

PROBLEMS OF ETHICS AND LEGAL PRACTICE

1/2000

HYPOTHETICAL CASE STUDIES

Silverglow & Goldish a leading law firm as part of its public relations programme obtained from the Jamaica Chamber of Commerce and the Professional Associations of Jamaica their mailing lists. The firm printed card lettered in gold and silver with the following statement:

"Silverglow & Goldish, the leading firm of attorneys has been joined by the eminent and recently retired Judge of Appeal, the Hon. Mr. Justice Cordozo as General Consultant. Also joining the firm is the famous advocate, Mr. James Denizen, Q. C. who will team up with our able team of Mr. Adrian Silverglow, Jnr. and Miss Amy Goldish in the fields of criminal law and human rights.

We are also delighted that Miss Jean Newclerk has joined us as an associate and she will be part of our powerful family law team headed by Mrs. Cassandra Overly, Q.C.

We are excited also by the firm's decision to broaden the impact of its staunch defence of criminal cases and human rights and family law cases by authorising books. Harold Silverglow & Abraham Goldish will collaborate with each other and with co-authors from outside the firm in comforting the afflicted and afflicting the comfortable by exposing institutions and those in power who have eroded protections that ensure liberty.

Harold Silverglow's initial effort, now in bookstores throughout the Island, is *Eternal Vigilance: The Militant Advocates*, by Neil O'Neil, (Liberty Press) (December 1988). Neil O'Neil, Harold's dear friend and university contemporary, now teaches political science at the University of Cornwall. Harold & Abraham are currently lining up a formidable list of authors for publication of their works over the next few years.

We invite you to be in touch with us, either on our new Web page, by e-mail, phone, fax, or snail mail, or stop by and see us."

The card was mailed to the persons listed on the P.A.J.'s mailing list and then brought to the attention of the G.L.C. which issued a warning to Silverglow & Goldish that it did not approve of the Card and its use should be discontinued. The Managing partner of Silverglow & Goldish nevertheless issued the card to the persons on the mailing list of the J.C.C. A complaint has been lodged with the Disciplinary Committee against all the partners of Silverglow & Goldish.

What should be the result?

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2/2000

HYPOTHETICAL CASE STUDIES

Mr. James Firth is the defence counsel for Dwight Works on a charge of rape, in which the defence is consent. Mr. Firth is interrupted by the trial judge, Mr. Justice Bridleman, as he challenges the complainant's character by suggesting several previous intimate relationships with Work's co-workers and friends. Bridleman, J. states that he will not permit any further questions in this area, unless Mr. Firth demonstrates to him, by producing written instructions, that he has a basis for such questions. Mr. Firth says that he is not in a position to produce the instructions which are contained in his client's statement and unless he is permitted to ask the question he will be unable to present his client's case. Mr. Firth consults with his client and then informs the judge that he has handed the statement to his client who may produce it if he wishes but he has advised him that he cannot be compelled to do so and should not. In answer to the judge the accused stated that he will not produce the statement. The judge then rules that no further questions will be allowed in this area and states "Let's get on with it". At this point Mr. Firth announces that he is unable to proceed with the Defence and withdraws from the case.

Bridleman, J. reports Mr. Firth to the General Legal Council with the result that charges are lodged with the Disciplinary Committee against Mr. Firth for (1) improperly withdrawing from the defence of his client and (2) disrespectful behaviour to the Court.

What should be the result?

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Mr. Everald Noble, a senior attorney, entered into a contingency agreement with Mrs. Burchell in respect of her claims for maintenance and division of matrimonial property against her estranged husband. When both summonses had been partly heard, Mr. Noble died in a tragic accident, leaving his close friend and colleague Mr. Jonathan Swift as his sole executor. Mr. Swift quickly takes charge of Mr. Noble's practice but Mrs. Burchell retains Mr. Rudolph Easy to represent her. Mr. Easy asks Mr. Swift for the papers but he refuses claiming a lien on behalf of the estate. As the hearing dates for the summonses were imminent, Mr. Easy gives an undertaking to Mr. Swift to hold the documents to his order. Simultaneously, Mrs. Burchell gives to Mr. Swift a title to a property registered in her name alone to hold as security for any fees and costs which may be recoverable by him. Mr. Swift sends all the court documents to Mr. Easy and gives to Mrs. Burchell certificates of title for certain of the properties in dispute. Mrs. Burchell obtains very satisfactory results on both summonses. Mr. Swift claims on behalf of Estate Noble, 50 per cent of the stipulated contingency fee. Both Mrs. Burchell and Mr. ~~Swift~~^{EASY} denies that any such amount is payable. Mr. ~~Easy~~^{SWIFT} insists and Mr. Easy photocopies the documents, gives the copies to Mrs. Burchell but returns the originals to Mr. Swift. Mr. ~~Easy~~^{SWIFT} sues both Mr. ~~Swift~~^{EASY} and Mrs. Burchell.

What should be the result?

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Case - CDRB NO. 10

Richard Roe is an attorney-at-law with an extensive conveyancing practice. A client asks him to prepare an agreement for sale and act for him in the sale of a house which he is selling to Mr. and Mrs. Thomas Smith.

When Mr. & Mrs. Smith came in to sign the agreement for sale they ask Richard Roe if he will also act for them as the matter is simple and they do not know another attorney-at-law. Richard Roe tells them that he cannot officially act for them, but they need not go to another attorney as he will look out for their interests and the costs will be shared 50:50 between the Vendor and Purchaser in any event.

The transaction is completed without any apparent problems and the purchasers pay their half share of the costs of transfer to Richard Roe and they request that the title be sent to their bank who has lent them part of the purchase money. The bank decides to register a mortgage on the title to secure their loan and sends the title to their attorney. Their attorney requests a surveyor to prepare an identification report which shows that the western boundary is located wrongly and there are breaches of the restrictive covenants stating how near to the boundary the house can be built.

Mr. and Mrs. Smith make a complaint to the Disciplinary Committee stating that they have been to Mr. Richard Roe and asked him to help them to correct the errors in the title, but he has refused to do anything and tells them that he was not acting for them and they must go to another attorney to correct the title.

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Carpenter, Mason & Plumber, three young and enterprising attorneys, each of whom has had some success in personal injuries cases, formed a new firm and decided on a vigorous promotional campaign. With the help of a friend in public relations they devised an advertising campaign comprising the following elements:

(1) Billboard advertising:

Four (4) billboards of 20" x 10" in dimensions are rented on the Constant Spring Road, the Nelson Mandela Highway, the Rockford Road and the Queens Highway which states:

Carpenter, Mason & Plumber, experienced and highly successful personal injuries attorneys. Best service: Lowest fees: Exceptional integrity.

(2) Cable T.V. Advertising:

Contracts are entered into with 10 cable t.v. licensees to run an advertising line 20 times on every Sunday for six months, stating:

"If you are injured in a motor vehicle accident or have any personal injury claim contact **Carpenter, Mason & Plumber**, Attorneys-at-Law, immediately. No consultation fee, lowest contingency percentage, proven high success rate.

(3) Reference Agreements:

Agreements are made with the Corporate Workers Trade Union and the Parishioners Cooperative Union that whenever any of their members are injured on the job, they would be referred to **Carpenter, Mason & Plumber** for legal representation and the firm would charge a reduced contingency fee of 18% on any sums recovered in return for making an annual contribution of 3% of such fees to the Unions.

(4) Agency Agreements:

Agreements are entered into with the Admission and Records Officers at the Half-Way Tree Public Hospital, the Rockford General Clinic and the Pembroke General Hospital to advise **Carpenter, Mason & Plumber** of all accident and personal injuries cases admitted for medical treatment, to give each of these patients the firms' business card and wherever possible to recommend that legal advice be sought from the firm. In return the firm agreed to pay a flat fee of \$500 for each client who seeks the firm's assistance.

A complaint is made to the Disciplinary Committee.

What should be the result?