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SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1990

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CIVIL PROCEDURE AND PRACTICE II

(Wednesday, August 15, 1990)

Instructions to Students

- a) Time: 3½ hours
 - b) Answer THREE questions from PART A and TWO questions from PART B
 - c) Questions selected from PART B must be answered on a separate sheet.
 - d) In answering any question a student 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.
-

Civil

- 2 -

QUESTION 1

State the purpose of and the procedure on a Summons for Direction.

QUESTION 2

(a) One of the ways of determining an action without a trial or a full trial is for the defendant to induce the plaintiff to accept a sum of money he may pay into court in full and final settlement of the claim made against him. By reference to relevant rules of court and decided cases outline the procedure and practice and the principles relating to payment into court.

(b) In the event that the plaintiff does not accept a payment made into court by the defendant in full and final settlement of his claim may the defendant withdraw such payment in?

QUESTION 3

Write notes on:-

- (a) Legal Professional Privilege
 - (b) Privilege against Self Incrimination
 - (c) Crown Privilege.
-

QUESTION 4

- (a) What is the difference between costs awarded -
(i) on a party and party basis and
(ii) on an attorney-at-law and own client basis?
What is the effect of such awards of costs on the taxation
of a bill of costs?
- (b) On the taxation of the plaintiff's bill of costs before
the Registrar/Taxing Officer the defendant unsuccessfully
raised several objections as regards the allowance, either
wholly or in part, of certain items of disbursements and
charges including attorney's fees claimed by the plaintiff.
The defendant wishes to challenge the Registrar's/
Taxing Officer's decision to allow, either wholly or in
part, those items of disbursements and charges to which he
had objected.
- Advise the defendant as regards his right and entitlement,
if any, to challenge the Registrar's/Taxing Officer's
decision and the procedure that should be followed.

QUESTION 5

- (a) "Justice is not or ought not to be a cloistered virtue".
Briefly discuss with reference to decided cases.
- (b) Distinguished between "in camera" and "in chambers".
When may a trial be ordered to be held "in camera"?
-

PART B

Ass

QUESTION 6

What are the various procedures to be used in making applications to the court under the Companies Act?

QUESTION 7

Outline the procedural steps for any THREE of the following:

- a) reduction of share capital of a company registered under the Companies Act;
- b) admission of a new partner to a firm;
- c) the formation of a club;
- d) transfer of 50% of the shares of a member of a company registered under the Companies Act;
- e) a private company going public.

QUESTION 8

- (a) Outline the contents of a standard combined register in common use.
 - (b) Outline the procedure to be used in the winding up of a Partnership by the court and advice on the evidence required.
-

QUESTION 9

The instructions from your client, Mary Jones are as follows:

Your client and her husband, Ken Jones were the signatories of the Memorandum of Association of Marken Ltd. for one share each; at the first directors' meeting, they were both elected directors along with their eldest son, Ben and your client appointed secretary. All the shares were allotted as follows:

40% to Ken Jones

40% to your client

20% to Ben Jones

Ken Jones was appointed Managing Director, for the past two years. Ken Jones has become so overbearing and domineering in the running of the affairs of the company - as though the business was his own - that Ben Jones has resigned as director and transferred his shares to him; Ken Jones has just dismissed your client as secretary, taken away the company's car which had been assigned to her and forced her out of the matrimonial home, the property of the company. She has now discovered that he had used the company's money to buy an apartment in the name of the newly appointed secretary, Karen Miles.

Draft the appropriate document(s) to take immediate legal action to protect your client's interest in Marken Ltd.

TAKE NOTICE THAT THE HUMBLE PETITION of Charles Henry
showeth:

1. That on the 20th day of May, 1991 your petitioner was induced by the Defendant to invest \$60,000 in TUTTS HOLDINGS LIMITED which has been operating since 1988.

Your Petitioner was promised:

- a) 20% of the shares of the said company;
- b) a Debenture for the sum of \$58,000;
2. That on the 21st day of May, 1991, relying on the abovementioned inducement your Petitioner paid the Defendant the sum of \$60,000.
3. That the directors of the company are the Defendant, his wife, Mary Jane and his son, Donald.
4. That on the 1st day of April, 1992, at a members' meeting of said company your Petitioner and the Defendant had a quarrel over whether it was the turn of your Petitioner to be appointed a director of the company.
5. That since then your Petitioner has ben excluded from all meetings of the said company by the Defendant and your Petitioner has discovered the following facts:

PARTICULARS

- (i) No Annual Returns have ever been filed on behalf of the company.
- (ii) The directors of the company are being paid salaries

of \$400,000 per annum.

iii) No financial statements or accounts of the company have been prepared; no dividends ever declared.

iv) The Debenture has not been registered.

6. In the circumstances, your Petitioner submits that the affairs of the company are being conducted in a manner oppressive to him. Your Petitioner has lost faith in the commercial integrity of the Defendant. It is therefore just and equitable that an Order should be made with a view to bringing to an end the matters complained of by your Petitioner.

FILED etc.
