

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2011

CIVIL PROCEDURE AND PRACTICE II

(THURSDAY, AUGUST 4, 2011)

**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**

You are the judicial clerk to the Honourable Mrs Justice Wisdom, a Judge of the High/Supreme Court in your jurisdiction. After hearing a claim for damages arising from a breach of contract, she gave judgment for the Claimant for the equivalent in your currency of US\$20,000, plus interest and costs. However, she was then advised of the following:

- (a) 8 weeks before the trial, the Defendant made an offer to settle the claim without prejudice, save as to costs, in the amount equivalent to US\$20,500 (not including interest and costs);
- (b) 5 weeks before the trial, the Claimant made a counter-offer to settle the claim which was without prejudice, save as to interest, in the amount equivalent to US\$23,000 (not including interest and costs);
- (c) 2 weeks before the trial, the Defendant made a counter-offer to settle the claim without prejudice, save as to costs, in the amount equivalent to US\$22,000 (not including interest and costs);
- (d) At the same time as (c) above, the Claimant wrote indicating he was changing his offer to the equivalent of US\$19,800 (not including interest and costs), without prejudice, save as to interest;
- (e) Having received each other's offer at (c) and (d) above, the Claimant and the Defendant wrote to each other the day before trial seeking to withdraw their offers at (c) and (d).

In response to a request from the Judge, you are required to provide her with a memorandum advising her on what adjustments (if any) she should make to the judgment she had delivered in the light of the information she has now received.

## **QUESTION 2**

John Wagner obtained a search order against Mozart Limited in a claim for breach of copyright in which it was alleged that Mozart Limited was selling music composed by him without his permission. Mr Wagner had written to Mozart Limited 12 months ago, 6 months ago and last week complaining about the alleged breach. Mozart Limited responded on each occasion insisting that no part of the music in question belonged to him.

In making the application for the search order, Mr Wagner disclosed only the letter he had written last week and the response from Mozart Limited. When the search order was served, Mozart Limited was unable to contact an attorney-at-law and complied entirely with the order. Now, however, they have engaged you and have asked you to advise on whether Mr Wagner proceeded in a manner that was incorrect and, if so, what (if anything) they could do as a consequence.

Advise Mozart Limited.

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## **QUESTION 3**

Ten weeks ago, the Minister with responsibility for telecommunications in your jurisdiction made a decision to refuse a licence to your client, Telecoms International Limited, to provide services in your jurisdiction. In a terse letter to Telecoms International, the Minister simply said the application had been denied, giving no reasons for the decision. While they were contemplating challenging the decision, Telecoms International learned that the Minister held 10 of the 30 issued shares in Local

Telecoms Limited, which had opposed the issue of the licence. Your client therefore decided to proceed with a claim for judicial review.

You are required to prepare the following:

- (i) skeleton arguments in support of the application that must first be considered by the Supreme/High Court, addressing all the issues that the Court should take into account on the hearing of the application; and
- (ii) a draft order setting out all the orders that the Court should make on the hearing of the application.

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#### **QUESTION 4**

Brian Bryan, a customer of your client - Bank Limited, brought a claim against Bank Limited for breaching its obligation of confidentiality to him by disclosing to his wife information concerning his account with the bank. The bank has denied liability. At the case management conference, an order for standard disclosure was made.

The following documents exist:

- (a) A letter dated November 11, 2010 from the Managing Director of Bank Limited to the Head of Customer Service, copied to the in-house counsel, advising that “we should urgently apologize for the wrong done to this customer who has clearly been severely hurt by our disregard of our obligations to him”;
- (b) A letter dated December 12, 2010 from the bank to Mr Bryan, written without prejudice by Bank Limited’s in-house counsel shortly before the claim was filed,

- in which Bank Limited offers to settle the claim on the basis that “we know you were deeply troubled by what we did and we are hoping we can bring this matter to an end amicably”;
- (c) A letter dated January 2, 2011 from Mr Bryan’s attorney-at-law to the bank refusing Bank Limited’s offer of settlement; and
  - (d) A letter dated February 3, 2011 from Mr Bryan’s attorney-at-law to Bank Limited’s attorney-at-law consenting to their oral request for agreement on an extended time within which to file a defence.

You are required to prepare:

- (i) A draft List of Documents to be filed on behalf of Bank Limited in compliance with the order for standard disclosure; and
- (ii) a letter to your client briefly explaining the treatment of each document.

(The relevant form is available.)

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## **QUESTION 5**

A judgment for \$10,000,000 plus costs (which have not yet been taxed/assessed) has been entered in favour of your client, the Claimant, in a claim in the Supreme/High Court in your jurisdiction.

It is known that the Defendant owns an apartment worth about \$6,000,000 and a motor vehicle worth about \$2,000,000. However, the Claimant has no information about any

other assets the Defendant may hold. The Defendant having ignored a demand for payment subsequent to the entry of judgment, the Claimant requests your advice as to how he may proceed to recover the amounts adjudged to be due to him.

Advise the Claimant.

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

**QUESTION 6**

Herman Furman and Stanley James are independent building contractors. Over time both have developed solid reputations for reliability and high quality work. They plan to work together to bid for the right to develop a small low income housing project being undertaken by the Government Housing Authority in your jurisdiction. Bids will only be accepted from registered companies and so they have come to see you for assistance in the matter.

Advise Herman and Stanley as to –

- (i) the type of company they should incorporate in the circumstances, giving reasons for your choice;
- (ii) the steps and documents (including the general content of same) required to effect incorporation of the type of company recommended by you; and

- (iii) any other steps or documents which are required to be taken or prepared contemporaneously with or proximate to the company's incorporation pursuant to relevant companies legislation in your jurisdiction.
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### **QUESTION 7**

Howzatt Company Limited is a private company limited by shares in the business of sports broadcasting. It has been doing well, having taken advantage of modern technology and the passion of the locals in the jurisdiction for sporting activities of all kinds. Advertisers have been eager to take slots on the company's network. In order to move the business to the next level, the company requires additional capital which it proposes to raise by the issue of new shares.

The managing director of the company, Howard Mazatt, has requested your advice on -

- (i) the approaches which the company might take to raise the capital needed by an issue of shares; and
- (ii) the legal implications of these approaches including the steps and documents which would be required to effect each of them.

Advise Mr. Mazatt.

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## **QUESTION 8**

Hilary Hanson, Katie King and Pearl Peart are consultant engineers in the fields of structural, electrical and mechanical engineering respectively. Each of them currently practises her profession in the same building. They have, over the course of several years, grown to be fairly good friends and professional colleagues who enjoy each other's respect. They are contemplating forming a general partnership but require advice on certain issues first. Specifically they wish to find out some of the possible approaches which they may take in the arrangement between them in respect of the following:

- (a) management and decision-making in general;
- (b) dispute resolution;
- (c) admission of new partners;
- (d) distribution of profit; and
- (e) the authority of each partner to bind the firm in contract.

Advise them.

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## **QUESTION 9**

Dwayne Wayne is a dirt-biking fanatic. He has several trophies which bear testimony to his skill as a dirt-biker and he is very well known in dirt-biking circles throughout the Caribbean. His favourite bike is a Kawasaki KLX450R.

As he approaches retirement from the sport, Dwayne has been giving thought to how he might not only continue to enjoy his favourite activity, but also how he might



continue to make some money from it. He has a fairly large piece of land left to him by his father, outside the city limits in a somewhat remote area but not too far off the beaten track. It seems to him that the sport of dirt-biking is quite popular, particularly amongst the more affluent and that there might be an opportunity to start some sort of association of dirt-bikers. He could develop the property to make it a highly desirable dirt-biking location and, since the bikers would need refreshment, he could also provide same. Of course it would be necessary to screen persons who wanted to be a part of this association. It would not be just a matter of anyone who could pay being able to enjoy the facilities.

Dwayne has come to you for advice on –

- (i) the type of organisation which would be most suitable in the circumstances and its legal characteristics;
  - (ii) the steps and documents required to form it; and
  - (iii) the likely content of any documents identified by you at (ii) above.
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