

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2006**

CIVIL PROCEDURE AND PRACTICE II

(TUESDAY, AUGUST 1, 2006)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

In March 2005, Town Bank commenced a claim to recover a debt which was outstanding from Robert Robinson, one of its customers. According to Town Bank, Mr Robinson's account went into default in August 1999.

In his Defence filed in May 2005, Mr Robinson neither admitted nor denied that the debt was due for payment. However, in a letter dated June 1, 2005, Mr Robinson's attorneys-at-law wrote to Town Bank's attorneys-at-law and, after making reference to the paragraph in the Defence containing the non-admission, admitted that sums were outstanding to Town Bank and that Mr Robinson was liable to repay them.

Mr Robinson's attorneys-at-law also showed a copy of the letter to the judge presiding at the case management conference. The judge ordered that only the issue as to the amount outstanding be tried, and made directions for the trial.

Mr Robinson and his accountant, reassessing the statements of account issued by the bank, discovered that several charges had been improperly applied to the account, and that when these are removed along with the interest on these bank charges, it turns out that no debt is due at all. The charges, which had been applied to the account between 1996 and 1998, ought properly to have been charged to an account in the name of Mr Robinson's sister, Tamara Robinson.

As an attorney-at-law in the firm that has been representing Mr Robinson, you have recently assumed responsibility for this matter.

Advise Mr Robinson on what effect the admissions made on his behalf will have on his case, what steps may be taken to alleviate those effects, and how effective those steps are likely to be.

QUESTION 2

Environmental Action Group (EAG) is concerned about the rate of deforestation in sections of the country. Pursuant to legislation, the Minister with responsibility for the environment must give a building licence before it is permissible to embark on any construction involving the removal of trees from more than 1,000 square metres of land. The Minister granted a licence to Townhouse Developers Limited for the construction of houses in an upscale gated community. Over 3,000 square metres of land will need to be cleared of trees. EAG was not aware of the licence being granted or applied for until they saw Townhouse Developers Limited's heavy equipment heading to the area of the proposed development. EAG wishes to prevent the clearing of the land, by challenging the Minister's grant of the licence and seeking such remedies as may be appropriate when making such a challenge.

As EAG's attorney-at-law, prepare a draft of the initial application for the court orders that EAG should file and advise them on the likelihood of their application's success.

QUESTION 3

Land Valuers Limited claims against Jack Squatter damages for trespass to Land Valuers Limited's property. In support of its claim to recover as damages the total annual rental value of the property, Land Valuers Limited (who are auctioneers and valuers, and consider themselves to be the best in the country) wish to use a valuation report to be prepared by their most experienced valuator.

As Land Valuers Limited's attorney-at-law –

- (a) prepare an application for court orders seeking permission to rely on the valuation report (you need not prepare the affidavit in support); and
- (b) advise your client on –
 - (i) when the application should be made;
 - (ii) whether you expect permission to be granted; and
 - (iii) if permission is granted the weight you expect to be given to the report at trial.

QUESTION 4

In a civil case in the Supreme/High Court, the claimant/plaintiff did not attend the case management conference. No explanation for his absence was given, but

the judge nevertheless proceeded with the conference and a trial date was set. The claimant/plaintiff attended the pre-trial review.

On the day the matter was set for trial, the claimant/plaintiff did not attend court, nor did his attorney-at-law, who was stuck in Guam, having missed the flight that was to bring him home in time for the trial. The defendant's attorney-at-law was present, but did not know why the claimant/plaintiff's attorney-at-law was not there. The trial judge, without hearing any evidence, gave judgment for the defendant.

The claimant/plaintiff, upset at what has happened, decided to change attorney-at-law and has come to you.

Prepare the application for court orders and the affidavit in support of the application and advise the client on the strength of the application. (For these purposes, you may assume such facts as are necessary but are not inconsistent with the facts set out above.)

QUESTION 5

Your client, Melanie Ebanks, entered into a contract for the purchase of land from Michael Jackson. The transaction was to have been completed 5 months ago. However, Mr Jackson has failed to satisfy his obligations. On behalf of Ms Ebanks, you have filed a claim seeking specific performance or alternatively damages. Property values have been escalating rapidly, with the result that the property is now worth \$20,000,000, instead of the \$12,000,000 purchase price which is what it was worth at the time the parties had entered into the contract for sale of the land.

Advise Ms Ebanks as to whether she can make an offer under Part 35 to settle either the claim for specific performance or damages, and whether either would be beneficial to her. Assuming that the client decides to make a Part 35 offer, prepare the offer that would be both legally permissible and useful.

PART B

LAW OF ASSOCIATION

QUESTION 6

Darren “Mr Music Man” Browne is a well known disc jockey on the local radio station, WLBB, in your jurisdiction. Having developed a good reputation in the music business, Darren wishes to set up an exclusive club for music lovers from which he could earn substantial profits. The plan is to expose members to the rudiments of the various music forms by, among other things, having top local and international artistes perform at the club from time to time. The club will have various musical instruments, dvds, videos and the like that members can use. Darren also plans to accommodate discussion and socializing amongst members by setting up his “Table Talk” corner which would be at the club’s restaurant where great food and drink will be served in a lush garden setting with a waterfall.

Darren consults you and is seeking your advice on the options available to him to set up this exclusive club.

Advise Darren.

QUESTION 7

Jerome Henry and Michael Cassie are two young graduates of the Youth School of Business in your jurisdiction. They see an opportunity to test their entrepreneurial skills and to make some money to assist with their student loan payments. They have obtained permission from the relevant authorities to set up a business to sell cricket memorabilia leading up to and during World Cup 2007.

Jerome and Michael are sure that they want to set up the business as soon as possible, that their intention is to operate the business only up to and including the world cup with the ability for a smooth termination of the business. They would also like to separate their personal liability from that of the business as far as is reasonably possible.

Jerome and Michael seek your advice on the following:

- (i) the steps they can take to set up the business consistent with their requirements and the basis for your advice.
 - (ii) Based on your advice in (i) the document(s) that would be required and the contents of each.
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QUESTION 8

Ann Littleton is a public relations consultant. She is now negotiating with Jamie Alleyne, also a public relations consultant and Josepha Fenty, a lecturer in media

studies and media consultant, to enter into a partnership for consultancy services to the private sector in your jurisdiction. Jamie, who is also a trained business analyst, offers these services to certain companies from time to time.

Ann tells you that she is only willing do business with Jamie and Josepha if there is a formal arrangement in place. Ann seeks your advice on an appropriate form of such an arrangement and the important terms that she should consider.

Advise Ann.

QUESTION 9

Members of the Small Business Association in your jurisdiction have been facing increasing financial difficulties in conducting business. Your firm represents the association and you have been asked, on behalf of the firm, to make a presentation at the next monthly meeting of the association, on the following:

- (i) the difference between receivership and liquidation;
- (ii) the procedural steps required for the appointment of a receiver;
- (iii) the procedural steps required for the appointment of a liquidator.

Prepare the presentation.
