

FOR REFERENCE ONLY

511
NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION
MONA, KINGSTON 7, JAMAICA

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1984

STATUS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

Monday, May 21, 1984

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

By a general retainer Mr. Grange Hill employed Miss Arima as his attorney in 1980. In January 1983 he agreed in writing to sell to Miss Arima or her assignee a dairy farm for \$30,000, and to complete the sale within 12 months. In December 1983 Miss Arima, unknown to Grange Hill, assigned her interest to Gregory Smith for \$45,000. In March 1984 Grange Hill terminated his retainer with Miss Arima and later that month agreed in writing to sell the dairy farm to Mrs. Pepper Corn for \$40,000.

Grange Hill has rejected Gregory Smith's request to complete the sale and Smith has consulted you about an action for specific performance.

Advise him.

QUESTION 2

Leo Augustus Ltd., is a small company which buys locally grown fruit directly from the growers and processes them into canned juices for export. An accident occurred in the factory on October 5, 1983, resulting in serious injury to a worker named Emmanuel Green. The head injuries he thereby suffered severely affected his speech. The Managing Director requested the foreman to prepare a detailed account of the accident for the purpose of submitting a copy to Ben Johnson, the legal adviser of the company, in the event litigation should ensue. Accordingly, a detailed report was prepared and sent to Ben Johnson on November 17, 1983.

During September, 1983, the company had been under investigation for fraud by the Inland Revenue Department as a consequence of discrepancies between their accounts for the previous tax year and accounts submitted by two citrus growers who regularly sold their produce to the company.

The Managing Director consulted Ben Johnson. He left with him the purchases and sales records for the year in question. The Inland Revenue Department called in the Criminal Investigation Department. After a search warrant was issued by a Magistrate, the account books and records, in addition to the notes and record of the interview between the Managing Director and Ben Johnson were seized from Johnson's office on December 1, 1983.

Emmanuel Green's lawyer initiated legal action against the company. Partly because of the defect in Emmanuel's speech, his lawyer, by means of an application for discovery of documents, seeks to obtain from the company a copy of the report prepared on the request of the Managing Director concerning the circumstances of the accident.

Ben Johnson, on behalf of, and with the authority of his client, requests your opinion as to whether the company could successfully oppose the application for discovery made by Emmanuel Green; and further, whether an application, for an injunction for the return of documents seized by the Criminal Investigation Department, might be successful.

Advise Ben Johnson.

QUESTION 3

Randolph, 32, and his brother Percy, 30, conspired to raise money by falsely pretending to form a company to deal in dairy products which were in short supply in the island. They induced Mary Williams, whom they met at a luncheon, to invest in the company. Mary Williams is a wealthy 45 year old widow who knew the brothers quite well.

In January, 1981, Mrs. Williams purported to buy shares worth \$20,000, by issuing a cheque in favour of Randolph. She was promised that her share certificate would be sent to her during the following week. In December of the same year when she did not hear anything from the brothers, or the company, and after making enquiries, she became suspicious and consulted Don Moore, a lawyer.

Don Moore wrote both Randolph and Percy. No reply was received. The brothers had however received their letters and had consulted Ben Toney, a lawyer who had acted for them on two previous occasions in prosecutions for fraud.

On June 1, 1983, Don Moore, on the instructions of Mary Williams, sued Randolph and Percy claiming damages for fraud and conspiracy. The brothers retained Ben Toney who left the proceedings in the hands of his managing clerk, John Smith. Smith had 10 years experience and much ability. In the preparation of their defence, the brothers told John Smith that the money was in fact a gift by Mary Williams whom they knew very well. They offered to produce Heedath who was willing to support their statement by affidavit. When Heedath was interviewed by John Smith it became clear that there was no truth in the story regarding the gift by Mary Williams.

Randolph and Percy however prevailed on Heedath to make, and on John Smith to prepare the affidavits, although Smith had previously warned them that the affidavits would be untrue. The affidavits were prepared by John Smith and sworn by Randolph, Percy and Heedath. The matter was set down for a hearing on December 9, 1983.

On November 25, 1983 Ben Toney took up the file to prepare for the hearing. He then became aware for the first time of the contents of the affidavits and his suspicions were aroused. He called John Smith who assured him that the affidavits were read over to the deponents.

On the morning of the hearing Heedath told Ben Toney that, for reasons of conscience, he could not support the false affidavit. He said that he had never heard of Mary Williams before the day he visited Toney's office with Randolph and Percy. Ben Toney thought about the information but took the view that it was too late to do anything. The hearing proceeded. Mary Williams' action was dismissed.

After the trial Heedath told Williams what occurred at Toney's office and about his later conversation. Don Moore is out of the island on an extensive trip abroad and Mary Williams consults you.

Advise Mary Williams.

QUESTION 4

A bus owned by Julian Bakeries Ltd., was negligently driven near to a market and collided with a number of persons who were standing on the roadside. Sarah Marks was the most seriously injured. She was hospitalised for six months. In the meantime, the other injured persons brought claims against Julian Bakeries Ltd., and the insurance company settled their claims for sums ranging between \$10,000 and \$20,000 in respect of pain and suffering and loss of amenities.

After Sarah Marks was discharged from hospital she attended a political meeting at which a lawyer, Mr. Ronald Thorpe, spoke. He closed his speech by asking the residents in the locality to return him as their parliamentary representative at the forthcoming election. After the meeting Ronald Thorpe spoke privately to many persons including Sarah Marks. She told him about the injuries and loss she suffered as a result of the collision and that she was never compensated. In response Ronald Thorpe said to her: "That's terrible; I know how to deal with such companies, leave everything to me."

Six months later when Sarah Marks heard nothing from Thorpe, she went to his office. According to her, Thorpe admitted that, in the excitement of the election campaign, he did not remember that they had spoken. He told her that he was then engaged in a difficult jury trial but that as soon as it was over he would deal with her claim.

The elections were held. Mr. Thorpe was not successful. He did nothing about Sarah Mark's claim until her next visit two months afterwards, by which time the negligence of the driver of Julian Bakeries Ltd. was not actionable by virtue of the Statute of Limitations.

Sarah Marks consults you. In reply to your letter Ronald Thorpe says that he was never retained by Sarah Marks at the time of the political meeting and that he simply wanted to help a resident of his constituency. He added that although he vaguely remembers Sarah Marks coming to his office, he had no recollection of what was discussed.

In reply to your letter to the company, liability is repudiated but an ex gratia sum of \$5,000 is offered in full settlement of all claims.

Sarah Marks is not willing to accept the offer and asks you whether she has a right of action and if so, against whom.

Write an opinion for Sarah Marks.

QUESTION 5

Mrs. Charlotte Hogg, a widow aged 76, lives with her only sister Norma, aged 78, in one of three houses owned by her. Her husband's relatives, who are not on good terms with her, have started litigation to obtain two of the houses. David Thomas, whose wife Bella is a lawyer, is Norma's only son.

Charlotte Hogg requested Bella Thomas to represent her in the legal proceedings. She arranged with Mrs. Thomas that, in consideration of Mrs. Thomas representing her free of charge, disbursements excepted, she would, by will, devise her property to her nephew. Bella Thomas represented her accordingly and prepared a will which was duly executed by Charlotte Hogg on a day agreed for that purpose. The will did not include specific mention of the houses but, at the time of execution, Bella Thomas produced another document for Mrs. Hogg's signature. She explained that the document was a deed of assignment whereby the three houses would be assigned to Bella Thomas in trust for Charlotte Hogg and after her death in trust for David Thomas for his sole use and benefit absolutely.

Mrs. Hogg said she wished to show the deed to her parish priest, who, when he read it, commented that it was a good thing for people to share their goods. The deed was duly executed on the following day when Mrs. Hogg also handed to Bella Thomas a gold chain and trinket which she described as an heirloom from her mother. She asked that it be given to the seven year old daughter of the Thomas'.

After a couple months, relationships between Charlotte Hogg and the Thomas' became strained. The validity of the will and the deed was questioned and Mrs. Hogg consulted you. She said that she asked Mrs. Thomas to represent her in the litigation as agreed but that, in addition to preparing the will, she also prepared a deed, without prior instructions. Mrs. Hogg said also, that when she asked what was the other document, she was told it was a separate document for the houses and that she did not understand why it was necessary to have two documents. She complained to you that the deed was not read over to her nor was she told it was irrevocable.

Bella Thomas, in her reply to your letter, said that she fully explained to Mrs. Hogg the difference between a will, which is revocable and the deed which is not; and further, that both documents were read over to Mrs. Hogg who not only intended to bind herself irrevocably by the deed, but had consulted her parish priest in whom she had said she placed much confidence.

A person who is unconnected to the parties and who happened to be present when the deed was being executed, is willing to testify that Charlotte Hogg signed the deed in his presence and that before she did so Bella Thomas told her that the document was a deed and explained its effect.

Advise Charlotte Hogg on the merits of proceedings to invalidate the deed and to recover the heirloom.

QUESTION 6

John Paul, a former secondary school boy and an employee of J.D. Simson Ltd., was indicted for receiving stolen goods. At the trial he appeared in person and pleaded not guilty. In his cross-examination of the police witnesses he attacked their credibility by suggesting that the charge was trumped up and that the policemen were bribed to bring the charge against him.

John Paul behaved in a disorderly manner in court. He interrupted the witnesses on several occasions and had to be warned by the trial judge. On one occasion, when the court was about to take a short recess, he refused to stand when the judge rose to leave the Bench; nor did he stand when the judge re-entered the court.

At the close of the prosecution case John Paul refused to testify. The judge summed up to the jury who returned a verdict of guilty and he was sentenced to six months' imprisonment for the offence. In addition, the judge held that his behaviour in court was inexcusably deplorable and he committed him to prison for an additional term of one month for contempt of court.

Slightly more than ten months after the trial, John Paul visited the local Human Rights Bureau and thereafter consults you. He alleges that his human rights have been infringed in that he was deprived of his liberty without due process of law. He produces a transcript of the proceedings in which, in the judge's summing up, there is an evident misdirection to the jury regarding the issue of possession. John Paul also complains that, in his opinion, the trial judge was motivated by false pride when he sentenced him for contempt of court because he did not stand up when the judge left the court room and when he re-entered. John Paul retains you to take action against the judge since, in his opinion, he acted improperly and maliciously.

Advise John Paul whether his human rights were infringed, and if so, whether any appropriate remedy is available to him and against whom relief should be sought.

QUESTION 7

In her capacity as a lecturer in the extra-mural department Grace Fields met Harry Taylor, a public servant in the Income Tax Department. On two occasions Fields invited a group of students, including Taylor, to her home. Thereafter, Taylor visited Fields' home intending to establish an intimate relationship. She became annoyed and asked him not to return. Thereafter Taylor telephoned Fields late at nights; two or sometimes three times a week in the early evening, Taylor would park his car in her unfenced driveway and molest her if she appeared. Taylor's conduct angered Fields and caused her considerable annoyance and mental distress.

Grace Fields consulted Messrs. John Dewar & Co., a firm of lawyers, and she was there introduced to A.R. Berry who was a fourth-year law student. Fields believed that Berry was a lawyer and accepted his advice to commence an action in the High Court for the purpose of preventing Taylor from trespassing, telephoning, or otherwise molesting her. Fields paid the firm \$500 on account of fees and was advised by Berry that an injunction would be obtained in four weeks. An action was commenced against Taylor claiming damages but did not include a claim for an injunction.

In the ensuing three months Taylor's conduct continued and worsened. Fields was hospitalised and treated for severe mental strain and nervousness. She now consults you and wants to know what redress she may seek and against whom.

Write an opinion.

QUESTION 8

In your capacity as a lawyer responsible for the conduct of the case what steps would you take or, where necessary, what advice would you give in each of the following circumstances:

- (i) 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 two other men;
 - (ii) during the trial of an indictment for murder in which the defence to be relied upon is an alibi, the accused, your client, confesses to you, before the case for the prosecution is closed that he killed the deceased and stole his revolver. The prosecution case is based on circumstantial evidence;
 - (iii) during the hearing of a petition for divorce on the ground of adultery, your client, 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.
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