

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 2010

CIVIL PROCEDURE AND PRACTICE II

(WEDNESDAY, MAY 19, 2010)

**Instructions to Students**

- (a) Time: **3 ½ hours**
- (b) Answer **THREE** questions from Part A and **TWO** from Part B.
- (c) **Answer Part A and Part B on separate answer booklets.**
- (d) 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.**
- (e) It is unnecessary to transcribe the questions you attempt.
- (f) Answers should be written in ink.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

## PART A

### QUESTION 1

Your client, Lisa Fleming, entered into an agreement to sell real property in your jurisdiction to Yana Stewart. Ms Stewart, having provided you with an undertaking for payment of the balance required to close the transaction, expected title to the property to be conveyed/transferred to her client. However, you were unable to do this as the mortgagee failed to discharge its mortgage over the property and hand over the necessary documents to you.

The sale was to have been completed on January 2, 2010. Frustrated with the delays, Ms Stewart filed a claim in the Supreme/High Court of your jurisdiction seeking damages for breach of contract and specific performance. Her annoyance has also resulted in her refusing to entertain any settlement negotiations. A mediation was held but was fruitless in the circumstances. The case management conference is scheduled for July 2010.

You now have an undertaking from the mortgagee's attorney to release its mortgage and hand over the necessary documents to you within 2 weeks, and your client has asked that you make an offer to settle pursuant to Part 35 of the Civil Procedure Rules. You have assessed the value of the claim for damages to be the equivalent in your currency of US\$10,000.

You are required to prepare -

- (i) a draft offer to settle pursuant to Part 35 (on terms that you would expect to have an effect on the Court's order for costs, if the offer is refused); and
- (ii) a letter to Ms Fleming explaining why you have drafted the offer in those terms.

## **QUESTION 2**

Janet Unlucky, a resident of Ontario, Canada vacationing in your jurisdiction, was involved in a motor vehicle collision involving a car she was driving and a car owned and driven by John Willit, whom you represent on instructions from his insurer. Ms Unlucky was not wearing her seatbelt and was thrown forward, sustaining injuries when her chest hit the steering wheel. The vehicle's airbags did not deploy.

A loss adjuster investigated the matter on behalf of the insurer and concluded that liability would ultimately be determined by whose version of the accident was believed by a court. Ms Unlucky has brought a claim in the Supreme/High Court in your jurisdiction seeking damages for negligence. Mr Willit's insurer has requested you to pursue an application for security for costs.

You are required to prepare -

- (i) a draft [notice of] application for court orders; and
- (ii) a brief letter to the insurer advising on whether the application is likely to succeed and how the Court is to determine the amount to be ordered as security.

(The relevant form is available.)

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### **QUESTION 3**

The Defendant to a claim in the High/Supreme Court of your jurisdiction obtained an order striking out the Claimant's statement of case unless the Claimant filed his list of documents within 14 days of the date of the order. The Claimant, having failed to do so, applied for relief from sanctions.

You are required to advise the Claimant as to what order(s) regarding costs would be appropriate in each of the following situations and why -

- (i) an order is made granting relief from sanctions;
- (ii) following (i), an order is made by the Supreme/High Court refusing the Defendant's application for permission to appeal;
- (iii) following (ii), an order is made by the Court of Appeal giving the Defendant permission to appeal;
- (iv) following (iii), an order is made by the Court of Appeal requiring the Defendant to provide security for costs of the appeal; AND
- (v) finally, the appeal is dismissed.

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### **QUESTION 4**

The Claimant filed a claim for damages against the Defendant and on May 10, 2010, obtained, without notice, an order from the Supreme/High Court in the following terms-

*"That the Defendant, its employees and agents be restrained until judgment or earlier order of the Court from disposing of, dealing with or diminishing the value of any of its assets within the jurisdiction."*

An appropriate undertaking as to damages was given.

Your client, the Defendant, was incorporated in Florida, USA, but owns and manages two hotel properties in your jurisdiction. The incorporation in Florida was indicated in the affidavit in support of the application, as well as the fact that the Defendant has bank accounts in your jurisdiction. The affidavit made no mention of the hotel properties, though there was a reference to them in a sentence of a letter which was one of the many exhibits to the affidavit.

The Defendant requests that you apply to discharge the order. You are required to prepare -

- (i) a draft [notice of] application for court orders applying for the discharge of the order on all grounds that may be arguable based on the instructions above;
- (ii) a brief letter to the Defendant assessing the likelihood of success of the application to discharge on the grounds relied upon.

(The relevant form is available.)

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## **QUESTION 5**

Pursuant to an order for standard disclosure made by the Supreme/High Court in your jurisdiction, the Defendant's attorney-at-law prepared a List of Documents in which Schedule 1 Part 1 listed a letter from the attorney-at-law to an investigator setting out various facts as recalled by the Defendant and requesting a report on a fire at the

Claimant's premises that was the subject of the claim. The request was made, at the time, for the purpose of preparing the Defendant's Defence. Schedule 1 Part 1 also listed the investigator's report in which he concluded that the fire had been caused by the negligence of the Defendant.

The letter from the attorney was also listed in Schedule 1 Part 2. The investigator's report was not.

As one of the Claimant's attorneys, you served notice to inspect the documents listed in Schedule 1 Part 1, and the Defendant's attorney in response provided copies of all the documents listed in that Part, including his letter to the investigator and the investigator's report.

The Claimant intended to rely on both documents at trial. However, the day before the trial was to commence, the Defendant's attorney called the senior attorney with whom you are appearing in the trial to say that the documents are confidential to the Defendant and were provided to you by mistake.

The senior attorney has requested your advice as to what should occur in the circumstances.

Advise her.

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**PART B**  
**LAW OF ASSOCIATION**

**QUESTION 6**

Lewis Hamlin and Jensen Betton are classic motor car enthusiasts and talented mechanical engineers. They have known each other for some time, largely through encounters at classic car shows and also at social events, as they have several friends in common. At one such encounter about 2 years ago they discovered their mutual interest in the restoration of classic cars and took to exchanging notes on their current restoration projects. More recently, they have noticed a notable increase in other enthusiasts asking one or other of them to take on restoration jobs.

After joking with each other for some months about leaving their present jobs to do this for a living, they have looked at the matter more seriously. They have decided that, while they would not risk leaving their present places of employment, they would be willing to start the business using the persons which each of them currently contract or employ to help them in their personal projects and dedicating their own spare time to the business as well. They are a little nervous about potential personal liabilities to their workers, customers and other third parties but also do not want to do anything which would subject them to too much public scrutiny.

Advise Lewis and Jensen on –

- (i) the types of business vehicles which might be suited to their proposed business;
- (ii) the advantages and disadvantages of these vehicles which they ought to consider in choosing one of them; and

- (iii) the steps and documentation required to form the vehicle which is the more advantageous one, if the avoidance of personal liabilities is their overriding concern.
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### **QUESTION 7**

Marcus Twine, Hunter Flynn and Thomas Slaughter are attorneys-at-law and partners in the firm of Slaughter, Flynn and Twine, a general partnership operating in your jurisdiction. You are a sole practitioner, specialising in family law, with a growing practice and reputation. This has made you a target for recruitment by firms such as Slaughter, Flynn and Twine and in fact you have been approached by Thomas Slaughter to join the firm as a partner.

Your initial due diligence indicates that the firm has no written Partnership Agreement, a situation with which you are not comfortable. Mr. Slaughter, who is particularly keen on having you join the firm, has indicated that the current partners have got along quite well without one up to now but that, if you insist, he supposes that they could be persuaded to put a written agreement in place. As the party who is insisting on the document you have been asked to indicate what such an agreement ought to contain.

Describe the clauses of the agreement which would be both usual and desirable, giving reasons for the inclusion of each.

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## **QUESTION 8**

Mr Raphael Bennites is an employee of Rainbow Garments Limited, whose head office and factory are located at 20 Anfield Boulevard, Liverpool District in your jurisdiction. He has approached your firm on behalf of the entire cadre of junior employees of the company on the matter of forming an association, primarily for sports and general recreational purposes. They envisage premises which would have a green area suitable for football and cricket as well as a building with changing and bathroom facilities and in which food and drink would be available at a cost to members of the association. There would also be a lounge area where members would be able to play board and other indoor games which would be provided by the association.

Mr Bennites has advised that the company, which is in support of the idea and may be willing to be involved, has suitable premises and that they plan to approach the Managing Director about using them once they receive certain advice from you. Funding for the association is uncertain but the company might be willing to help with this also. Mr Bennites has also indicated that, although it has been mentioned “in some quarters”, the employees have no interest in any new company being formed in connection with the proposed endeavour. He has requested that you write him a letter which he can circulate to the small committee which has been requested by the wider body of employees to spearhead the project setting out -

- (i) the types of associations which might be considered given your instructions, with a general description of their structure and legal characteristics;
- (ii) the advantages and disadvantages of each type of association identified by you at (i) above; and
- (iii) the steps and documents required to form them.

## QUESTION 9

You are an associate in the firm of Williams, Chuck and Harding, Attorneys-at-law. Keith Daye and John Senior are co-managing directors of Flamenco Company Limited, a private limited liability company, which operates "Frenchies", a nightclub on Blue Mountain Road in your jurisdiction. They advise that when the nightclub was first opened, Blue Mountain Road and its environs was a desirable even somewhat upscale commercial area, which was home to several nice nightclubs and other types of night-time entertainment. However, over the years the area has declined in quality as have the fortunes of Frenchies and its operator, Flamenco Company Limited. In fact the position of the company is that after barely being able to keep afloat for some years it is now unable to pay its debts or meet its ongoing financial obligations and the directors believe that the shareholders have no option but to close the nightclub and to liquidate the company. They have come to the firm for advice on the matter.

Percival Chuck, the partner in the firm who acts for the company, and who interviewed Messrs. Daye and Senior, has asked you to prepare a memorandum to him which sets out -

- (i) the ways in which a company may be liquidated in your jurisdiction;
  - (ii) the type of liquidation which you recommend for adoption in this case, giving reasons for your choice; and
  - (iii) a description of the process up to dissolution of the company and the role of the parties involved in the type of liquidation identified by you at paragraph (ii) above.
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