

FOR REFERENCE ONLY

NORMAN MANLEY LAW SCHOOL - HUGH WOODING LAW SCHOOL

Council of Legal Education

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATION 1977

STATUS, RIGHTS AND RESPONSIBILITIES OF THE LEGAL PROFESSION

Friday, June 10, 1977

Instructions to Students

- a) Answer five questions only.
  - b) Time: 3½ hours
  - c) It is unnecessary to transcribe the questions you attempt.
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QUESTION 1

B. is the executor of a deceased person's estate of which A. was one of the beneficiaries. A. was entitled to receive Royal Bank of Jamaica 12½% bonds bearing a face value of \$15,000: or the proceeds thereof. After persistently requesting delivery of the bonds or payment of the proceeds A. filed a writ with supporting affidavit against B. on January 6, 1977 claiming (a) delivery of the bonds, and (b) an injunction restraining B. from parting with them. In reply to A's affidavit, B. swore and filed an affidavit prepared by C., the managing clerk to D., an attorney, denying allegations of wilful default and alleging that he was incapacitated for 12 months through illness and that after diligent effort he eventually sold the bonds for \$18,000 on January 4, 1977. The sum of \$18,000 was deposited into Court. B. had not been ill at any time. In December 1976 he had refused an offer of \$20,000 for the bonds which were not in fact sold, but were in the possession of C. who, together with his employer D., was aware of the facts. D. represented B. at the hearing of an application for an interim injunction on January 14. The trial judge, relying on the statements in B's affidavit, asked A. (who was not represented) whether he was willing to accept the sum of \$18,000 deposited into Court in addition to the costs of the action. A. consented to that course. D. merely consented to the order proposed by the judge. A. uplifted the money but subsequently discovered the truth and consults you. Write an opinion.

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QUESTION 2

At the continuation of his trial at 2 p.m. on the day following its commencement, A., who appeared as the defendant to a charge of possession of ganja, made an application to the magistrate for an adjournment on the ground that his attorney B. was not present and that he was not capable to conduct his own defence. In reply to the magistrate, the Clerk of Court said that B. had telephoned him early that morning to say that he was engaged in another magistrate's court about 20 miles away and that he was asking for an adjournment in the event A's case was proceeding that morning. The evidence for the prosecution up to that point was that the ganja was found in a dwelling house occupied by three persons of whom A. was one, and that the others were not present when the search was carried out by the police. The magistrate refused the application and A. was tried as an unrepresented person and was convicted. A. denied possession. B. had received \$100 in part payment of a fee of \$250, and A. was ready, willing and able to pay the balance.

Give reasons for any steps, if any, you may advise A. to take.

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QUESTION 3

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 4 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.

Write an opinion.

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QUESTION 4

On the last page of a newspaper called the Moon there was a statement that the newspaper was published by "Gaysers and Son Limited." On April 1, 1977, a writ alleging a libel contained in the Moon was issued by Hugh Laird against Gaysers and Son Limited on whose behalf an appearance was entered by J.A.Y. Walker, an Attorney, on the instructions of one Arthur McNaught. The defence admitted the publication of the words complained of, but pleaded justification and fair comment. In the course of the pleadings Walker prepared an affidavit in which McNaught swore that he was the managing director of the defendant company Gaysers and Son Limited. The action was heard. Damages in the sum of \$5,000 was awarded to Laird with the costs of the action which were later taxed at \$1,000. When execution of the judgment and costs was attempted, it was discovered that no company bearing the name Gaysers and Son Limited was registered by the Registrar of Companies and there was no record of the copyright of such a newspaper.

What action, if any, may Hugh Laird take to recover his judgment and/or costs? Write an opinion.

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QUESTION 5

A. requires an opinion advising what steps might properly be taken with respect to a writ filed against him by B. and C. claiming specific performance of an agreement of sale of a freehold interest in property upon which a cinema is operated. The facts are these:

B. an attorney, and C, his partner, are the trustees of an estate which comprised several parcels of land including a lot upon which a cinema was operated by D. who held a 21-year leasehold interest which was due to expire on December 31, 1977. There was a right of renewal for a similar period exercisable by the lessee upon giving 12 months notice prior to the date of expiry. A, who spent most of his life in the cinema business,

wanted to acquire a cinema with a freehold title and he discussed his wishes with C. after he had consulted B. professionally early in 1976. A. was aware that B. and C. were trustees of the estate. C. obtained two valuations of the freehold property; the first was based on the possible non-renewal of the lease and the second was based on the probable renewal of the lease for 21 years. Without disclosing the valuations to A. or B, C. negotiated with A. to sell the property for a price lower than the first valuation but higher than the second valuation on the probability that the lease might be renewed. The price was midway between the two valuations. A. believed that he had obtained a bargain, but later discovered that C. had obtained valuations. The lessee exercised the option to renew the lease.

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QUESTION 6

At the conclusion of the hearing of a running down action in which he had represented the plaintiff and in which judgment was reserved until the following day, Archie Bold, an attorney, applied to the trial judge that he might be excused from attending on the next day. His application was granted. Evan Meek, the attorney for the defendant, then asked that he also might be excused. Thereupon the judge, stating that the Court could not carry on in the absence of the attorneys for both parties withdrew the permission he had granted to Archie Bold and directed that both attorneys should attend the next day to receive the judgment. At the sitting of the Court on the following day Archie Bold was absent. No communication had been received from him by the Court or by his colleague Evan Meek. Immediately before delivering judgment in favour of the plaintiff, the judge stated that he considered Archie Bold's absence without leave amounted to contempt of court and fined him \$50, and ordered that in default he should be imprisoned for 30 days.

Advise Archie Bold about the merits of an appeal against the order made against him.

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QUESTION 7

David Hill devised his property, a coffee estate in the Blue Mountains, to his grandson Absolom for life; but subject to a power to sell the estate

when he attained the age of 25 years and, in that event, the proceeds thereof to be for his sole use and benefit absolutely. In the will, the testator devised a gift over of the estate to his nephew Jonathan in the event Absolom died having omitted to exercise the power of sale. Absolom was 11 years old when the testator died in 1960. His mother Delilah Hill, as his guardian and executrix of the estate, retained Abel Gully, an attorney, to advise her on the extent and nature of Absolom's interest in the estate. Gully advised her that Absolom, upon attaining the age of 25 years, would become entitled absolutely to the property. In December 1975, in response to Delilah's request for advice as to vesting the property in Absolom she was told by Gully that the transfer could conveniently await Absolom's return from Canada where he was undertaking a course of training to become an airline pilot. Delilah informed Absolom accordingly. In August 1976 Absolom was killed in a flying accident. He died intestate and was a bachelor. Before his death he had not exercised the power to sell the property which, as a consequence, devolved upon Jonathan.

After Absolom's death it was discovered that Abel Gully had mistaken the nature of Absolom's interest in the property.

Delilah Hill wants to know whether she has a right of action against Abel Gully and, if so, what is the cause of action and the remedy to which she may be entitled.

Write an opinion.

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QUESTION 8

Vincent Stream, acting as the attorney for Harry Waterman, arranged with Carl Flood for the purchase of a property for the sum of \$100,000. The purchase price was negotiated on the basis that the property was subject to a restrictive covenant against building on the eastern 1/3 portion of the land. Vincent Stream became ill and in his absence from work his partner Buster Dam inadvertently advised Waterman that the property was free from any restrictive covenant and was therefore wholly available for building. Waterman purchased the property for \$100,000, believing that it was wholly available for building. He felt satisfied that he had obtained a bargain and paid the whole of the purchase price. When he discovered the error he wrote Carl Flood saying that he did not wish to complete the sale and asked for a refund of the purchase money. Flood refused and sued Waterman for specific performance of the agreement. Waterman has consulted you. He

wants advice regarding:

- (1) any cause of action he may have against Buster Dam and/or Vincent Stream; and
  - (2) the merits of the action for specific performance filed against him by Carl Flood.
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