

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2013

CIVIL PROCEDURE AND PRACTICE II
(WEDNESDAY, MAY 15, 2013)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

On September 6, 2010, Jennifer Unobservant, an artist, commenced proceedings against the Super Supermarket Limited for damages suffered when Ms. Unobservant, while in the supermarket's King's branch location, allegedly slipped on a wet floor, fell and landed heavily on her left side. As a result of her fall she suffered injuries to her left arm, shoulder and wrist and was forced to wear an arm brace and stay away from work for a period of 2 months. She has claimed the equivalent in your currency of US\$25,000.00 for certain special damages, as well as general damages for pain and suffering and resulting decreased mobility in the use of her left wrist.

You act on behalf of Super Supermarket Limited and are advised by their employees that on the day of the accident, August 4, 2010, signs had been placed in the aisle where Ms. Unobservant fell, indicating that the floor was wet. They further advised that barricades had also been placed at each end of the aisle to prevent customers from entering same. There was video footage of Ms. Unobservant's incident which revealed that she had seemingly noted the existence of the barricades and moved one to the side and walked into the aisle. She retrieved a product from the shelf and was returning to her trolley (which she left on the other side of the barricade) when she seemed to slip on the wet floor and fall to the ground. She had to be assisted to get back up.

The Super Supermarket representative instructs you that the supermarket is unwilling to pay Ms. Unobservant's full claim as she should not have removed the barricade. Management is, however, anxious to swiftly dispose of the matter and would be willing to settle same for a total of the equivalent in your currency of US\$25,000.00.

Trial is scheduled for June 27, 2013.

- (a) Draft a letter to your client advising about making an offer to settle under the Civil Procedure Rules which impacts on decisions the Judge will make on the matter of interest and/or costs where the offer is not accepted. Include in the letter details of the procedure to be followed and benefits/risks of making such an offer to settle pursuant to the Civil Procedure Rules of your jurisdiction;

 - (b) Draft the offer to settle.
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QUESTION 2

In December 2012, High Tech Gaming Limited (“HTG”) created new software expected to revolutionize the gaming industry. Access to the software was limited to a small team of persons from the organization including Jennifer Better-Life, Chief Innovation Officer of HTG and Jonathon Strikeadeal, Deputy Chief Innovation Officer of HTG. HTG planned to launch the new software on May 22, 2013.

Jennifer and Jonathon both resigned from HTG effective March 29, 2013 and on leaving their employment entered into a ‘non-compete’ agreement with HTG. Pursuant to this agreement they were each paid the equivalent in your currency of US\$23,000.00 to refrain from being associated with any competitor of HTG for a period of four (4) years following the termination of their employment.

On May 8, 2013, Jeffrey Getalong, the Vice-President of HTG, visits your law firm. He instructs you and Mr. Senior Partner QC that it has come to his attention that Jennifer Better-Life and Jonathon Strikeadeal were recently appointed to the Board of Directors of Prestige Gaming Limited (“PGL”), HTG’s main competitor. His investigations have revealed that PGL intends to launch similar software on May 15, 2013. Mr. Getalong indicates that he would like to sue PGL, Jennifer and Jonathon saying:

“I think those guys took confidential documents to Prestige and those must be immediately recovered. They must not be allowed to have our information or breach our patent.”

Mr. Senior Partner QC assigns you the task of providing him with a legal opinion advising on the way in which HTG’s sensitive confidential information may be recovered from PGL and the former employees.

Prepare a draft opinion for submission to Mr. Senior Partner QC addressing the following:-

- (i) the type of order which may be applied for to retrieve the confidential information and what it permits;
- (ii) how and when the procedure to obtain that order should be undertaken;
- (iii) the principles which the court will take into account in determining whether or not to grant the said order; and
- (iv) the consequences of failure to comply with the order.

QUESTION 3

Mr. Winter Notsowell has claimed against Nobler Fabric Manufacturing Limited (“NFM”) for damages resulting from injuries sustained by him while he was employed to NFM. Mr. Notsowell had worked as a fabric cutter and was one of the persons responsible for neatening the edges of fabric produced by NFM. In carrying out this job he had to exercise great hand control skills and operate a machine with a sharp blade that was lowered against the very edge of the fabric to remove loose ends in preparation for being sealed. While operating this machine three of the fingers on his right hand were sliced off. The matter is proceeding to trial

and at the case management conference an order is made for standard disclosure and inspection.

You are the attorney-at-Law acting on behalf of NFM.

- (a) Write a letter to NFM advising them of the standard disclosure order and their obligations arising from it.

- (b) Set out below are the documents your client has produced:
 - (i) letters dated March 30, 2012, April 13, 2012, June 15, 2012 from you to your client in which you provided details on their potential liability under the claim;

 - (ii) the operations manual on the fabric cutting machine being operated by Mr. Notsowell at the time of the incident;

 - (iii) a report which you are instructed by the President of NFM (who commissioned the report) was generated to inform new safety practices to be implemented at the Company's factory to ensure an accident, similar to that which is the subject of this claim, is not repeated. The report was made by the Chief Safety Officer at NFM and at the end of the document appears a statement which reads as follows – "This private and confidential document has been created partly in anticipation of litigation"; and

 - (iv) correspondence between the attorneys-at-law representing the claimant and the defendant exchanged prior to the commencement of litigation in which the parties had been negotiating a settlement of the matter.

Draft the List of Documents to be filed on behalf of your client.

- (c) State briefly your reasons for the placement of the documents in the List of Documents.

(The relevant form is available.)

QUESTION 4

On February 12, 2010 Ms. Marianne Malady was at the New Hope Plaza with her then boyfriend, Mr. Gavin Fiend, when Ms. Smart, Mr. Fiend's ex-wife, accosted both of them. There was a heated argument amongst the three of them which became violent. A physical brawl ensued, ending when your client, Marianne Malady, was pushed in a manner which resulted in her crashing through the glass door of the Prader store and sustaining physical injuries. Shortly after the accident, Ms. Malady lost her job as a result of her injuries and is currently unable to meet her debts.

Ms. Malady was not sure who pushed her into the glass door and claimed against Gavin Fiend and Stephanie Smart for damages arising from the injuries sustained during the altercation.

The Court found that Ms. Smart was wholly liable for the damages sustained by your client and awarded the sum of the equivalent in your currency of US\$28,000.00 to Ms. Malady together with costs. The Court further ordered that the costs of Mr. Fiend be paid directly by Ms. Smart.

After the judgment is awarded by the court, Ms. Malady accompanies you to your chambers and asks to meet with you to discuss what happens next. During this discussion she thanks you for your hard work and then makes the following statements –

- (a) "When do I get my money from that woman?"

- (b) “She’s miserable and bitter! She’s not going to willingly pay it! We must be able to take things that she owns and sell them - how do we find out what she owns?”
- (c) “Well I know that in the divorce settlement she got a lot of expensive jewellery and a BMW X5. Plus she lives in a big fancy house owned by her grandparents. Can’t we sell all those things to get my money?!”
- (d) “How come the Judge didn’t ask me to pay Gavin’s costs?”

Respond to each of Ms. Malady’s questions including the procedural steps and documents required.

QUESTION 5

Pasor Limited, one of the largest pharmaceutical companies in your jurisdiction, announces that it has found a cure for excessive perspiration. The drug is released on the market and a number of persons have had a bad reaction to it, experiencing severe pains in their muscles. A representative claim is made against Pasor Limited who had failed to disclose this as a possible side effect of the drug.

You act on behalf of Pasor Limited which denies responsibility for the side effect and posits that its extensive research did not reveal the possibility of such a side effect. Pasor Limited has suggested that its employee, Dr. Sigfried Knowalot, Chief Scientist, serve as an expert witness in the matter.

- (i) Draft the Application for Court Orders for permission to rely on Dr. Knowalot as an expert witness and for a report to be submitted by him.

- (ii) Advise your client on the likely objection to this Application, and whether or not the objection would be upheld.

(The relevant form is available.)

PART B
LAW OF ASSOCIATION

QUESTION 6

Jonathan Wynter and Sebastian Wright operate a wholesale grocery business, in partnership with each other, under the name “Wynwright Wholesale”. The business is quite profitable and they have a good relationship with their bank manager, Mr. Muschette.

Jonathan and Sebastian are considering buying their own premises (they presently rent) and expanding the business. They have discussed financing opportunities with Mr. Muschette who has been encouraging them to incorporate the business.

Having been perfectly happy up to now, Jonathan and Sebastian are not sure that this is a move they wish to make, but are willing to explore the matter. They have therefore come to you for advice on:

- (i) the advantages of incorporation and how, if at all, it would change how they presently operate;
- (ii) the type of corporate body which would suit their purposes and the steps and documents required to form it; and

- (iii) whether they can continue to use the name Wynwright Wholesale, as they have built up a considerable amount of goodwill in that name.

Advise Jonathan and Sebastian.

QUESTION 7

The share capital of Williamson Electrical Limited is owned by the members of the Williamson family. It is a highly successful private company and the profit derived from the business has been the source of significant income for the family for many years.

Unfortunately, over time, those senior members of the family who were integral to the running of the business have died, leaving the company, but not their passion for it, to a younger generation of Williamsons. While the company remains profitable, the current owners have decided to bring the business and the company to an end and have sought your advice on the matter.

Advise them, by way of a letter to the company chairman, John Williamson, of the approach which may be taken to terminate the business and the company. In your letter, include an outline of the procedure from start to finish.

QUESTION 8

A group of church “brothers” have been meeting in the church hall every Monday night to play a few games of dominoes. The domino sessions have proven to be times of great fellowship and they have an understanding that each will make a small monetary contribution each week to allow one or other of them to purchase snacks and drink for the following week’s session.

This has been going on for some time and, for the most part, it has worked well but lately two things have begun to bother some of the original members of the group. One is that, without the approval of the others, some of the men have been bringing friends to play whose conduct is not to the liking of others. The other is that a trend has developed whereby only a few of them contribute regularly to the “refreshment fund”.

Dean and Patrick, both founding members, have approached you for advice in establishing a legal structure for their group which might address these issues but which would not involve too much formality or cost and in which the members would still remain in control without outside interference.

Advise Dean and Patrick on:

- (i) the type of organization which would suit their purposes, giving reasons;
- (ii) the steps and document(s) required to form it; and
- (iii) the recommended content of any document(s) identified by you at (ii) above.

QUESTION 9

Grupo Catalonia, S.A., a company incorporated in Spain, which distributes generators and other industrial electrical equipment, wishes to establish a branch of its business in your jurisdiction.

It instructs you that it does not wish to form another company for this purpose and seeks advice from your firm on the matter.

Write a letter to the in-house counsel of Grupo Catalonia, S.A., Angelo Marquez, advising him on:

- (i) a possible approach which his company may take to establishing the branch, and the procedure attendant on so doing; and
- (ii) the ongoing statutory obligations which his company would have once the branch was established.

END OF PAPER