

FOR REFERENCE ONLY

NORMAN MANLEY LAW SCHOOL  
Council of Legal Education

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS 1978

STATUS, RIGHTS AND RESPONSIBILITIES OF THE LEGAL PROFESSION

Friday, June 9, 1978

Instructions to Students

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

QUESTION 1

Val Brice, an attorney, was convicted on indictment of the offence of fraudulent conversion of a large sum of money entrusted to him by a client. His defence was that his secretary had received the money and he did not know her whereabouts as she had since migrated. The client made an application to the Disciplinary Committee of the General Legal Council for Brice to be struck off the Roll pursuant to the provisions of section 12 of The Legal Profession Act, 1971 on the ground that he had been convicted by a court of competent jurisdiction of an offence involving misconduct in a professional respect. Each member of the Disciplinary Committee was furnished with a copy of the proceedings before the Supreme Court. An affidavit by the Registrar was filed exhibiting a sealed copy of the order of conviction. Brice was served with copies of all documents. At the hearing, Brice asked for an adjournment to call as a witness his secretary whose address in Canada he had by then discovered. The application was refused on the ground that the evidence of the order of conviction was conclusive against him. An order was made striking Brice's name off the Roll of Attorneys. Give the reasons for the advice you would give Brice who wishes to appeal.

QUESTION 2

Wong & Khan, a firm of attorneys, were trustees of property for sale and distribution to the beneficiaries of a deceased person's estate. The plaintiff purchased a property from Wong & Khan after an inspection had been made with Ramsingh, an employee of Smith Real Estate Ltd. which acted as the agent for Wong & Khan in the transaction of sale. At the inspection the plaintiff asked Ramsingh where the back boundary of the property was situated. Ramsingh gave a positive answer representing to the plaintiff that the boundary peg was in a gully. The peg was not discovered upon search in the gully either by the plaintiff or by Ramsingh who together looked for it. Ramsingh indicated in a general way the line along which the back boundary should fall. An agreement was signed in August 1975 and the plaintiff became the registered proprietor of the property in December 1975. In August 1976 the Municipal Corporation advised the plaintiff that it would be using its road reserve beyond the plaintiff's boundary for road widening. As a result of a survey, the plaintiff became aware that an area of about 126.465 square metres which he thought formed part of the land purchased by him was in fact a part of the road reserve. The plaintiff had, in the meantime, spent \$2,000 on improving that area. The plaintiff sued Wong & Khan and Smith Real Estate Ltd. He claimed damages on the ground of fraudulent misrepresentation, or alternatively, negligence by Ramsingh as regards Smith Real Estate Ltd. and for breach of contract and vicarious negligence by Wong & Khan. Wong & Khan have consulted you. Write an opinion.

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QUESTION 3

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 in default 3 months imprisonment. The attorney has consulted you. She wishes an opinion as to the merits of an appeal.

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QUESTION 4

Lemmon and Lyme were the sole partners in a firm registered in the name Lyme & Co. Violet Rose obtained judgment against Lyme & Co. Lemmon and Lyme together consulted Shaddock, an attorney, and sought his advice as to how they could defeat Rose's judgment. Execution issued by Rose against the goods of Lyme was stayed by interpleader proceedings at the instance of Lemmon who swore in an affidavit that the partnership was dissolved and that the goods were his by Bill of Sale. Unknown to Shaddock the affidavit was prepared by his clerk, Orrin Neek. Lemmon, Lyme and Orrin Neek are being prosecuted upon a charge of conspiring to defraud Violet Rose. Shaddock has given a statement to the attorney appearing for Neek to the effect that he had been consulted professionally by Lemmon and Lyme as to whether a Bill of Sale could legally be executed by Lyme in favour of Lemmon so as to defeat the judgment obtained by Rose, but that no suggestion was then made by either of them of any dissolution of partnership having taken place. Shaddock is being called as a witness for Neek. The attorney appearing for Lyme has consulted you about the admissibility of Shaddock's evidence. Write an opinion.

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QUESTION 5

Ada Punch is a semi-literate spinster who had saved money as a migrant employed in Great Britain between 1948 - 1965. She owned dwelling premises in Havendale and was also the mortgagee of a small property in the Red Hills district. Being dissatisfied with the income derived therefrom as a consequence of the devaluation of the currency and the statutory prohibition against the increase of the annual rental value of dwelling premises, she telephoned a firm of attorneys who shared a building with other attorneys. Ada Punch intended to speak to Black, White & Brown, but in error she was connected by the telephonist to Green & Pepper. She was advised by Green, to whom she spoke, to bring her deeds the following day. On the following day she visited Black, White & Brown. She met Ralph Rice, their managing clerk, who, in the course of his employment conducted without supervision the conveyancing business of that firm. Believing that her appointment had been made with Black, White & Brown, she discussed her dissatisfaction with Ralph Rice who induced her to give him instructions to sell the dwelling premises, and also to call in the mortgage loan. For that purpose she gave him her deeds for which he asked. Rice later induced her to sign two documents which he never read over nor explained to her, but which she believed from what he said that she had to sign in order to effect the transactions. The documents were, in fact, a conveyance to him of the dwelling premises, and a transfer to him of the mortgage. Ralph Rice dishonestly disposed of the property for his own benefit, and was indicted and sentenced to a term of imprisonment. Ada Punch has no other means of livelihood, and has come to the Norman Manley Law School Legal Aid Clinic. You are to advise the Director of the Clinic whether Punch has a cause of action, and if so, against whom.

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QUESTION 6

Ruth Kane is the sole beneficiary of her father's estate which includes a small cattle farm in Manchester near lands owned by Alcan Jamaica Ltd. The property was originally owned by her grandfather who purchased it in 1910 for \$1,000. In 1975 the property was valued at \$28,000 for purposes of Estate Duty. In 1976 an adjoining proprietor, John Peare, who maintained a tobacco cultivation, offered Peter Cawfie, her late father's attorney, \$35,000 for the property. Cawfie informed Ruth Kane who refused the offer. In the meantime Cawfie proposed to Alcan Jamaica Ltd. that the company consider purchasing Kane's property. Negotiations continued from time to time. Early in January 1977 Jimmy Beans, a Canadian speculator, in the course of

discussing investment possibilities with Cawfie, offered \$75,000 for Kane's property. On January 31 Alcan Jamaica Ltd. in a letter to Cawfie offered \$70,000, and said that that was their final offer. When told about Alcan's offer, Kane refused, and was about to leave Cawfie's office when he stated that he (Cawfie) would be prepared to offer her \$75,000 providing she gave him an option for \$1,000 to purchase in six months. He explained that he did not wish to keep the property, and that he would sell in the event he got an offer in excess of \$75,000. Ruth Kane agreed. The option in the agreement provided for the payment of interest by Cawfie at the rate of 6 per cent per annum on the sum of \$75,000. On June 30, 1977 Beans offered Kane directly the sum of \$100,000 for the property. Kane informed Cawfie that she wished to accept Beans' offer and asked him to agree terms of cancellation of their agreement. Cawfie has refused to do so, and has threatened to sue Kane for specific performance. In his consultation with you he frankly admits that Kane was not independently advised. Write an opinion on the merits of his proposed action for specific performance.

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QUESTION 7

At the conclusion of the trial of an action before the High Court, judgment was delivered in favour of the plaintiff with an order for costs. The attorney appearing for the plaintiff made an application to the judge for an order that Bruce McGregor, the attorney representing the defendant, should personally pay the costs of the action, or such portion as the Court may consider just, on the ground of his professional misconduct in the proceedings. The particular misconduct alleged against McGregor was that he had prepared, or caused to be prepared, affidavits of documents which were wholly inadequate and obviously false, and that he permitted his client, the defendant, to swear to those affidavits. Apparently, McGregor had left the conduct of the proceedings in the action largely to his managing clerk, a man of ability and long experience. When, however, McGregor realised what had occurred, he obtained from his client a proper affidavit of documents; but in the meantime, unnecessary costs had been incurred by both parties. McGregor has consulted you. Write an opinion on the question whether, and if so, upon what basis the Court has jurisdiction to order an attorney to pay costs to a party for whom he was not acting as attorney in so far as the conduct complained of was not committed by him, but by his clerk.

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QUESTION 8

Smellie, Smartt & Co., a firm of architects was the tenant of premises under a lease for 5 years which expired on December 31, 1977, and which contained an option to renew provided notice thereof had been given on or before June 30, 1977. The options were not exercised because the partners were uncertain as to whether they would continue the partnership. On November 30, 1977, the Jamaica Mutual Insurance Society Ltd., the owners of the building, in response to an enquiry by Barrington Brown, an attorney, advised Smellie, Smartt & Co. that they would have no objection to an application to the Court by Smellie, Smartt & Co. for the grant of a yearly tenancy, provided the application was made before December 31, 1977. On December 1, 1977 Smellie, Smartt & Co. retained Barrington Brown, and instructed him to make the necessary application to the Court for the grant of a yearly tenancy. He was paid the sum of \$500 for his fees and disbursements in the prospective application. In the meantime, assuming that the order for a new tenancy would be made by consent following their application, Smellie, Smart & Co. spent \$1,200 on refurbishing and restoring the interior of the premises. Barrington Brown failed to make the application to the Court, and on April 30, 1978 the Court made an order for possession to be delivered up on June 30, 1978 in favour of the Jamaica Mutual Insurance Society Ltd. Smellie, Smart & Co. paid an annual rent of \$6,000 for the premises. Suitable alternative accommodation is available from July 1, 1978 on a monthly tenancy at the rate of \$800 per month. Smellie, Smartt & Co. have consulted you, and wish to be advised what, if any, is the nature of their cause of action against Barrington Brown. Give reasons for your advice.

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