished to leave a substantial bequest to B whose deportment and manners were such as he would have wished for his own son. A took written instructions and prepared a will in which one half of the property was to be held in trust for the benefit of the grand-children of Rice and one quarter was bequeathed to B. There were other legacies.

?The will was ...

The will was executed two years afterwards when Rufus Rice, being afflicted by a stroke, sent for his legal adviser. The firm dispatched B who was asked by Rice to arrange for the execution of his will. This was duly done by C, the managing clerk of the firm, making a mark for Rice and the nurses in attendance signed as witnesses. The will was read over to Rufus Rice by B, whose firm was named as executors.

The children of Rufus Rice have opposed the grant of probate. B has retained you. Write an opinion.

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QUESTION 7.

Define "retainer" and comment briefly on the obligations deriving from a retainer and imposed upon a legal practitioner.

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QUESTION 8.

At A's trial for murder a witness B, gave evidence identifying A as the person whom he saw running away from a building in which the body of the deceased was found with gun shot wounds. B had given the same evidence at the preliminary enquiry. There was no other evidence of identification and an alleged confession by A was not admitted into evidence by the trial judge on the ground that it was not voluntary. In his written statement to the police during their investigation of the crime B said he had seen the back of a man running away from the building but he did not recognise him. That statement is in the possession of prosecuting counsel.

What action, if any, would you advise prosecuting counsel to take and give reasons.

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