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LEGAL PROFESSION

FINAL EXAMINATION JANUARY, 1960

I.

Debtor, D, consulted Attorney, A, explaining that he had assets of $20,000 and one immediately pressing claim against him of $30,000 and that he wished to avoid bankruptcy. A said that he would attempt to settle D's affairs without bankruptcy, and that if he was successful he would want as a fee one-half of whatever he might be able to salvage of D's $20,000, to which D agreed. A then approached D's creditor, C, and succeeded in obtaining an assignment to himself of C's $30,000 claim against D for $12,000, which A paid to C. A then offered D a release of the claim for $16,000, computed with reference to $12,000 for reimbursement of his cost and $4,000 which he felt that he was entitled to receive pursuant to their agreement. D is now willing to pay A only $1,000 in excess of the $12,000, maintaining that the reasonable value of A's services based on time and effort was no more than that amount. In view of D's failure to abide by their agreement, is A justified in bringing suit as assignee of the $30,000 claim with the intent to execute judgment thereby obtained against D's entire $20,000?

II.

A is attorney for the H Corporation, of which H owns 98% of the stock, and a close friend of both H and H's wife, W. H and W have decided that they wish to be divorced and that a reconciliation is impossible. Divorce grounds exist against H without collusion, connivance or condonation on W's part. H has made known to W all of his assets and agrees to make a property settlement with her which is more than fair in every respect. Both wish A to bring an uncontested divorce action for W, having full confidence in him and that he, being fully acquainted with all of the circumstances and friendly to both, will do so with no aggravation to either. May A do so with propriety, at least subject to his later withdrawal in the event that any dispute between them should subsequently arise?

III.

H wishes to divorce or be divorced from W and retains attorney, A, to represent him in the matter. He makes known to A that W committed adultery 3 years ago but that he had cohabited with her after learning of it. He also reveals that he committed adultery this year but that she does not know about it. He is certain that she wishes a divorce as much as he does and at any cost to reputation if necessary, but that each would prefer to be plaintiff. The State statute reads, "When the suit is for divorce for adultery, the divorce shall not be granted, if it appears that the parties voluntarily cohabited after the knowledge of the fact of adultery, or that it occurred more than 5 years before the institution of the suit, or that it was committed by the procurement or connivance of the plaintiff." There are no problems of property settlement or custody of children. Thus the alternatives are: (1) that he bring action against her, not reveal his adultery to her, and trust that she will not raise the issue of condonation, or (2) that he make known to her his adulterous act, thus giving her grounds for suit, and he not defend her action against him. Is A's participation in either or both alternatives ethically improper?

IV.

Five years ago, A, as attorney for defendant X Insurance Co., had unsuccessfully defended an X insured claim for jewelry loss by theft brought by Claimant, C. C had been impressed with A's competence in the field of insurance law and now asks A to represent him in a claim against the Y Insurance Company for another jewelry theft loss which he claims he recently sustained, Y Co. denying liability for an alleged breach of condition by C having to do with the amount of jewelry kept by C in his jewelry store show windows. In looking over C's Y Co. insurance policy and declaration, A notices that in answer to a question in the declaration as to what claims for theft loss the applicant C had ever previously made against any insurer, C had answered "none". Questioning C about this, C replied that he wanted the Y policy and he felt that he would not have gotten it had he answered truthfully. This fraudulent misrepresentation would give Y Co. an absolute defense. May A accept the retainer and bring suit against Y Co. on C's claim, alleging a proper cause of action?

V.

Client, C, consults attorney, A, explaining that he has not heard from his wife, W, for more than 7 years, and that he now wishes to marry M. A tells him that W is presumed to be dead; that C may get a probate court decree to that effect, and then marry M; or that he may marry M and then obtain a court decree affirming the validity of the marriage. C says that he will take the latter course, as a friend, F, believes that he saw W on the street of a distant city 3 years ago, and that F is moving away permanently in another 6 months and will not be around to bring it to the court's attention. A explains that that is not proper and that in the circumstances of his having some reliable indication that W still lives, C must first make a thorough investigation of the possibility. C replies that he will not do so for fear that the investigation will turn up that W is living; that her disappearance was under circumstances which would not constitute desertion

grounds for divorce; and that he is determined to marry M. A now tells C that what C proposes to do will constitute the crime of bigamy if it develops that W is living and that C had cause to believe that she might be; that C must make full disclosure to M and that if C does not, he, A, is obliged to do so; and that if C does marry M and then seeks court sanction in F's absence, that he, A will have nothing to do with it, and that A will be under a duty to tell any other attorney whom C consults and the judge of the court whose sanction he seeks of the true circumstances. Is A's pronouncement of his own obligations to make revelation to M, other counsel, and the court accurate?

VI.

H wishes to borrow money from Loan Co. for investment in his business but Loan Co. will not make the loan unless W, H's wife, will become liable in the event of H's default. H, W, and Loan Co. are residents of State X and a statute of that State provides that a wife may not become guarantor for her husband. The statute is a deliberate hold-over from pre-emancipation days, the objective being to thwart the usual dominance of the husband which might preclude the wife's exercise of free will in such matters. The conflict of laws rule applied by State X determines the validity of a contract by the laws of the State where performance is to be given. W is willing and anxious to guaranty the debt. Attorney, A, suggests to H and W that it might be accomplished either (1) by making the debt payable at a bank in neighboring State Y, which has no restrictions upon a wife's freedom of contract, or (2) by making W the primary debtor and H the guarantor in the loan agreement. Are either or both of these suggestions improper for A to make?

VII.

P's attorney, A, has commenced a tort action against D and D's truck driver, T, individually, for damages sustained by P in a collision of P's truck and D's truck. A crucial fact is the speed at which D's truck was travelling at the time of the accident. A is convinced that the situation is hopeless both for P's recovery and A's contingent fee unless T's interests adverse to his admission of excessive speed are removed and that T can be interviewed without the knowledge and restraining presence of D and T's attorney. T is likely to be judgment proof and the main concern is to obtain judgment against D. A proposes to discontinue the action against T and also have P assure T that P will give him a job in the event that T loses his job with D for his truthful revelations. (a) May A in these circumstances discontinue the action against T without P's consent? (b) Would his objective of being able ethically to question T without D and their attorney be thereby accomplished? (c) Would P's assurance of a job for T if D fires him be improper? (d) If P refuses A's proposal, is A justified in withdrawing from the case and claiming reasonable value of his services to date?

VIII.

In 1957 Decedent, D, had made a gift of securities to his son. Upon D's death in 1959 and the filing of the Federal estate tax return, the value of the gift securities was not included. The Government audited the return and determined a deficiency based upon a contention that the 1957 transfer was one in contemplation of death properly subject to estate tax. A crucial factor in determining if a transfer is one in contemplation of death is whether the donor was motivated substantially by a purpose to save estate taxes in the making of it. D's executor has retained attorney A in the matter. The Government refused a compromise and the executor wishes to litigate if there is reasonable chance of success. He tells A that in 1957 before making the transfer, D had written to his accountant inquiring as to the tax consequences involved, and that Accountant had replied by letter setting forth the tax savings to be realized by the making of such a gift, and that neither the existence of this correspondence nor the fact that D had consulted Accountant is known to the Government or likely to become known unless volunteered by the estate. A realizes that without this evidence the estate has an excellent chance but that with it, the case is almost hopeless. It will be necessary to allege in the pleadings for the estate that "the Commissioner erred in determining that the 1957 gift of securities to D's son was a gift in contemplation of death." If you were A, would you advise litigation and seeing it through to a court determination?

IX.

State whether the following described conduct or practice is Proper or Improper, and if Improper, in what respects:

(a) A objects to the admission into evidence of a copy of a document on behalf of the other party on the grounds that it is not the best evidence, although A has at one time seen the original and knows it to be a correct copy?

(b) A sends announcements to all of his acquaintances reading, "A, formerly with the Chief Counsel s Office of the Internal Revenue Service, announces the opening of his law office for the general practice of law." ?

(c) Judge, a candidate for re-election to his judicial position, appears on the platform at a political campaign conducted by his party and explains to the audience that his unpopular decision in a school segregation case does not reflect his per-

sonal preference in the matter?

(d) Prosecutor attacks the credibility of defendant's witness, a person of criminal repute, although he knows that the witness testified truthfully, but he is nonetheless convinced of the defendant's guilt?

(e) A conducted some realty business out of his law office, not, however, advertising the same. In one such transaction he orally agreed to sell some land and subsequently refused to do so, taking advantage of the statute of frauds?

(f) A receives an unsolicited forwarding fee from another attorney; offers it to his client whose matter was involved; is told by his client that he may retain it; and does so?