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LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1987

STATUS, RIGHTS AND OBLIGATIONS OF THE LEGAL PROFESSION

(Tuesday, May 19, 1987)

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

- (a) Define "retainer" in the relationship between an Attorney-at-Law and his client and explain the various ways in which an Attorney-at-Law may be retained.
- (b) Define "entire contract" and explain how such a contract affects the rights of Attorney-at-Law and client.

QUESTION 2

- (a) What factors may be taken into account in determining a fair and reasonable fee for an Attorney-at-Law?
 - (b) What arguments can you advance in favour of the use of the contingency fee and what protection do you think a client should be given by statute when this facility is used?
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QUESTION 3

C.D., an Attorney-at-Law, when speaking from a political platform during an election campaign, decides to use the occasion to even certain scores which he has with Michael Hatt, a Judge of the High Court of the jurisdiction within which he practices. C.D. feels that the Judge has on several occasions embarrassed him in open Court in the presence of his clients and he has borne a grudge against the Judge for several months.

In the course of his election address he openly and repeatedly says that the Hatt family and Michael Hatt, in particular, are good for nothing and that Michael Hatt is "treated like scum by important people in the society who matter". He goes on to criticise one of Judge Hatt's recent judgments describing it as unsound in law.

Judge Hatt learns of C.D.'s diatribe against him and the next time the latter appears before him he asks C.D. to say why he should not be imprisoned for contempt for his remarks made during the political campaign.

C.D. insists that his remarks do not constitute contempt and asks to be allowed to retain the services of an Attorney-at-Law before any further action is taken in the matter.

Instead, Judge Hatt says to C.D. "If that is all you have to say in the matter I hereby sentence you to seven days imprisonment for contempt".

C.D. wishes to appeal and consults you as to the wisdom of such a course of action.

Advise.

QUESTION 4

Benn Green discusses with George Amber, an Attorney-at-Law, the advisability of filing suit based on particular facts which he relates to George. Benn tells George that he will not be able to pay fees until he obtains employment. George hearing this decides not to waste too much time with Benn but briefly spells out the law and tells him that he has a good cause of action.

George takes the matter to Court where judgment is given against Benn.

Benn is upset and consults the Legal Aid and Advisory Authority who tells him that while they can find no fault with the legal principles used by George there were alternative ways of approaching the matter in law which George should have explored. The Authority also advise that having regard to what they have heard concerning the way the matter was handled in Court they have examined the pleadings prepared by George and find that both his pleadings and advocacy provide evidence of gross negligence.

With the help of the Authority Benn now sues George in negligence in respect of the pre-suit advice, preparing the pleadings and his advocacy.

George seeks your advice in the matter.

Advise him.

QUESTION 5

A brother and sister who are defendants in an action concerning their deceased father's estate are represented by an Attorney-at-Law, Ray Bright. The Attorney-at-Law advises the defendants that given the circumstances of the case, they should discuss the matter with their mother and persuade her to make an application to the Court to be joined as a party to the action. He further tells them that unless they can so persuade their mother, there is little or no chance of successfully defending the action.

After weeks of trying, the brother and sister are convinced that their mother's refusal to take part in the action is unlikely to change. They discuss the matter further with Mr. Bright and subsequently advise him to join their mother without her consent. The mother learns of this and protests both to the children and to Mr. Bright but takes no formal action to have her name removed from the record.

The matter proceeds and judgment is given in favour of the defendants resulting in a large sum of money becoming due under the judgment to the mother. When Mr. Bright requisitions the mother she refuses to pay his fees.

Mr. Bright seeks your advice.

Advise him as to:-

- (i) whether he should sue to recover his fees and the cause of action; and
 - (ii) whether there are any other options open to him.
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QUESTION 6

"An Attorney should give no undertaking he cannot fulfill and should fulfill every undertaking he gives" - Bahamas Bar Association Code of Professional Conduct.

- (a) Explain the meaning of "undertaking" in the above context and comment on and illustrate the importance of undertakings both in litigation and otherwise.
 - (b) What are the consequences when an Attorney fails to honour an undertaking?
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QUESTION 7

Alex Hogg, an Attorney-at-Law has handled all the legal affairs of Yvonne Chan and her 30 year old nephew Charlie Chan for a number of years. Yvonne is an aged woman whose health is declining but who is mentally alert.

Both clients tell Alex that they intend to sell part of their adjoining freehold properties to re-invest in other property.

Several months later Alex gets an opportunity to enter into a scheme of land development which part of the Chan's properties would greatly facilitate. He indicates his interest to them and advises them fully on the legal aspects of the transfer of the properties and tells them to deal with his clerk who will draw up the necessary conveyance and register the deeds. Alex pays \$200,000 for the properties.

The Chans who are contracted to buy a property called Blue Haven with the proceeds of the sale tell the clerk that they would like to have Mr. Hogg prepare the conveyance in respect of the Blue Haven property also.

The clerk suggests that he receive the cheque representing the contract price for Blue Haven and the cheque is made out in the name of the Attorney-at-Law for payment to the owner of Blue Haven.

The clerk forges Mr. Hogg's signature, has the cash paid into his account, resigns his position with Mr. Hogg and disappears. He is thought to have gone to North America and to have taken up residence there illegally.

The Chans also learn from a reputable real estate agent that had they advertised their properties they could have obtained a better price.

They now propose to sue Mr. Hogg to have the contract of sale between Mr. Hogg and themselves rescinded and to recover the cash which has been fraudulently converted by his clerk.

Advise whether they have any claim in law in either case.

QUESTION 8

- (a) What do you consider to be the attributes of a good advocate?
 - (b) What rules should be observed and techniques employed by an Attorney-at-Law when -
 - (i) examining a witness; and
 - (ii) cross-examining a witness?
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