

COUNCIL FOR VOCATIONAL LEGAL EDUCATION

BARRISTERS' EXAMINATION . SEPTEMBER 2018

PAPER VII- DRAFTING AND OPINION WRITING

(THREE HOURS)

Candidates have ten minutes to study the Examination Paper which consists of 15 pages before they start writing.

All questions carry equal marks. Marks will be granted, where appropriate, for correct reference to enactments and case law.

This PAPER is in TWO PARTS.

PART I on DRAFTING. There are FOUR QUESTIONS out of which TWO must be answered.

PART II on OPINION WRITING. There are FOUR QUESTIONS out of which TWO must be answered.

EACH QUESTION MUST BE ANSWERED ON SEPARATE SHEETS WITH CLEAR MARKING AS TO THE QUESTION ANSWERED AND THE NUMBER OF PAGES.

MAKE SURE THAT YOU PUT ALL YOUR ANSWERS TO THE DIFFERENT PARTS IN THE APPROPRIATE ENVELOPES PROVIDED.

PART I - DRAFTING

Question 1

Mr SEBASTIEN ANTONIO and Mrs. ANNE JOELLE INGRID contracted civil marriage on 2 August 2010 before the Civil Status Officer of Vacoas as is evidenced by certificate of marriage bearing number 200 of 2010, Vacoas, Plaines Wilhems. At the time of the celebration of their civil marriage, they stated to the Civil Status Officer that they wish to avail themselves of the provisions of Article 38 of the Civil Code.

From the said marriage, a child was born on 20 April 2012, at Nouvelle Clinique, Bon Pasteur, Rose-Hill. On 17 May 2012, Mr. Sebastien Antonio attended the Civil Status Office of Rose Hill to make the declaration of birth of their aforementioned child. Mr Sebastien Antonio indicated to the Civil Status Officer that they wish to declare the names of their newly born child as 'JEAN CLAUDE ANTONIO'. The Civil Status Officer refused to register the declaration of Mr. Sebastien Antonio claiming the child should bear the surname 'ANTONIO-INGRID' and not 'ANTONIO'.

Thereupon Mr. SEBASTIEN ANTONIO and Mrs. ANNE JOELLE INGRID initiated proceedings before the Honourable Judge sitting in Chambers against the Registrar of Civil Status, calling upon the latter to show cause inter alia why (a) their child's birth should not be registered and (b) their child should not bear the names "JEAN CLAUDE ANTONIO'. By a judgment delivered by the Honourable Judge in Chambers on 20 January 2013, their aforesaid application was set aside.

Mr. SEBASTIEN ANTONIO and Mrs. ANNE JOELLE INGRID have now been advised that the Civil Status Officer cannot now tardily register the birth of their child named JEAN CLAUDE ANTONIO- INGRID' except upon an Order from His Honour, the District Magistrate Of Rose-Hill.

Draft the petition and affidavit to be filed by Mr. SEBASTIEN ANTONIO and Mrs. ANNE SOELLE INGRID praying for an Order directing the

Registrar Civil Status to register tardily the birth of the child named JEAN CLAUDE ANTONIO-INGRID.

Question2

Mr and Mrs. Berty Johansson, who were civilly married, were residing in England. In the year 2000, whilst they were on holidays in Mauritius, Mr. Jean Clement Picollo, the cousin of Mr. Berty Johansson, made representations to Mr. and Mrs. Berty Johansson for them to adopt, Peter Picollo, aged 16 years, the son of Mr. Jean Clement Picollo, so that the latter's son could emigrate to England. Mr and Mrs. Berty Johansson accepted to adopt Peter Picollo and subsequently on 13 September 2001, the Court pronounced the 'adoption simple' of Peter Picollo by Mr and Mrs. Berty Johansson. Peter Picollo was authorised to continue to bear his name and surname.

In the year 2002, Peter Picollo joined Mr and Mrs. Johansson in England but in 2014, Peter Picollo decided to come back to Mauritius. At the request of their adopted son, Mr and Mrs. Berty Johansson bought a bungalow in the name of Peter Picollo, out of their own personal funds. In the deed of purchase, it was stated that the purchase price was paid 'hors la vue du Notaire'.

Mr. Peter Picollo, who, by then, was married to Mrs. Jeannette Miramar, started occupying the said bungalow. Since 2016, Peter Picollo and his wife ceased to correspond with Mr. and Mrs Berty Johansson and even refused to reply to their phone calls. In August 2017, Mr. and Mrs. Berty Johansson came to Mauritius and went to visit Peter Picollo and his wife at the bungalow. In the absence of Peter Picollo, his wife refused to give Mr and Mrs. Berty Johansson access to the bungalow, asking them to leave failing which she would complain to the Police for harassment. Mr. and Mrs. Berty Johansson felt so embarrassed that they had no alternative but to leave. On the next day, Mr and Mrs. Berty Johansson received the visit of Peter Picololo and the latter became very aggressive towards them and asked Mr. and Mrs. Berty Johansson not to come again to the bungalow. On the next day, Mr and Mrs. Berty Johansson received the visit of Police

Officers who informed them that Peter Picollo and his wife had made a complaint against them alleging that they (Mr. and Mrs. Berty Johansson) had been harassing Mr. Berty Picollo's wife and had even threatened to cause bodily harm to her.

Mr. and Mrs. Berty Johansson went back to England by end of September 2017 and sent several letters to Peter Picollo but the latter responded to none of them.

Mr. and Mrs. Berty Johansson returned to Mauritius in August 2018 and retained your services to obtain (i) the revocation of the adoption of Peter Picollo and (U) the cancellation of the deed of purchase of the bungalow in the name of Peter Picollo, claiming the said purchase was in fact "a *donation d'OguisO*".

Draft the Complaint with Summons to be lodged before the Supreme Court.

Question 3

Mr. Jean Claude Belmondo was civilly married to Mrs. Marie Thérèse Joly on 20 November 2013. From the said marriage, two children named (i) Jean Jacques Belmondo and Marie Patricia Belmondo were born on 6 January 2015 and 3 March 2017 respectively.

Mr. Jean Claude Belmondo is a person who consumed alcoholic drinks excessively and would become aggressive towards his wife after such consumption.

Sometime in July 2018, Mrs. Marie Thérèse Belmondo, who could no longer bear the ill-treatment of her husband, decided to leave the conjugal roof but her husband did not allow her to take her children along with her. Mrs. Marie Thérèse Belmondo retains your services and wishes to apply for the immediate care and control and the custody of her two minor children. She has good grounds to believe that it would be in the best interest of the children that they stay with her.

Draft the necessary affidavit to be filed by Mrs. Marie Thérèse Belmondo in support of an application praying for the immediate care and control and the custody of her minor children.

Question 4

Mr. Ranbir Rajnikant owns a portion of land of 3 acres at Grand Baie and following a survey of his portion of land, his surveyor reported that Mr. Ashutosh Kapoor, the neighbour of Mr. Ranbir Rajnikant, has encroached over the property of Mr. Rajnikant over an area of 450m².

Mr. Rajnikant sued Mr. Kapoor and the Court gave judgment in favour of Mr. Rajnikant on 03 May 2018 ordering Mr. Kapoor to vacate the encroached part of Mr. Rajnikant's property.

Despite several requests made to Mr. Kapoor, the latter fails to comply with the judgment. Mr. Rajnikant now retains your services to initiate contempt proceedings against Mr. Kapoor.

Draft the Notice which is to be served upon Mr Kapoor prior to lodging an application for contempt against Mr. Kapoor.

Question 5

Mr. Zinedine Pogba is the owner of a commercial premises situate at Lees Street, Curepipe, which is rented to Mr. Didier Platini for and in consideration of a monthly rent of Rs 1,000.

The tenant has not been paying rent for the last three months, complaining that there were leakages in the roof and water would flow in the premises whenever there were heavy rains.

The Landlord retains the services of a civil engineer to carry out a survey of the premises and the latter reported that the rented premises was in a dilapidated state and needed to be pulled down and reconstructed the moreso as it constitutes a danger to the occupier/s.

Mr. Zinedine Pogba proposes to proceed with a scheme of reconstruction but the tenant does not want to vacate the premises claiming those repairs can be carried out without him vacating the premises.

The Landlord retains your services to initiate proceedings to obtain the eviction of the tenant, Mr. Didier Platini.

Draft the Complaint to be lodged by Mr. Zinedine Pogba to obtain the eviction of Mr. Didier Platini.

PART II - OPINION WRITING

Question I

Mrs Milena Jessops is 32 years of age and pregnant. On the 17 July 2015 she attended the private surgery of Dr Starbucks, a gynaecologist, for a medical check-up. This was her first visit to Dr Starbucks and it was agreed that she would attend his surgery to be followed up by the said doctor until the time of delivery of her baby which Dr Starbucks will perform himself. At the end of this visit, Mrs Jessops paid Dr Starbucks for his professional services and left.

Mrs Jessops thereafter regularly attended her medical visits with Dr Starbucks who each and every time did a scan of her womb and checked the health of both mother and baby.

At around weeks 37, Mrs Jessops felt an acute pain in her womb and could not feel her baby moving as the baby had been regularly doing over the past months. She became concerned and immediately took an

appointment with Dr Starbucks. On the same day, she attended the surgery of Dr Starbucks and the latter did a scan of her womb. Dr Starbucks reassured Mrs Jessops that everything was fine, that the baby was in perfect health and therefore there was no cause for alarm. Mrs Jessops left the surgery reassured but still in pain.

A week later, Mrs Jessops attended the surgery of Dr Starbucks for her regular visits and at that visit, Dr Starbucks informed her that he would be unable to attend her delivery on the due date that is on 12 April 2016. Mrs Jessops could not believe her ears and requested for an explanation. The only one she was given was that Dr Starbucks did not have time as he was busy with other professional commitments. In order to calm down Mrs Jessops, Dr Starbucks made a phone call and informed Mrs Jessops that he was referring her to one Dr Jekyll who would be able to accommodate her delivery on the 12 April 2016.

Mrs Jessops left the surgery of Dr Starbucks in tears and attended the surgery of Dr Jekyll where she met the latter who stated to her that he was short of staff and therefore unable to accommodate her on that date for her delivery.

In a state of complete disarray, Mrs Jessops started to call friends and relatives for advice and she was referred to Dr Seek. She took appointment with Dr Seek and attended the surgery of Dr Seek. Upon doing a scan of her womb, Dr Seek immediately noticed that the baby had a severe malformation, known as spina bifida, and was shocked that Dr Starbucks neither saw such a malformation nor informed Mrs Jessops of this condition. Upon informing Mrs Jessops of his finding, the latter became very upset and started to cry. Dr Seek advised her to seek the medical opinion of a specialist and Mrs Jessops left the surgery.

Upon receiving further medical advice on the matter, Mrs Jessops eventually decided to travel, after obtaining the necessary clearances from her medical practitioner, to France where she was admitted in a specialised

clinic where she gave birth. Shortly before birth, she was informed that it was very unlikely that the baby would survive, and even if the baby did survive, it will be severely handicapped and would not live long after birth. After having been carefully explained about her options, including to euthanise the baby through a lethal injection just before birth, Mrs Jessops decided to avoid any suffering to her child and opted for the lethal injection just before birth. The surgical operation was scheduled one day before the due delivery date and Mrs Jessops could still feel her baby kicking before the operation started. When the lethal injection was administered in the umbilical cord, Mrs Jessops could feel the baby kicking even more before it eventually stopped. She was eventually allowed to hold her baby and she cuddled and kissed the baby before it was taken away to a different room.

This whole episode was terribly traumatising for Mrs Jessops and she has now come to see you in Chambers to request for your professional legal advice on what options are available to her. During your conference with her, Mrs Jessops informs you that she does not have the means to pay your full fees which has already been agreed to but would like to make payments by instalments with the final last two payments made to you in cash which she has obtained from the sale of two beautiful antique clocks she had obtained from her brother. She also tells you that this brother had stolen the clocks from his former employer who failed to pay him his salary when his employment was terminated.

You are requested to draft a comprehensive legal opinion for Mrs Jessops and deal with any ethical issues which may arise

Question 2

On 12 April 2014, Mrs Coolmore and her three children, Calamity aged 7 years, James aged 11 years and Billy aged 2 years, went for a walk down the road where they live.

Calamity and James were walking ahead of their mother whilst the latter was pushing the 'pram' in which Billy was sleeping. The little family were all

smiles and the two elder children were screaming whilst playing with each other.

All of a sudden the kids stopped and went silent. Mrs Coolmore who was following did not understand why the children had suddenly stopped. She however found out that there were 2 fierce dogs, one brown and one black, running towards her two children. She was so terrified at the sight of those two dogs that she remained rooted to the spot. The dogs jumped on Calamity and started to maul the 7 year old who fell on the ground. Mrs Coolmore instinctively left the pram where Billy was still sleeping and ran towards her two children. She started screaming and upon hearing her, the dogs stopped mauling Calamity and started barking. The brown dog, which looked like a Rottweiler, started to attack James who also fell on the ground. James was injured and utterly traumatised. When Mrs Coolmore moved nearer to the dogs, she picked up a stone and threw it at them. Instead of running away both dogs became even more aggressive and started to move dangerously towards her. She had hardly had time to pick up a second stone when the black dog, a Pit bull, rushed towards her and knocked her to the ground. As she fell, she heard someone shouting and at the same moment, both dogs stood up straight and stopped any movement. As she tried to get up, she heard more clearly the following in a loud tone, 'Smith, Wesson, come back here'.

Both dogs ran back to the place from where they came and Mrs Coolmore immediately attended to Calamity who was bleeding profusely whilst he was still on the ground. She could see James, with bleeding wounds and crying but Calamity lay unconscious. John Butler, a neighbour of Mrs Coolmore, rushed to their help. Both children, Calamity and James, were conveyed to hospital whilst Mrs Coolmore attended to Billy who was in his pram. Mrs Coolmore realised that the dogs were standing next to Mr. Pokbah, who owned a shop a mile from her residence. She gave him an angry look and shouted at him, 'I will kill you, you bastard'. She then rushed towards her residence with Billy.

Both Calamity and James sustained injuries, with Calamity having to undergo surgery for two hours at Candos hospital. The children were

transferred to a private clinic on the same day and their conditions became stable. Calamity had several cuts and bruises and both children were in a state of shock and did not speak for several days. Mr and Mrs Coolmore had to resort to a psychologist to follow both children and both parents also had to see the psychologist as they were traumatised as a result of the incident. Billy was the only one who escaped this ordeal.

The children had to undergo further surgery for the scars which they had and Mr and Mrs Coolmore spent over Rs 1.5 million rupees on both children for medical treatment. Calamity and James continue to have nightmares a long time after the attack and they have to be consistently assisted by their parents.

Mrs Coolmore remains very angry with Mr Pokbah, the owner of the dogs. She has requested for an appointment with you to seek legal advice on the matter. In the meantime, following press reports, she learnt yesterday that both dogs were not on leash and that they had undergone training to attack upon request.

Please submit a written legal opinion advising Mrs Coolmore as to the exercise of the legal remedies which are available to her, setting out the procedural and evidential issues as well as any ethical issues which may arise.

Would your advice have been different, if Mr Pokbah was known to you and you both have played football in the past in opposing teams. You are acquainted with Mr Poknah but only know him for having seen him and spoken to him once or twice at these matches, the last time being two days ago when he told you about the incident with the dogs and Mrs Coolmore's children and you innocently advised him on the matter.

Question 3

Seabiscuit Ltd is a foreign company based in Norway and it deals with office furniture and accessories. White Caviar Ltd is a local company which specialises in financial services and has its main office at Deux Frères, Grand Port. In February 2017, White Caviar Ltd ordered new office furniture for its brand new office which is situated at Deux Frères, in the east of the island. The order amounted to Rs 15,000,000 and half payment was made at the time of the order, on 22 February 2017. The second payment for the remaining amount had to be paid as per the terms of the contract duly signed by the parties upon the consignment reaching Mauritius. Shipment was to be effected on 15 March 2017 and the expected delivery date at the seat of the new office premises was set for 12 May 2017.

Shipment arrangements were made with EHL Ltd, another foreign shipping company, which specialises in the transport of goods. The contract stipulates that half payment is due at the time of hiring of their services and the other half at the time the consignment is delivered to the premises of White Caviar Ltd.

On 15 March 2017 the shipment left Norway and it reached Mauritius on 10 May 2017. Upon verification by Customs of this consignment, the Customs officers found **24** 'Tasers' and two boxes of bullets for a 9mm calibre pistol. The matter was reported to the police and the consignment detained at the port.

White Caviar Ltd was called upon by the police to attend the Port police post for a statement. Mr. Whitaker, who is a director of the company, was deputed as the representative of the Company to give the said statement. The Police decided to provisionally charge Mr. Whitaker for the offences of importation of prohibited goods and for the possession of bullets. He is now being detained by the police who has objected to bail. The police inquiry is ongoing but the consignment remains in the custody of the police at the Port.

White Caviar Ltd has contacted Seabiscuit Ltd and the latter company has informed White Caviar Ltd that it has nothing to do with the “Tasers” and “bullets” and that it had only done what it was asked to do. Seabiscuit Ltd has requested payment of the remaining sum which is due to it upon the consignment arriving in Mauritius, failing which it will initiate legal proceedings against White Caviar Ltd.

White Caviar Ltd has retained your services and has requested you to advise the Company on this matter urgently. You have been told that the service of another Counsel, Alice Des Merveilles, has been retained but that she is very slow and day dreams instead of doing her work. The Company will not pay her the remaining part of her fees. She is not aware that the company has contacted you and White Caviar has requested you not to let her know that they have retained your services.

Please draft a written legal opinion dealing with all the legal issues which are now of concern to White Caviar Ltd and please also deal with any ethical issues which may arise.

Question 4

On the 15 September 2018, Mr James Bond, of Wild and Wolf Ltd attends your Chambers in panic and gives you a letter which he has received and which is reproduced below. He explains to you that Wild and Wolf Ltd is involved in hotel management and enjoys a good reputation in the industry and that as at 15 September 2018, he took cognisance of the letter dated 8 September 2018 stating that a winding up order has been issued against Wild and Wolf Ltd on 31 August 2018.

He explains to you that he was never made aware of the Winding up proceedings initiated by The Shark Ltd against Wild and Wolf Ltd in case bearing reference SC/COM/PET/03231/2016 until receipt of the aforesaid letter. He further explains to you that he believes that any correspondence or purported service of documents might have been left unattended and he cannot explain why.

Mr Bond explains that he knows that there is a sum of Rs 300,221 .46cs which is due to The Shark Ltd and that he does not dispute such a claim by The Shark Ltd and begs you to explain to the Court that he is ready and willing to settle the amount immediately. He provides you with a certificate of solvency dated 15 September 2018 showing that Wild and Wolf Ltd was and is solvent as at date. He also provides you with his company's financial statements which confirm the fact that the company is financially sound and solvent.

He finally adds, almost in tears, that his company employs 68 employees and has a monthly salary expenses of about Rs 1 million, which is due to be paid to the employees at the end of the month. He is desperate as the Company's assets and bank accounts have been frozen.

He wants you to act on behalf of the company and advise him on what can be done to save his company from Winding up and Liquidation. He also whispers to you that should you manage to save his company, he will give you an additional cash payment in the sum of Rs 650,000. He wants you to keep this for yourself and since he is paying the full amount of Rs 650,000. in cash to you, he does not need a receipt and will simply accept a note from you that you have well received the money.

Please draft a legal opinion considering all the legal issues, and any course of action which you may advise to safeguard the interests of Wild and Wolf Ltd, as well as addressing any ethical issues that may arise.

LETTER

8th September 2018

Ref: SC/COM/Pet/03231/2016 Dear Sir,

The Shark Ltd

Petitioner

v/s

Wild and Wolf Ltd

Respondent

TAKE NOTICE that a winding up order of Wild and Wolf Ltd (the Company) has been made by the Supreme Court on the 31 August 2018 at 10.35 hours and that according to the provisions of Section 113 of the Insolvency Act 2009, you are required to deliver to me, within fourteen days as from this day, a Statement as to the Affairs of the company, books of accounts, minutes books or any books of the company as at the date of the winding up order in duplicate.

You are hereby notified as director of the above mentioned company in liquidation to attend my office situate at the Corporate and Business Registration Department, One Cathedral Square, Jules Koenig Street, Port Louis, on the 24 September 2018 at 10.30 hours.

Forms and instructions for the preparation of the said statement of affairs can be obtained from this office upon application.

You are hereby informed that any person or persons having in their possession any goods, chattels, cash and other property whatsoever belonging to Wild and Wolf Ltd are warned that they must deliver over same to me.

Please find herewith annexed an extract of Section 113 and 383 of the Insolvency Act for your information.

JOSEPHINE CASSEPARTOUT
Ag. Official Receiver &
Provisional Liquidator

Mr James Bond
7 Bond Street
Port Louis