

NORMAN MANLEY LAW SCHOOL - HUGH WOODING LAW SCHOOL

Council of Legal Education

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LEGAL EDUCATION CERTIFICATE EXAMINATIONS 1976

STATUS, RIGHTS AND RESPONSIBILITIES
OF THE LEGAL PROFESSION

Monday, June 14, 1976

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.
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QUESTION 1.

A qualified as a barrister-at-law and was admitted to practise in October, 1960. B was admitted to practise as a solicitor in April, 1930.

A and B were the legal representatives of C, as plaintiff, in an action for recovery of possession of land. In a written judgment the action was dismissed in December, 1975, on the ground of prescription as pleaded in the defence and counter claim. Judgment was entered for the defendant.

On the day after the delivery of the judgment C paid to A the sum of \$300 with instructions to prosecute an appeal. The money was understood to cover -

- (i) disbursements, including the filing of the notice of appeal; and
- (ii) payment on account of professional fees to A and B.

C was not told the sum he would be required ultimately to pay for professional fees.

No notice

No notice of appeal was filed within the prescribed time; but subsequently, unsuccessful proceedings for the purpose of obtaining leave to appeal out of time were twice initiated by B acting on the advice of A. The total costs of these proceedings awarded by the Court against C amounted to \$500.

C has consulted you and requests advice as to the proceedings, if any, which may be taken against A and/or B.

QUESTION 2.

A, a legal practitioner, was summarily convicted of allowing premises, of which he was the landlord, to be used by the tenant as a brothel. As a consequence an application was made to strike his name off the roll on the ground that he was not fit to be a legal practitioner.

You are retained to advise A. Write an opinion. Would your opinion be the same if A had been convicted of driving a motor vehicle while under the influence of alcohol?

QUESTION 3.

A has been sued by B, a legal practitioner, for the sum of \$400, being the balance of a fee of \$1,000 agreed upon retainer to be paid by A in proceedings involving the seizure and sale of a ship. Proceedings against B by E, the purported purchaser of the ship are pending.

The facts are these:

B, acting on behalf of A, the master of a ship, instituted proceedings against the ship and her owners claiming \$5,000 for services rendered and goods supplied on their behalf. The owners, who were resident out of the jurisdiction, entered an appearance to the action through C their legal representative who, within the knowledge of B, died shortly afterwards. About two weeks after C's demise B, acting

on A's behalf

on A's behalf, caused the ship to be seized and, in default of defence, obtained judgment for \$5,000 with costs; at the time, B knew that one of the owners had arrived and consulted D, a legal practitioner, who had previously represented the owners in other matters. Ten days after the date of the judgment B filed a summons "for all parties concerned" to attend Court on an application on the part of A for an order that the ship be sold for \$20,000. The appraised valuation of the ship was \$30,000. No notice of the summons was served on the owners or on D, or on the legal representative of C's estate. The Court made an ex parte order for the sale of the ship by private treaty for \$20,000. B sold the ship to E for \$20,000. After deducting the judgment of \$5,000 B retained the balance pending taxation of a bill of costs. The day after the sale D filed a notice of change of legal representative on behalf of the owners. D thereafter successfully brought proceedings to set aside -

- (i) the ex parte judgment and costs;
- (ii) the order for sale; and
- (iii) the purported sale thereunder by B.

You have been retained to advise B. Write an opinion.

QUESTION 4.

Ruth James, a friend of John Thomas, a law student, brought affiliation proceedings against Mark Luke. The proceedings were defended. At an adjourned hearing John Thomas accompanied Ruth James who was unrepresented. Thomas intended to assist her by taking notes of the evidence and by giving such advice or making suggestions as the occasion might seem to require. While Mark Luke was being examined in chief by his legal representative, Thomas gave James a piece of paper upon which a list of questions was written.

The presiding Magistrate demanded to see the document and asked Thomas whether he was attending Court in the capacity of a lawyer's clerk. Thomas said he was a friend of James and that he had attended voluntarily to assist her in the conduct of her case. The Magistrate said he would not allow Thomas to take part in the proceedings and requested him to leave the Court. James was not permitted to use the list of questions.

Was the action of the Magistrate correct? Give reasons for your answer.

QUESTION 5.

The Misses A and B, the elderly spinster sisters of a deceased testator were trustees for the sale of a sugar estate. Their younger brother C, acting upon their request, retained D, who had been the legal adviser of the deceased testator, to act on his sisters' behalf in the sale of the property and the investment of the proceeds in trustee securities. At the interview, D advised C against his wish to advertise the property for sale and he promised to obtain a purchaser. Shortly afterwards D informed C that E was prepared to pay \$140,000 for the estate. At a time appointed by D, the trustees Misses A and B visited his office and, having accepted the offer of \$140,000 signed an agreement of sale with E who then deposited \$14,000 with D. A and B believed that E was the only and true purchaser and that D was acting as their legal adviser.

In fact, previously to the visit by the trustees, D had arranged with E, who needed only a small portion of the estate, to purchase the whole estate in E's name in order to sell to D a large specified portion which D arranged to sub-divide and sell in separate housing lots at a handsome profit.

There was no suggestion that \$140,000 was not a reasonable purchase price for the sugar estate, but acting upon the advice of C who learned about the transaction between D and E the trustees refused to complete the sale.

Advise E who has consulted you about an action for specific performance against A and B.

QUESTION 6.

A is a prominent legal practitioner of 15 years standing with a large practice in Company Law. He is a member of a service club which conducts a weekly lunch for its members and visiting friends. Over drinks before lunch B, a visitor, in the presence of A, informed C with whom A was in partnership, that he intended to purchase shares in the X company which had issued a prospectus that day. B asked C whether he thought it was wise for him to do so. C said he was not competent to advise and he thereupon asked A what he thought about it. A said he would need to see the prospectus before expressing an opinion. B handed the prospectus to A who appeared to be reading the document when the bell for lunch rang. A kept the document and at lunch sat apart from B and C.

After lunch,

After lunch, when B was about to leave the premises A called out to him and handed him the prospectus. B said- "What do you advise me to do - a debenture or shares?" Looking thoughtful, A said- "Five thousand dollars in shares should do." B enquired whether A thought it would be a good and safe investment. A's reply was that he was thinking of investing \$5,000 himself.

B bought \$10,000 worth of shares. There was however an error in the calculations in the prospectus which had the effect of misrepresenting the state of financing of the company's operations. The company was a failure from the start and B lost his whole investment.

You have been retained by B who is contemplating an action. Write an opinion.

QUESTION 7.

In your capacity as the legal practitioner responsible for the conduct of the case what steps would you take or, where necessary, what advice would you give in any three of the following circumstances:

- (a) You have been briefed to defend A on a charge of murder. About two weeks before the date fixed for the trial of the indictment A confesses to you that he killed the deceased, who was a watchman, while escaping from commercial premises which he had robbed in company with 2 other men.
- (b) During the trial of an indictment for murder upon which the defence to be relied upon is an alibi the accused confesses to you, before the case of the prosecution is closed, that he killed the deceased policeman and stole his revolver. The prosecution case is based on circumstantial evidence.
- (c) During the hearing of a petition for divorce on the ground of adultery, the petitioning husband informs you that he resides permanently with a spinster who has borne him three children but whom he does not intend to marry. No discretion statement was filed.
- (d) After obtaining

- (d) After obtaining an interlocutory order for an injunction made by a judge on the strength of affidavits filed by both parties you are satisfied that the facts sworn by the plaintiff, whom you represent, are substantially false.
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QUESTION 8.

A, aged 40, was severely injured in the course of his employment with the Telephone Company. He suffered 40 per cent permanent incapacity and, as a workman, received weekly payments of compensation for injury under the appropriate legislation. The accident causing the injury stemmed from negligence of a fellow workman in the course of his employment. A was dissatisfied with the weekly payments he received and retained B, a legal practitioner to handle the matter. Proceeding on the basis that the matter was simply a claim by a workman for compensation, B after hearing all the facts, negotiated with the Telephone Company and succeeded in obtaining larger weekly payments which continued for 4 months before A resumed duty.

A's incapacity considerably reduced his chances of promotion and after one year his employment was terminated by notice. A is dissatisfied and has consulted you. What advice would you give A? What is your opinion regarding B's conduct.
