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NORMAN MANLEY LAW SCHOOL
Council of Legal Education

FOR REFERENCE ONLY

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1980

STATUS, RIGHTS AND RESPONSIBILITIES OF THE LEGAL PROFESSION

Thursday, May 22, 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, Belize or 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

What are the professional obligations inherent in the relationship created by a retainer? Comment briefly on the means whereby the relationship may be established and terminated.

QUESTION 2

At his trial Perturbed was unrepresented and he observed that whilst the witnesses for the prosecution were giving their evidence the judge listened most attentively and recorded laboriously almost everything they said. However, when Perturbed was cross-examining these witnesses he noticed that the judge made no notes even when the witnesses gave answers which were favourable to his defence. Fearing the worst, during the luncheon adjournment Perturbed engaged Blabb, Q.C. and related to him what had so far transpired at the trial in the morning session.

At the resumption and before the prosecution continued its case Blabb announced to the court that he appeared for Perturbed, only to be greeted with a grunt and a frown from the judge. The judge's behaviour in the presence of Blabb was very much the same as when Perturbed was unrepresented. Feeling that Blabb's presence was not helping his case in any way Perturbed scribbled him a note stating inter alia - "Call it off. It's no use" Blabb proceeded to make the following statement to the judge:

"My Lord my client has asked me to say that he has had enough. He honestly believes that he will not get justice here. He does not wish to take any further part in the proceedings and he sees no useful purpose in continuing my retainer. He is confident that he will get justice higher up."

Blabb then withdrew; whereupon the judge had him brought back to court and ordered that he should show cause why he should not be cited for contempt of court for the things he had said. Blabb replied that he was only doing his duty to his client. He was found guilty and fined.

On the following day, when Blabb did not appear at the continuation of Perturbed's trial, the judge had him brought to court again and ordered that he should show cause why he should not be cited for contempt by reason of his failure to appear and defend his client. Blabb's reply was that his client didn't think that he (Blabb) could be of any further assistance to him in the case. Blabb was again found guilty of contempt and fined.

Advise whether either of Blabb's convictions was justified.

QUESTION 3

In May, 1976, Augustus, an Attorney-at-Law, practising in Tortola, was retained by Beulah to prepare her Will. Instructions were duly taken by him and shortly afterwards he attended Beulah at her home to have it executed. The draft Will was read and upon being satisfied that she understood the contents and that they conformed with her instructions, Augustus enquired about the availability of two persons whom he said should be witnesses to her signature and who should both be present when she signed. He also told Beulah that neither of the witnesses should be a beneficiary under the Will. Nobody was then available to be a witness so Augustus left the draft Will in Beulah's possession requesting her to sign it and have her signature witnessed in accordance with the attestation clause. In August, 1976, Beulah signed the Will in the presence of Charles and Donald who witnessed

her signature. Charles was named in the Will as the Executor. In October, 1976, Beulah sent the Will to Augustus for safe-keeping and at the same time forwarded her cheque in full payment of fees.

Beulah died in 1978. Charles informed Florence, to whom Beulah had bequeathed the residue of her estate valued at \$10,000 that she will not receive the legacy because Florence is the wife of Donald to whom she was married in July, 1976. Florence has consulted you about obtaining her legacy.

Write an opinion.

QUESTION 4

P asked A, a legal practitioner, to find a purchaser for his property for which, if successful, he would pay A a commission of 10% of the price for which it is sold. Unknown to P, A is an agent of D. Co. and, in fact, one of its directors. A arranged a sale to D. Co. but before the contract was entered into or the commission had become payable P became aware of A's relationship to D. Co. P completed the contract without disclosing to D. Co. as purchasers the agreement to pay commission to their agent A.

By further agreement between P and A, before the commission became due, an immediate payment of a sum less than that agreed on was substituted. Having discovered the existence of these two agreements and the payment of the substituted sum to A, D. Co. wishes to be advised as to whether he can recover the amounts agreed to be paid and the amount in fact paid; as commission and from whom.

Advise D. Co.

QUESTION 5

The plaintiffs, a husband and wife, became stranded on a highway when their car developed engine trouble. Gibson, an employee of a service station, arrived in his car to try to start the plaintiffs' car. Because it was raining the plaintiffs got into Gibson's car. While Gibson was turning his car around in the middle of the highway in order to connect the two batteries with jumper cables, it stalled and was struck by another car.

Gibson was killed and the plaintiffs were injured. The defendant, Cannon, an attorney-at-law, represented Gibson's family and the plaintiffs in an action against the driver of the other car. This action was dismissed on the ground that Gibson's negligence was the sole cause of the accident. By this time the limitation period within which the plaintiffs could claim against Gibson had expired. The plaintiffs brought an action for negligence against Cannon the attorney, for failing to advise them of their possible claim against Gibson's estate. Their action against Cannon was dismissed. They wish to appeal and have consulted you.

Write an opinion.

QUESTION 6

You have been consulted regarding a proposal to draw up a Code of Ethics for the Judiciary.

What are the main provisions you would recommend for inclusion and what are the factors which motivated those you have selected.

QUESTION 7

"Police entering the office of an attorney-at-law under a search warrant should not regard themselves as having an unlimited licence to search all his documents meticulously for evidence of any crime his client might have committed. Some sorting there must be in order to execute the warrant, but in conducting a search in the offices of an attorney that sorting should, as far as possible, take place in the attorney's office and be so conducted that documents which are clearly both privileged and inadmissible can be eliminated at once and without perusal of their text."

Comment on this statement with reference to decided cases.

QUESTION 8

Ernest has paid over a large sum of money to his Solicitors/ Attorneys-at-Law, Shark & Co. and indicated that at a later date he would furnish them with instructions as to the business activity to which it should be applied. Shark & Co. proceeded immediately to invest the money. It was not until a year later that Ernest got around to communicating his requirements. Having learnt what use had been made of his money and knowing how ungenerous Shark & Co. were, Ernest has been heard to express the wish that there was a way he could get Shark & Co. to give him some or perhaps even all of the large profit they had made by investing his money.

Advise Ernest.
