

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2017

CIVIL PROCEDURE AND PRACTICE II
(AUGUST 00, 2017)

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. Erasable pens are not allowed.
- (g) Calculators may be used and are provided.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

INSTRUCTIONS FOR PART A

All figures referred to in Part A of the paper are stated in United States Currency.

You may either:

- (i) use the figure, as is, assuming that it is sufficient for the matter to be before the Supreme/High court of your jurisdiction; or
- (ii) update the given figure to an equivalent sum in the currency of your jurisdiction, using the following exchange rates.

- Jamaica: J\$128.00 -US\$1.00
- OECS: XCD\$2.70 – US\$1.00
- Belize: BZD\$2.00 - US\$1.00

The claims are not for United States currency.

QUESTION 1

Sebastian Charo, owner and senior manager of Charo Cleaners Limited (“Charo Cleaners”), attends your office today. He engages the firm and meets with you and Gina Messam, a senior partner in your firm. Sebastian hands you a claim form (with prescribed notes/notes to the defendant, form acknowledgment of service, application to pay by instalments and form defence), statement/particulars of claim, notice of application for court orders for a freezing order, affidavit of Xavier Hamilton in support of the application and a freezing order issued by the Supreme/High Court in your jurisdiction.

You examine the documents and note that Charo Cleaners has been sued for a sum, being the rent due and owing under a lease with Xavier Hamilton. Xavier has obtained an unlimited freezing order from the court preventing Charo Cleaners from dissipating its assets held within the jurisdiction. The grounds set out in the application include a concern that the company is in the process of dissipating its assets, as it recently closed its largest location.

Sebastian instructs that the location referred to in Xavier’s affidavit was closed eight months ago, that the location was no longer profitable because of changes in the profile of the neighbourhood and that Charo Cleaners has refused to pay rent for the last year, because there are a number of repairs to be done to the premises.

He further instructs that there are a number of letters between them concerning the matter. Some of these letters include promises from Xavier to make the repairs.

Draft:

- (i) the appropriate notice of application for court orders to be made for and on behalf of your client in the circumstances (The relevant form is available); and
- (ii) brief notes to your senior partner on the likelihood of success of the application.

QUESTION 2

You act for and on behalf of the defendant, Jamsport Factories Limited (“Jamsport”), in a claim brought against it by Alex Rainer for damages in respect of injuries he sustained to his hands while operating machinery in the defendant’s factory.

Alex was employed as a tailor at the defendant’s factory and while handling a machine at the factory a lever slipped, and his right hand was sliced off. In its defence, Jamsport alleges that, at the time of the incident, Alex was not operating the machine in the manner instructed and was therefore wholly responsible for the injuries he sustained.

The matter had been scheduled for case management conference today and Alex did not attend. This was the third time the conference had been scheduled for hearing. It had been adjourned on the last two occasions. On the first such occasion, it was because Alex was ill and unable to attend. On the second occasion, it was adjourned because counsel for Alex was arrested on the way to court. The Manager of Jamsport, Oneil Arito, attended with you on both occasions.

This morning Oneil did not attend the case management conference. You were in attendance and explained to the Judge that Oneil had been overseas on the company’s business for the last four weeks but had arranged to arrive in the jurisdiction that morning. His flight was, however, cancelled, and he was not able to secure a flight until the following day. You asked that the court kindly adjourn the matter to the following day.

The judge refused the request and proceeded to strike out the company’s statement of case and entered judgment for Alex with damages to be assessed.

Advise the client, by way of a letter, on whether or not the judge had the authority to act in that manner, the appropriate application to be made in the circumstances and the strength of any such application.

QUESTION 3

You are an associate in the firm of Clippers & Associates, attorneys-at-law, acting for and on behalf Roving Parties Limited (“Roving Parties”), the defendant in a claim. Roving Parties is in the business of planning events on behalf of its customers.

The claimant, Jennifer Salez, had engaged Roving Parties to plan her daughter’s sweet sixteen party held on December 5, 2015. While employees of Roving Parties were setting up the dance area for the event, a set of strobe lights, which had not been properly affixed, fell and landed on Jennifer’s head, seriously injuring her. Jennifer brought a claim for damages, arising from a breach of contract and, alternatively negligence.

The case management conference was held on May 26, 2017, and an order made for standard disclosure to be completed by October 4, 2017.

Your client has conducted a reasonable search for documents and those listed below were located.

- (i) The manual for the strobe lights.
- (ii) Various letters, including those dated January 6, 2016, January 20, 2016 and March 2, 2016, between Clippers & Associates and Roving Parties, concerning substantive matters in the claim.
- (iii) A report dated December 19, 2015, done for Roving Parties by Kongs Assessors & Advisers Limited, setting out details of the incident, and steps to be taken to prevent such an incident from occurring in the future. It was done on the orders of the chief safety officer of Roving Parties to investigate the cause of the incident in the event of a claim being brought by Jennifer.
- (iv) Copy letter dated January 1, 2016, from Roving Parties to Jennifer offering a sum, the equivalent of US\$200,000 in the currency of your jurisdiction, in full and final settlement of any claims she may have against the company.

- (v) Letter dated May 12, 2017, from Clippers & Associates to Roving Parties, reminding them to have a representative attend the case management conference.
 - (vi) A letter dated December 12, 2015, from Roving Parties to its insurance company, setting out details of the incident. Roving Parties is unable to find its copy of this letter and assumes it has been misplaced.
- (a) Draft the List of Documents to be filed on behalf of your client. (The relevant form is available.)
 - (b) Write brief notes detailing your reasons behind your treatment of each of the documents listed at (i) to (vi).

QUESTION 4

You act for and on behalf of Tong Free Limited (“Tong Free”), the claimant in a claim for breach of contract against Sylvia Sursmith. The trial of the claim is two weeks away. The following issues come to your attention:

- (i) The claimant’s main witness, Sergio Templacy, was recently dismissed from his position as chief executive officer of Tong Free. When contacted by you, as part of your pre-trial preparation, he indicates that he is no longer willing to serve as a witness in the matter. You and the claimant agree that Sergio’s evidence is crucial to the success of the trial.
- (ii) The internal legal counsel at Tong Free comes across a letter which he feels would be essential to the claim against Sylvia. The letter had not been disclosed in the List of Documents filed on behalf of the claimant over a year ago.
- (iii) The witness statement filed on behalf of the public relations officer of Tong Free, Jaden Kline, had briefly referred to certain pertinent facts concerning a matter in dispute in the claim. It has now been determined that full details of the relevant facts should be presented at the trial.

Draft a letter to your client, setting out your advice on the appropriate steps to be taken to address the issues set out above.

QUESTION 5

Your firm acts for and on behalf of Cuddles & Kind Limited (“Cuddles”), the claimant in a claim for damages for trespass against Lorianne Tennance. Cuddles was successful in the claim and awarded a sum, the equivalent of US\$400,000 in the currency of your jurisdiction, including interest, at the trial, which concluded one month ago.

Lorianne refused to pay the sum awarded to Cuddles and filed a notice of appeal. She has also obtained a stay of execution pending the appeal. Investigations, to date, have revealed that Lorianne owns a motor vehicle valued at a sum, the equivalent of US\$15,000 in the currency of your jurisdiction, and a bank account with a sum, the equivalent of US\$20,000 in the currency of your jurisdiction, at Raiders Financial Services Limited. She is gainfully employed as a statistician.

Write a letter to Cuddles advising on the impact of the notice of appeal and stay of execution, as well as, the steps that are best taken by it to enforce its judgment in light of the result of the investigations.

PART B
LAW OF ASSOCIATION

Question 6

Nellie, Belle and Katie are business analysts of many years standing and are close friends. They all graduated from the same business school in Canada, albeit in different years, but that common background has contributed significantly to their relationship.

Now the three women are contemplating a business relationship which they believe will provide them with opportunities for growth that would not be achievable by them individually. They are contemplating forming a general partnership and require advice on certain issues. Specifically, they want to ascertain:

- (a) the procedural steps involved in forming the general partnership;
- (b) any legal issues they should bear in mind in choosing a name for the general partnership;
and
- (c) the instructions they would need to give you in respect of the following areas in order for you to formalise the partnership arrangement among them:
 - (i) management of the partnership and decision-making in general;
 - (ii) profit-sharing; and
 - (iii) contributions to the capital of the firm.

Advise Nellie, Belle and Katie.

Question 7

Construccion de Madrid, S.A., a construction company incorporated in Spain, has recently contacted your firm for legal advice concerning a proposed business venture in your jurisdiction. Its in-house counsel, Rosa Martinez, in an email to the firm's senior partner, has instructed that the company's board of directors wishes to establish a branch of the company in your jurisdiction to take advantage of opportunities in the building industry there. Her email indicates that the

company has already identified property there for the purpose of establishing an office and for storage of the equipment and materials.

While it wants to establish a physical presence and conduct the company's business in your jurisdiction it does not intend to incorporate a subsidiary company for that purpose. Mrs Martinez knows that it needs to comply with local laws and in particular, has asked for advice on:

- (i) any requirements under your jurisdiction's companies legislation with which the company needs to comply in order to go ahead with its plan; and
- (ii) the obligations, if any, the company would have, under that legislation, while it continued to do business in your jurisdiction as proposed.

The matter has been passed to you.

Prepare a response to Mrs Martinez's email.

Question 8

Kingsley Bennett is the managing director of Bennett's Hardware Limited, a limited liability company incorporated in your jurisdiction. The owners of the company are two related companies, incorporated in the United States of America, who have decided to cease doing business in your jurisdiction pursuant to a reorganisation of the group.

The plan is to sell the entire business (all assets and liabilities) of the very profitable company to a large local competitor, and thereafter to terminate the life of the company.

Mr Bennett has been mandated by the board of directors to ascertain the simplest and most cost-efficient way to achieve this termination and has therefore sought your advice. In addition, he would like to know, for his own purposes, whether, if the life of the company is terminated, it can be restored.

Advise Mr Bennett as to:

- (i) the simplest and most cost-efficient way in which the company may be terminated in the circumstances, outlining the procedural steps involved; and
 - (ii) whether the company may be restored to life after being terminated in this manner and, if so, the means by which this may be done.
-

Question 9

Simon Peter Academy is a secondary school run by a religious denomination in your jurisdiction, which caters to indigent students with special needs. The only fees collected in respect of the students is whatever their families can afford to pay, and the balance is provided by the church from its weekly collections. This is becoming an increasingly unreliable source and the school's administration has been seeking alternative sources of funding.

Certain prominent persons in the jurisdiction, who themselves have children with special needs, have agreed to help. The principal of the school, Leila Keating, has consulted with you about the registration of a charitable company for the purpose of receiving donations and undertaking fund-raising activities, for the benefit of the school and the students. The prominent persons referred to would be the initial members and directors of the company. No profit that the company makes will be distributed to its members.

Ms Keating has asked for information on the following:

- (i) the type of company which should be formed in the circumstances, giving reasons; and
- (ii) the procedural steps and documents involved in incorporating the company and establishing it as a charity.

Draft a letter to Ms Keating with the requested advice.

END OF PAPER