

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1981

STATUS, RIGHTS AND RESPONSIBILITIES OF THE LEGAL PROFESSION

Friday, May 22, 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.
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QUESTION 1

In April, 1979, Mrs. Jane Hackee, a wealthy higgler, was urged by her husband to make a will. He took her to the Chambers of his good friend Mr. Quik, attorney-at-law.

Mrs. Hackee instructed Mr. Quik to draw up a will bequeathing fifty dollars to her husband and to devise the residue of her estate, real and personal, to her dear nephew Mick.

Mr. Quik drafted the will in accordance with his client's instructions and sent it to her in the post with an enclosed document setting out how the will was to be executed and attested, and emphasising in bold type that Mrs. Hackee must sign the will in the simultaneous presence of two adult witnesses who in turn must sign their names in her presence and in the presence of each other.

Mrs. Hackee succumbed to her husband's insistence that Mick's wife, Mary, and Mr. Slik, a Customs Officer, sign the will as attesting witnesses. The will, executed and attested, was returned to Mr. Quik who filed it in his largest cabinet marked "ESTATES-SPECIAL".

Soon after, Mrs. Hackee confided to Mick that Mr. Quik was keeping the will under which she had left most of her property to him.

In December, 1980, Mrs. Hackee fell ill and died. The next week Mick called to see Mr. Quik who apologised profusely for "a little mistake in the will" explaining that he had now noticed that Mick's wife, Mary, was an attesting witness to it, resulting in the loss of the devise to Mick under the Wills Act.

Mick, furious, rushes out of Mr. Quik's Chambers shouting "I'm going to sue you for everything and you will have to pay all my legal expenses to boot!"

Mr. Quik, gravely worried, asks you to advise him comprehensively as to (a) liability and (b) consequences of such liability, in anticipation of Mick's instituting legal proceedings against him.

QUESTION 2

Identify five areas in which an attorney:

- (i) has a duty to assist in maintaining the dignity of the Courts;
- (ii) has a duty to maintain a proper professional attitude towards his fellow attorneys.

QUESTION 3

Jack Thorne was the registered owner of an estate at Bell Hall consisting of 500 acres of flat arable land fully cultivated in citrus. He had been cultivating the estate for the past 20 years but was now advancing to old age. On 1st January, 1970, he leased the land to his nephew, Tom Thorne, at a yearly rental of \$1,200 and nearly two years afterwards having been well pleased with Tom's performance, he gave him an option to purchase the estate to be exerciseable within 8 years from 1st January, 1972, at a price of \$40 an acre.

They proceeded to the chambers of Mr. Y on 15th December, 1971, where a document was drawn up by the attorney giving effect to the agreement made by Jack Thorne and his nephew as described previously. Mr. Thorne signed the document after reading it carefully and at the same time he handed Mr. Y his registered title to the estate. Mr. Y placed both documents in his own iron safe.

In April, 1979, Jack Thorne paid a visit to the estate and he was very displeased with what he saw and quarrelled violently with his nephew. In the following month he discovered that Mr. Y still had both documents locked in his safe and that the option was never registered as required by the local law. Jack Thorne thereupon obtained his title from Mr. Y and sold the estate to his niece Alice Thorne for \$10,000 on 10th September, 1979.

On hearing of the sale to his cousin 6 months afterwards Tom Thorne brought an action against Jack Thorne and joined Alice Thorne. He obtained an award against Jack Thorne for damages. By that time Jack Thorne was very ill and had little money left.

Tom is quite perturbed with Mr. Y as he had on a number of occasions since early 1972 consulted him on the question whether he should exercise his option. The limitation period for such matters under the local law is 6 years.

Tom Thorne consults you on his chances of an action against Mr. Y.

Advise him on what grounds, if any, can Mr. Y be held liable and his chances of succeeding in the action.

QUESTION 4

(a) What are the governing factors, legal and ethical, in the consideration of adequate remuneration for attorneys?

(b) Comment on the allegation that attorneys never return fees paid and documents given them by their clients.

QUESTION 5

Mr. U.P. Startt, an attorney appearing as counsel for the accused in the recently concluded case of R v Nick, applied to the trial judge Mr. Justice Fairplay, for an adjournment on the ground that he wished to take instructions from two vital witnesses for the defence whom he had not seen before, as they had been out of the country until that very morning. The judge refused the application and proceeded with the trial.

Later on the same day, as the Court was about to recess for lunch, Mr. Startt repeated his earlier application and Mr. Justice Fairplay again refused. Whereupon Mr. Startt asked the judge to disqualify himself from further hearing of the case as he considered his conduct unjudicial. Mr. Justice Fairplay enquired of counsel whether he was imputing that the court was lacking in honour and integrity, and counsel replied that his mention of unjudicial conduct referred to the rejected application.

Promptly thereafter, Mr. Justice Fairplay charged Mr. Startt for contempt of court, and committed him to prison for a term of five days.

The judge's reasons for his decision which were subsequently written and delivered, stated inter alia that Mr. Startt had impugned the honesty and integrity of the Court. Mr. Startt wishes to appeal the decision.

Advise Mr. Startt on the relevant ethical considerations of his own behaviour, and, with reference to decided cases, on the legal aspects of the judge's conduct.

QUESTION 6

"There has been an age-long complaint that the cost of the law prevents the poor man from getting justice. Some facilities for free assistance have existed for many years, but they were inadequate."

To what extent is this statement true and how is the complaint being remedied in the Commonwealth Caribbean?

QUESTION 7

Miss De Prive, a citizen of a neighbouring Caribbean country, State X, which is a member State of the Organisation of American States, has been referred to you by the local Human Rights Society.

The Society instructs you that on May 15, 1978, while Miss De Prive was peacefully picketing the Parliament of State X together with six other persons, she and three of them were seized by the national police and imprisoned without trial. Miss De Prive escaped from prison after six months and consulted a lawyer in State X who instituted proceedings in Court there in July, 1979, for wrongful imprisonment of herself and her three colleagues. Nothing more has since been heard of these proceedings and the others were still in prison.

The Society wishes to have the plight of Miss De Prive and her imprisoned colleagues brought before the Inter-American Court of Human Rights as a complaint.

Briefly advise the Society on all matters necessary to be considered and done before the Inter-American Court can hear the complaint against State X.

QUESTION 8

With reference to decided cases, state the legal position as regards attorneys' liability for damage which results from their conduct:

- (a) in negligently advising on matters preliminary to instituting legal proceedings;
 - (b) in negligently conducting a client's case in Court;
 - (c) in giving a legal opinion gratuitously without any reservation.
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