

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2007

CIVIL PROCEDURE AND PRACTICE II

(WEDNESDAY, AUGUST 1, 2007)

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

By a claim filed August 8, 2006, Greg Garth, an attorney-at-law, seeks to recover from Keisha Limited damages for breach of contract. Mr. Garth alleges that he provided Keisha Limited with legal services (involving representing it in Court) for which Keisha Limited has not paid. Keisha Limited initially had difficulty engaging attorneys-at-law to defend Garth's action, as most attorneys were wary of a client such as Keisha Limited that was challenging Garth's claim.

Eventually, Keisha Limited were able to engage Snugg & Snugg to represent them. Snugg & Snugg acknowledged service on December 1, 2007, and filed a Defence and Counterclaim on December 15, 2007. The Defence and Counterclaim alleged that Mr. Garth was so negligent in the handling of Keisha Limited's matter in Court that Keisha Limited was found liable and had to pay damages of \$1,000,000.

The claim by Mr. Garth was set for case management on June 29, 2007. Snugg & Snugg sent Keisha Limited a letter advising of the date for the conference, but the letter was not addressed to anyone in particular, and the receptionist at Keisha Limited decided to keep it until someone asked for it. A representative of Keisha Limited therefore did not attend the conference. However, Arthur Snugg was present as its Attorney. The Judge nevertheless struck out Keisha Limited's counterclaim and gave Mr. Garth judgment on his claim.

Snugg & Snugg received the order made at the case management conference on the day of the order. Two days later, they sent it to Keisha Limited by post. It reached the attention of Keisha Limited's Managing Director on July 24, 2007. Annoyed at the way in which Snugg & Snugg had handled their communications with Keisha Limited, and the order made, Keisha Limited immediately fired

Snugg & Snugg and sought other attorneys. Again they encountered difficulties finding new attorneys, but they have now come to the firm in which you are an associate, and you have been asked to handle their matter.

You are required to prepare:

- (i) the application Keisha Limited now needs to file; and
- (ii) the affidavit(s) in support of the application.

(Candidates answering this question can supply such incidental information as may be necessary to draft the application/affidavit.)

QUESTION 2

An article published in a daily newspaper in your jurisdiction carried the headline “Rhule builds defective stadium”. The article went on to describe the sloppy work of Rose Rhule Limited in constructing one of the stadiums used to host the Cricket World Cup 2007. Rose Rhule Limited sued the newspaper claiming damages for libel. As a result of discussions between the parties, an order was entered in these terms:

“BY CONSENT, IT IS HEREBY ORDERED THAT:

- (a) The defendant is to publish an apology, the publication to be as often as agreed by the parties;
- (b) The defendant is to pay the claimant \$950,000.”

The newspaper paid Rose Rhule Limited the sum ordered and, through the respective attorneys, wrote requesting that the newspaper send a draft of the proposed apology. Instead, the newspaper prepared an apology and published it on page 2 of the newspaper one Friday. Rose Rhule Limited is annoyed because (a) it did not approve the terms of the apology and is not satisfied that it goes far enough; (b) the newspaper is refusing to publish any apology again, whereas Rose Rhule Limited believes it needs to be republished; and (c) it feels that hardly anyone reads page 2 of the newspaper, whereas everyone reads the cover page where the initial article was published. Rose Rhule indicates that it wishes to go back to Court concerning what has happened, but it is concerned that the newspaper is saying that any such action will lead to an application by the newspaper to be repaid the \$950,000.

Advise Rose Rhule Limited on what steps may be taken by them and whether, in the light of their concern, such steps are advisable.

QUESTION 3

Barbara Inc, a company incorporated in Delaware USA, owns an office building in your jurisdiction, worth \$2,000,000. The property has recently been advertised for sale, as Barbara Inc. is planning to close its operations in your jurisdiction when it receives the proceeds of a contract with the government. Those proceeds amount to \$1,000,000.

Your client, Tamara Duncan, has instructed you to make a claim against Barbara Inc. for \$1,500,000 for goods supplied to it for which it has not been paid. Miss

Duncan is concerned about what will happen if Barbara Inc. is able to close its operations before her claim is tried, and consults you.

You are required to:

- (i) prepare an application that would address Miss Duncan's concern; and
- (ii) advise Miss Duncan on the procedure to be taken up to and immediately after the hearing of the application and on the likelihood of success.

QUESTION 4

In a claim filed by Nelson Security Limited (Nelson) against the Attorney General for unlawfully terminating a contract for Nelson to provide security services, an application by Nelson for summary judgment came up for hearing. Affidavits were filed in support, to which the following documents were exhibited:

- a) letter from Nelson's attorney-at-law to the Managing Director of Nelson advising on the strength of the claim, in response to a request from Nelson's legal officer for such advice;
- b) letter from the Attorney General's Department to Nelson's attorney-at-law making an offer to settle the claim.

An affidavit in response exhibited the following:

- c) letter from Nelson's attorney-at-law to the Attorney General's Department rejecting the offer at (b) above;

- d) a memorandum from the Ministry of Security to the Attorney General containing details of the security arrangements for Cricket World Cup 2007 and ICC Champions Cup and the reasons, in the context of those arrangements, that Nelson's services could not be used.

The application for summary judgment was heard, with no objection being made to any of the documents being exhibited to the respective affidavits. The application was dismissed, and the claim set for trial. Also, on dismissing the application for summary judgment, the Court ordered that standard disclosure should take place. The documents referred to above were included in both parties' Lists of Documents, with no claim to withhold disclosure or inspection of any of them.

Although the Attorney General's Department thought the memorandum from the Ministry of Security would assist its case, the Ministry does not want details of the security arrangements for ICC Champions Cup to be known. Consequently, the Attorney General's Department wishes to prevent Nelson from relying on the documents at (b)-(d) at trial. Meanwhile, Nelson wishes to prevent the Attorney General from relying on the letter at (a) above. These issues are all raised at the pre-trial review.

You are the judicial clerk assisting the judge hearing the pre-trial review. Advise the judge on what is the appropriate way for the parties to proceed in relation to the documents and whether he ought to permit the documents to be relied on at trial.

QUESTION 5

Following a motor vehicle collision in the year 2000, a claim was filed (later that year) by James Brown against Never Say Never Again Limited (“Nesna”), the owner of one of the vehicles involved in the collision. An issue in the claim is who caused the collision, and the issue is heavily dependent on the accounts of eye witnesses.

At a case management conference held 2 years ago, attended by the parties and their legal representatives, the matter was set for trial for 4 days in May, 2006. However, when the matter came up for trial, both parties indicated that having seen the other parties’ witness statements, they felt that other witness statements by each would be needed. The trial was therefore adjourned, and because another date could not be found for so many days in a Court term, it was set for 4 days beginning August 27, 2007. The witness statements in question were filed.

It is now weeks before the scheduled commencement of the trial, and a dispute has arisen between Nesna and its attorneys-at-law concerning their representation at the trial. In the context of this dispute, Nesna has lost confidence in its attorneys-at-law and wishes to engage new ones. They have approached your firm, but your partner has explained to them that your firm would not be able to prepare for the trial in time.

So as to allow them to make a decision on how to proceed, advise Nesna on the chances of their successfully applying for an adjournment and explain the orders you would expect the Court to make if the trial is adjourned to another date.

PART B

QUESTION 6

William Cooke and his wife Nellie are the proud owners of the well known restaurant chain “Nice Food Restaurants”, which operates in your jurisdiction. Nice Food Restaurants is a local success story of a small restaurant business which started in Nellie Cooke’s kitchen some years ago and has grown to become a restaurant chain with a presence in each parish. The Cookes have succeeded in bringing their four children into the business so that the entire family participates in the management and day to day operations.

The business has been run as a partnership from its inception. However, the Cookes have been offered the opportunity to expand the business to a neighbouring territory and have taken the decision to form a company through which they would conduct all business associated with Nice Foods Restaurants.

The Cookes seek your advice on the following:

- (i) the procedural steps they would be required to take to incorporate a company through which the Nice Food Restaurants business will be conducted, listing the documents required and summarizing the contents of such documents; and
- (ii) any further procedural steps they would be required to take to commence doing business in the neighbouring territory, listing the document(s) required and summarizing their contents.

QUESTION 7

Theo John operates a retail business in your jurisdiction under the name John & Sons Co. Ltd. Theo tells you that last year at the beginning of the hurricane season he borrowed \$2M from Business Bank plc, using the business premises as security for the loan.

Theo says that he used the loan money to purchase goods to stock his warehouse in preparation for the hurricane season. However, it turned out that the season was a quiet one and a large quantity of the goods remained unsold, impacting significantly on the cash flow for the business. As a result, Theo was unable to make regular repayments to the bank and is now three months in arrears.

Theo shows you a letter he has just received from the Bank's Loans Department, stating that pursuant to the terms of the loan agreement the Bank intends to appoint a receiver if Theo fails to make good on his default within 14 days of the date of the letter.

Theo seeks your advice on the following:

- (i) power and duties of a receiver;
- (ii) procedural steps to effect the appointment of a receiver.

Advise Theo.

QUESTION 8

The partner with whom you work in the firm has asked that you meet with and advise a group of employees of a small organization who wish to form a club, with a view to improving the overall working relationship amongst employees.

In preparation for your meeting prepare a checklist of the matters you consider to be important in advising the employees on the procedural steps to be taken to form a club.

QUESTION 9

Cedella and Pancho are both real estate agents who have collaborated over the years in doing business. They have now decided to form a partnership to sell real estate under the name 'Pandella's Real Estate'. However, Pancho, a cautious businessman, would like to formalize the arrangement and seeks your advice on how this can be done.

Advise Pancho on the procedural steps that he can take to enter into a formal partnership with Cedella, listing any documents that may be required and the contents of such documents.
