

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1981

STATUS, RIGHTS AND RESPONSIBILITIES OF THE LEGAL PROFESSION
Friday, August 21, 1981

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, Belize, or the British Virgin Islands, 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

Charles Henry Johnson, a bus driver employed with a bus company, was killed in an accident with another bus belonging to the said company at 11.45 on the night of Friday, April 3, 1980.

Two weeks later, the company in accordance with normal practice, conducted an inquiry into the accident during which a number of witnesses were heard and a report prepared accordingly. It appeared that one of the principal purposes for preparing such reports was so that they could be passed to the company's legal adviser to enable him to advise the company on its legal liability, and if necessary, to conduct its defence to proceedings.

In the meantime, Charles Henry Johnson's widow has been making several attempts to obtain compensation for her husband's death while on the job from the Managing Director of the company but her attempts have not been fruitful.

Charles' widow consults Mr. Roberts, an attorney. She is unable to inform him of the names of the witnesses on the spot at the time of the accident and she was not there herself. She informs Mr. Roberts, however, that the Managing Director of the company has a report of the inquiry on desk but has refused to give her a copy indicating that the report is the company's private property for despatch to its legal adviser.

Mr. Roberts is thinking of making an application for discovery but before doing so seeks your opinion on the issue of legal professional privilege.

Advise Mr. Roberts.

QUESTION 2

John Nicholson & Co. Ltd., hardware merchants, on March 1, 1979, brought an action against the defendant, Peter David, alleging various torts and breaches of contract extending from February 1974 to November 1978. Mr. Parry, an attorney, was retained by the defendant in the matter.

Mr. Parry was handed the copy of the Writ by the defendant and began preparing for the trial soon after. It was evident that the proceedings would be lengthy and the litigation complicated.

During the first week in May, 1979, Mr. Parry requested the defendant to put him in funds and sent a bill accordingly. The defendant disputed the amount of the charges although he paid some money but refused to pay any more.

On May 15, 1979, Mr. Parry wrote to the defendant stating that unless his costs were met by May 31, 1979, he would issue a summons applying to be removed from the record. There was no response from the defendant. By a letter dated June 30, 1979, Mr. Parry again notifies the defendant that unless he was paid he would apply to the court to be removed from the record and again there was no response from the defendant.

On July 7, 1979, Mr. Parry issued a summons applying for such an order. On July 12, 1979, the defendant instructed another attorney and duly gave notice of change of attorney.

The defendant now seeks the delivery of his documents from Mr. Parry to hand over to his new attorney, but Mr. Parry refuses to hand them over claiming a lien over them for unpaid costs.

The defendant consults you on the matter.

Advise him.

QUESTION 3

Stephen Coard is the managing director of Plastic Products (Jamaica) Ltd., a subsidiary of a large Canadian company. The subsidiary carries on business in Kingston. The terms of Mr. Coard's contract of employment stipulated that in any case of dismissal for unsatisfactory conduct or otherwise, the matter is to be determined by arbitration in Canada.

In October 1978, the company terminated the employment of the managing director and Mr. Coard duly referred the matter to arbitration. On March 5, 1979, the arbitrators awarded him the sum of \$15,000 in full settlement of all his claims submitted for arbitration.

In April, 1979, Stephen Coard consulted Mr. James, an attorney, to do all that was necessary to have the award made effective in Jamaica against his former employers and for this he gave Mr. James a certified copy of the arbitration award. Mr. James gave him to understand that he would pursue the matter.

Two months afterwards Mr. Coard called in at the office of Mr. James and in the course of conversation, Mr. Coard discovered that Mr. James had done nothing regarding the award. Mr. James had no entry of the interview in his diary and there was no note of the matter. Mr. James, however, promised to take the necessary action.

In December, 1979, a winding-up order was made against the company and it was revealed that the liabilities of the company at that date exceeded its assets by \$80,000. Stephen Coard, on hearing of the winding-up order, made inquiries of his matter and found out that Mr. James had still not taken any action and his claim against the company had not been included in the list of creditors.

Mr. Coard instructs you to write to Mr. James on his behalf and having done so, you receive a reply from Mr. James stating that while he thinks Stephen Coard had consulted him at his office in April 1979, and sometime afterwards, it is not his recollection that he had at any time told Stephen Coard he was going to court to secure a judgment of the Supreme Court in respect of the arbitration award. Mr. Coard assures you to the contrary and requests your opinion on his chances of success in an action against Mr. James.

Advise Stephen Coard.

QUESTION 4

To what extent is disciplinary control exercised over lawyers practising in jurisdictions within the Commonwealth Caribbean by:

- (a) the Courts;
 - (b) statutory and professional bodies.
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QUESTION 5

John Dowe, a farmer, was owner of a portion of land at Plymouth, where he lived with his wife until his death in 1972. By his will he left the land to his widow, Jane Dowe. Mrs. Dowe retained Miss Sylvestre, an attorney, to obtain probate of the will and to act in subsequent litigation.

Soon after obtaining the grant of probate in July, 1973, Mrs. Dowe, for a consideration of \$150, granted to Miss Sylvestre an option to purchase the land for \$10,000.

By letters in August 1973, Mr. Boysie Archibald agreed to buy and Miss Sylvestre agreed to sell the land for \$20,000 and Miss Sylvestre thereupon purported to exercise her option to purchase from Mrs. Dowe. About the same time there were other competing purchasers with whom Miss Sylvestre had come into contact and who were prepared to pay well over \$10,000 for the land.

In or about November, 1973, Mrs. Dowe, being advised that Miss Sylvestre could not compel her to sell her the property, sold it to Miss Annie Paul for \$25,000.

Mr. Boysie Archibald now brings an action against Mrs. Dowe, Miss Sylvestre and Miss Paul, claiming in the action to set aside the sale to Annie Paul, and to enforce the sale to Miss Sylvestre and by Miss Sylvestre to himself.

On what principle should the court decide the action?

QUESTION 6

Describe some of the duties which a legal practitioner owes to his client stating in the process any considerations or obligations which may override such duties.

QUESTION 7

Jim, a young attorney, will soon be entering practice on his own. What advice would you give him on how he should conduct his professional business with regard to:

- (a) retainer fees
 - (b) contingency fees
 - (c) keeping books/accounts.
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QUESTION 8

You are urging the Court of Appeal to hold that your client who was convicted and sentenced to imprisonment in the Court below, was deprived of his fundamental rights:

- (a) by his having been arbitrarily detained by the police, and
- (b) by not being allowed by the police to contact his lawyer/attorney while so detained.

What arguments and authorities would you consider appropriate in addressing the Court?
