

87/Supp.

NORMAN MANLEY LAW SCHOOL  
COUNCIL OF LEGAL EDUCATION  
MONA, KINGSTON 7, JAMAICA

LEGAL EDUCATION CERTIFICATE  
SUPPLEMENTARY EXAMINATIONS 1980

FOR REFERENCE ONLY

STATUS, RIGHTS AND RESPONSIBILITIES OF THE LEGAL PROFESSION

Tuesday, August 19, 1980

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, British Virgin Islands 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

Two young barristers-at-law had just returned from England after their recent admission to the Bar there, and were debating the prospects of being admitted straight away to the local Bar. They proceeded to a fuller discussion of the status, rights and obligations of the legal profession and were heard to express their total satisfaction with the position as it seemed to them: if they opted to practise as solicitors the only basis on which they could be held liable to their clients would be in an action founded on contract and if they opted to practise as barristers their clients could not sue them at all.

Harry, a businessman, who overheard this conversation was quite perturbed by what he understood to be a claim by these gentlemen to partial immunity in the one case and total in the other in respect of suits against legal practitioners; and this at a time when he had begun to make his own assessment of these young barristers in order to decide which one of them he should retain in the event that in the course of time he should need legal advice or representation.

Advise Harry as to the position regarding the matters discussed by the young barristers.

QUESTION 2

Cooper was the successful plaintiff in an action against Taylor who was represented by Brass. On an application by Taylor to a Judge in Chambers for a stay of execution, Cooper was represented by Ring and Brass appeared for Taylor. The Judge granted the application and endorsed the notice which he handed to Brass. Brass refused to show the endorsement to Ring and only did so when the Judge firmly directed him to do so. While Ring was copying the endorsement Brass snatched it away and the Judge rebuked him for so doing and gave Ring a similar endorsement on a separate piece of paper. As soon as Ring left the Judge's Chambers and while he was in the lobby outside, Brass assailed him with offensive language calling him "a damned scoundrel and a liar". As Ring proceeded toward the exit of the court building, Brass pushed his fist towards Ring's face and threatened him and continued the abuse and threats until they reached the exit.

Upon those facts the Judge in Chambers committed Brass to prison for contempt of Court. He has appealed against the order and he has consulted you.

What advice would you give?

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QUESTION 3

Alec Smart, who had been admitted to practice only six months before, was advising his client wealthy Lady Jane Lock as to some business prospects, whereupon she said to him that she wanted to make him a gift of one of her several condominiums as an indication of her estimation of his true worth. Alec asked his client if she really knew what she was doing. On her replying in the affirmative he told her that before he could accept such a gift she would have to terminate his retainer. Lady Jane lamented the fact that it had to be done that way but nevertheless proceeded to terminate Alec's retainer and convey the property to him. A few days later after Lady Jane reflected upon what she had done and feeling totally helpless without Alec's usually sound advice and, having not seen him again from the moment she executed the deed conveying the property to him, she resolved to demand that Alec should reconvey the property to her.

Smart Alec has learnt what Lady Jane proposes to do and he wishes to be advised whether he can successfully resist an action by Lady Jane to have the deed set aside.

Advise him.

QUESTION 4

On March 31, 1969 the respondent, Gloria Haynes, for a consideration of \$250, granted to Val Smith, an attorney-at-law, who conducted legal business for her as executrix of her deceased husband's estate, an option to purchase certain lands in the parish of St. Ann for \$55,000. By letters in May 1969 the Brown's Town Mining Company agreed to buy and Val Smith agreed to sell the land for \$112,000: Smith thereupon purported to exercise his option to purchase from Gloria Haynes. In or about October 1979 Gloria Haynes, being advised that the transaction with Smith was unenforceable, agreed to sell the property to William Warner for \$200,000. In an action by the company against Haynes, Smith and Warner a claim was made to set aside the sale by Haynes to Warner and to enforce the sale to Smith and by him to themselves.

The Trial Judge granted the company's application to set aside the sale to Warner and ordered specific performance of the sale to Smith.

Gloria Haynes wishes to appeal and has consulted you.

Write an opinion.

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QUESTION 5

Gold, an attorney-at-law, was engaged orally by Agatha to transact a number of business matters in order to get her out of the difficulties in which she had found herself. Gold successfully completed a number of these matters and delivered the relevant bills of costs to Agatha. She paid some of them but found that she could not pay the others as she had not yet landed the more lucrative of the deals. Gold informed Agatha that he was not prepared to continue. She tried to prevail on him to change his mind as there were, according to her, only two matters to be attended to by him before she would make the breakthrough for which she had been waiting. Gold did not relent but proceeded to discharge himself from the conduct of Agatha's affairs and to sue her for the work he had done in respect of which the bills he had presented to her were unpaid.

Agatha contends that Gold was duty bound to see all her transactions through to the end and so should have no right to claim any payment at all. She wishes to be advised as to her chances of success in defending the action.

Advise Agatha.

QUESTION 6

Gavin Greene, the managing clerk employed by a firm of attorneys, Messrs. Anglin, Griffiths and Farley, obtained an advance of \$5,000 upon a mortgage of property by producing to the attorneys of the McKay Permanent Building Society a fictitious deed. It was not proved that Greene actually forged the deed but he must have known that it was a forged document. In an action to recover the money brought by the Building Society against Anglin, Griffiths and Farley it was submitted that the firm of attorneys should not be made liable for the fraudulent acts of Green because :

- i) the fraud involved the uttering of a forged document which is a criminal act;
- ii) the plaintiffs were not their clients; and
- iii) Greene was on a frolic of his own and acted without authority.

As the Trial Judge you are required to deliver a decision on the submissions.

Prepare a decision and give your reasons.

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QUESTION 7

(a) On the day before his admission to practice Whittaker, who had recently been awarded the Legal Education Certificate, accompanied his friend to court to witness his contest affiliation proceedings. His friend, who was unrepresented, became very nervous and inarticulate and Whittaker proceeded to announce himself as 'amicus' and endeavoured to assist his friend with the case.

What is the nature and extent of the assistance that Whittaker may be permitted to give?

(b) Mary Thatcher, whose husband had been in custody for a very long time for some unexplained reason, has made application for a writ of habeas corpus in an endeavour to secure his release.

Advise as to whether Mrs. Thatcher, or even Mr. Thatcher, has a right to be heard in court on the application.

QUESTION 8

A instructed B to file a petition for divorce on the ground of his wife's adultery and to conduct the matter to finality. B obtained from A and his witnesses full proofs of their evidence and filed a petition on the ground of adultery. The petition was defective in that the co-respondent was not cited nor was any disclosure made, and consequently no judicial discretion was sought, with respect to A's own adultery. A had not only admitted his adultery in his statement but said that he desired to marry the person involved with whom he was then co-habiting. A paid B \$500 on account of the fee of \$1,000 which B charged for the conduct of the case to completion. The petition was dismissed and A filed with the Disciplinary Committee a complaint against B alleging professional misconduct on the ground of inexcusable or deplorable negligence. The Disciplinary Committee ordered that B be suspended from practise for 12 months and that he refund the sum of \$500 paid to him by A.

B has appealed and has consulted you.

Write an opinion.

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