

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1982

STATUS, RIGHTS AND RESPONSIBILITIES OF THE LEGAL PROFESSION

Monday, May 17, 1982

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 any Commonwealth Caribbean territory, 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

In June, 1981, Mr. Winston Wise, an attorney practising in Jamaica, was engaged by Mrs. Nullty to file and prosecute to finality, a petition for divorce on her behalf. Mr. Wise charged and was paid a fee of \$1,000. He filed the petition in September, 1981, on the grounds of cruelty and adultery, but forgot to specify the acts of cruelty and adultery in the petition.

Mrs. Nullty, a three-time divorcee and senior secretary for several years in a legal firm, noticed the omissions and brought them to Mr. Wise's attention. Mr. Wise prepared documents and made application for appropriate amendments to the petition but the application was refused because, inter alia, the summons by which it was made was defective.

Not wanting to let Mrs. Nullty know the result of the application for amendment, Mr. Wise told her that all went well with the application and that he was doing his best to obtain an early hearing of the petition.

In February, 1982, and several times thereafter until April, 1982, Mrs. Nullty enquired about the date of hearing but Mr. Wise kept assuring her that he was "working on it".

Mrs. Nullty is now thoroughly disgusted and dissatisfied with Mr. Wise and discovered last week that the application for amendment to the petition had been unsuccessful. She now consults you for advice and about filing an application to any authority you consider relevant, requiring Mr. Wise to answer allegations of negligence and professional misconduct based on the above facts.

Advise Mrs. Nullty.

QUESTION 2

Mr. O. Prest, a citizen of Jamaica, while holidaying in a Montego Bay Villa, is rudely awakened from his bed at 3:00 a.m. by the police and taken handcuffed to a city police station where he spends two days in the lock-up under the most appalling conditions. On the afternoon of the second day, after he is given his first good meal since arrival and promised another, and possible release if he tells the truth, the police accuse Prest of having been involved with several other persons unknown, in smuggling ganja to the Cayman Islands; but Prest denies the accusation and repeatedly protests his innocence.

On the third day, Prest is transferred to a more comfortable room in the police station and told by the sergeant that if he comes clean he would be released by midnight. Prest constantly requests that the sergeant phone his Kingston lawyer, Mr. Rites, but his requests are constantly refused or ignored. On the fourth day, Prest, desperate and defiant, attempts to escape from the police station but is intercepted by the sergeant and in the scuffle which ensues, Prest butts the sergeant to the ground.

Prest is eventually brought before the Justices and charged with assaulting a police officer in the execution of his duty. After a brief trial in a closed courtroom from which the public is excluded, Prest is convicted of the offence charged and is sentenced to one month's imprisonment. During the trial Prest is not allowed to cross-examine the sergeant.

Prest manages to send a message to Mr. Rites informing him of his plight and requesting him to take his case to the Inter-American Court of Human Rights without further delay.

Impressed, but ignorant, Mr. Rites asks you to write him an opinion on:

- (i) the justiciable rights of Prest which have been violated, having regard to the above facts in relation to the relevant domestic laws and to the American Convention on Human Rights;
 - (ii) what requirements must be satisfied in order to obtain a hearing of Prest's case before the Inter-American Court of Human Rights.
-

QUESTION 3

"Practising attorneys, like all businessmen, are free to advertise their services as they please." Critically examine this statement in relation to lawyers in the Commonwealth Caribbean today, making comparative reference to advertising by lawyers in other common law jurisdictions.

QUESTION 4

What constitutes a retainer in the relationship between attorney and client?

Advise specifically on:

- (i) the retainer of an attorney by an unincorporated body;
 - (ii) confidentiality of the client's business by an attorney retained;
 - (iii) the scope of an attorney's authority when retained in contentious business;
 - (iv) the termination and effect of termination of a retainer.
-

QUESTION 5

In September, 1979, Andrew Leacock brought an action against Dorothy Austin for an alleged trespass to his lands situated at Woodbine. Andrew was represented by Miss Parker and Dorothy by Mr. Webb. The matter was set down for hearing in Court No. 3 before Mr. Justice Mark.

In the course of the trial a noisy quarrel developed between the attorneys, Miss Parker and Mr. Webb, as a result of which each abused the other. The trial judge warned them to stop but the exchanges continued loudly and rapidly, and in fact disturbed the proceedings in the adjoining Court No. 2.

When the trial judge gave a second warning, Mr. Webb picked up his papers and proceeded to leave the court, whereupon Miss Parker shouted "You are a stupid man and nothing but a wretched and dishonest idiot!" Judge Mark asked Miss Parker to account for her behaviour and she replied, "Mr. Webb is the most ignorant lawyer I have come across". The judge thereupon fined both counsel \$200 for contempt of court and suspended them from practising in his court for a period of one month. The matter was adjourned sine die.

Both attorneys consult you, stating, inter alia, that they were not misbehaving towards the court but between themselves and therefore what had taken place did not amount to contempt of court.

Advise Mr. Webb and Miss Parker.

QUESTION 6

Discuss and illustrate by reference to decided cases, the principles by which courts in the Commonwealth Caribbean should be guided in considering an attorney's fiduciary obligations to a client.

QUESTION 7

Mrs. Jonah, a 65-year-old widow who until recently lived on her farm at St. Joseph, 25 miles away from the city, called upon Mr. Aubrey Symes, an attorney, on March 15, 1980, at his chambers and complained of the difficulty she has been having with Mr. and Mrs. Roberts over the boundary lines separating their farms. Mrs. Jonah, fearful of the Roberts family, has decided to quit the area and take up residence in the city. She instructed Mr. Symes in respect of the farm.

As a result of their deliberations, Mr. Symes, two weeks later, drew up a deed settling the farm on Mrs. Jonah for life and thereafter to her niece, Mrs. Aubrey Symes absolutely. Mr. Symes named himself as the

sole trustee of the settlement. On April 5, 1980, Mr. Symes took the document for execution to Flat No. 15 in the block of flats where Mrs. Jonah had taken up residence. The document was executed by Mrs. Jonah and witnessed by the occupant of Flat No. 16, Miss Sandra Bone, who had a careful look at the document. About three months previously Miss Bone had been admitted to practise as an attorney.

In December, 1980, relations between Mrs. Jonah and Mr. Symes became strained and she consults you.

Advise her.

QUESTION 8

With reference to decided cases and specific provisions in the Constitution of any Commonwealth Caribbean State as well as in recognised International instruments, support the contention that every person is entitled to a fair trial in a Court of Law.
