

Session: Ethics, Lawyering and Professional Regulation

Topic: Conflicts of Interests – The Bright Line Rule

Recommended time: 1 hour

Score: 100 Marks

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Conflict of Interest – The Bright Line Rule

Arnice was appointed as the Chief Executive Officer (Operations) of Scarlett Airlines in June 2007 and had since been working in that position. Five years ago, she ran into her ex-boyfriend from college, Mark, who informed her that he is now a licensed solicitor. The duo continued their friendship and Arnice consulted Mark on various legal issues relating to her personal life.

Three years ago, Arnice spoke to the board of Scarlett Airlines about retaining Mark as an external solicitor for her department. This was approved, and Arnice had conveyed this news to Mark, jokingly telling him that she was now his boss and Mark must obey all her instructions or she would not hesitate to fire him. Both parties have continued working harmoniously, with Arnice supplying the bulk of Scarlett's instructions to Mark, who also continued to work on Arnice's personal legal matters.

Arnice had invited Mark to dinner last New Year's Eve, during which she informed him of her plans as the Chief Executive Officer (Operations) to change the name of Scarlett Airlines and amend the articles, an action that would affect some positions. Mark had asked if Arnice had the authority to do this, and she had replied that she did. She confided in Mark that though some of the directors may not be in support of her moves, she could count on two of them to go along with her. She then instructed Mark to write a formal letter to all board members conveying the special meeting, which he did.

Two days later, Ruth the company secretary, called Mark to inform him that the notice of meeting was not authorised and that the board had taken the decision to fire Arnice for usurping its powers. Ruth then informed Mark that she has a letter signed by the Chairman, supported by a majority of the board members to this effect. Ruth further informed Mark that he would represent Scarlett Airlines in the impending legal fireworks, as they were sure Arnice would not take the sack lightly.

Mark immediately called Arnice to acquaint her with the development. But she sounded unperturbed and instructed Mark to immediately file an application to restrain Scarlett Airlines from sacking her. She concluded by saying, “After all, you are my lawyer. You have been my lawyer for several years. I brought you into Scarlett to work for me. Your loyalty is to me.”

Mark has filed the application on behalf of Arnice against Scarlett Airlines but is presently confused about the propriety of his actions. He seeks your independent legal advice.