

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 1995

STATUS, RIGHTS AND OBLIGATIONS  
OF THE LEGAL PROFESSION

(Wednesday, May 17, 1995)

Instruction to Students:

- (a) Time: 3½ hours.
- (b) Answer FIVE questions.
- (c) In answering any question, a student 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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

In October 1993, Patsy Young went to the office of John Jones, an attorney-at-law, for advice on how best to put an end to the persistent pestering of a former male friend. John Jones advised her that an injunction should be obtained against the young man and this would cost about \$3,000.

An injunction was duly filed by John Jones on behalf of Patsy Young and a date for hearing was fixed for January 15, 1995. When the matter came up for hearing Patsy Young did not attend the Court. John Jones applied for an adjournment informing the Court that he had written Patsy Young advising her of the date but he had not heard from her.

The matter was adjourned to another date but costs was awarded against Patsy Young.

On the adjourned date, Patsy Young attended the Court and expressed surprise that the suit was filed in the matter. She told the Court that though she was advised by John Jones in the matter she had not instructed him to file suit. John Jones informed the Court that he had indeed been instructed by Patsy Young to file suit in the matter.

Write an opinion on the course of action the Court should take.

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QUESTION 2

Robert, an attorney-at-law, was summarily convicted in the Magistrate's Court of allowing premises of which he is the owner to be used for the purpose of operating illegal casino gambling. On

conviction, the magistrate had directed the clerk of court that the matter should be referred to the Disciplinary Committee for action to be taken against Robert.

Write an opinion advising the clerk of court on the matter of discipline of an attorney-at-law generally and in particular as to the procedure to be adopted.

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QUESTION 3

Albert, an attorney-at-law, was engaged by Bertram to handle a number of legal transactions. Albert sent Bertram a bill covering his fees for those transactions which he had completed.

Bertram refused to pay anything, contending that Albert was not entitled to any payment until all the transactions were completed.

Albert thereupon informed Bertram that he was terminating the retainer. He promptly sued Bertram for his fees. Bertram consults you and seeks your advice.

- (a) Advise Bertram on all relevant issues.
- (b) Would it make any difference if Albert knew that Bertram was about to emigrate to another territory?

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QUESTION 4

Karl, an attorney-at-law, is engaged by Joshua, a long standing client, to act for him in a number of legal matters including an action for damages for breach of contract.

Joshua is dissatisfied at the way the action for damages is being handled by Karl. He consults Marla, another attorney-at-law about the action. Marla immediately agrees to act for Joshua in the matter and has written to Karl demanding from him all the papers belonging to Joshua. Karl is reluctant to do so as fees in the matters are outstanding. He also feels that he would be losing Joshua as a client.

Advise Karl on -

- (a) Marla's conduct in accepting the brief;
- (b) whether he can retain the papers belonging to Joshua;
- (c) the steps he may take to recover the outstanding fees.

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QUESTION 5

In June 1994, Joshua Collings entrusted to attorney-at-law, Roshni Ghany, the sum of \$50,000 with instructions that the amount be paid immediately to Caribbean Savings Bank Limited.

In August 1994, Collings discovered that the amount was not paid and requested the immediate return of the money. Despite repeated written and verbal requests the amount was not repaid. On April 5, 1995, Collings commenced legal proceedings for the recovery of the money. An order for summary judgment for the amount was made against Ghany by Walsh J who is of the opinion that proceedings should be taken against Ghany as he considers that Ghany's conduct in the matter amounts to conversion which makes him unfit to continue to be a member of the legal profession.

Write an opinion as to the courses of action which may be taken against Ghany in the circumstances.

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QUESTION 6

Frederick Ferguson, an attorney-at-law, angered by the difficulty he experienced in getting the Registrar of the Supreme/High Court to fix a date for hearing of an action that was filed some time ago, wrote the Judge before whom the hearing was fixed complaining of the incompetence and insensitivity of the Registrar.

Ferguson is summoned by letter before the Court whereupon the judge asked him - "Do you recognise that as an officer of the court your letter is a contempt of court?" He thereupon, without more, sentenced Ferguson to seven days imprisonment.

Ferguson wishes to appeal and seeks your opinion on the likelihood of success.

Write an opinion.

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QUESTION 7

In May 1990, Peter Sanderson instructed his attorney-at-law, Michael Shaw, to prepare his will.

Shaw prepared the will in accordance with Sanderson's instructions which included a bequest of \$200,000 to Rex, his friend and executor of the will. Shaw posted the will to Sanderson for execution. He failed to inform Sanderson that the will should not be witnessed by a beneficiary or spouse of a beneficiary as

this would render the gift to the beneficiary void.

When Sanderson signed the will, Rex's wife signed as a witness. The gift to Rex was therefore void.

Sanderson has recently died and Rex is seeking your advice on whether he has any redress against Shaw.

Advise Rex.

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QUESTION 8

James owned a house in your territory but resides in Canada. He retained Junor Thomas, an attorney-at-law, to act on his behalf on the sale of the house. Junor Thomas was to find a purchaser.

James subsequently received a letter from Junor Thomas enclosing a copy agreement for sale for his signature. The agreement stated the purchase price to be \$2,000,000 and the purchaser as "R & B Ltd. or its nominee". James signed the agreement and returned it to Junor Thomas.

Junor Thomas is the principal shareholder and sole director of R & B Ltd., but this was not made known to James and it was not until a year later that James learnt of this when the instrument of transfer was sent to him for execution containing Junor Thomas as the transferee.

James became suspicious, and making enquiries, learnt from a real estate friend of his that the property at the time of the sale was worth at least \$4,000,000.

Advise James who wishes to set aside the transaction and to take Junor Thomas before the disciplinary tribunal.

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