

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2008

CIVIL PROCEDURE AND PRACTICE II

(MONDAY, AUGUST 4, 2008)

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 a separate answer booklet.**
- (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

A claim is commenced by your firm's client, Jimmy Brown, seeking a declaration that his former employer Small Mind Limited had breached its contract with him by demoting him from Senior Supervisor to Supervisor. Despite this demotion, Mr Brown continued to be paid as Senior Supervisor, although he was only carrying out the duties of Supervisor. Shortly after filing its defence, and without consulting its lawyers, Small Mind Limited decided to make an *ex gratia* payment to Mr Brown given his long period of service to the company and the fact that he was still employed to the company. After receiving this, Mr Brown instructed your firm to discontinue the claim.

You are required to:

- (i) prepare a letter to Mr Brown outlining the steps required to discontinue the claim and who is to pay the costs of the claim; and
 - (ii) prepare the notice of discontinuance as it would appear when being filed in the Supreme/High Court.
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QUESTION 2

Your client, Janet Dowman, was injured when a motor vehicle owned by Danway Corporation Limited and driven by its employee John Don collided with the luxury motor vehicle owned by her and which she was driving. Following an expensive surgical procedure, Ms Dowman's injuries should not be permanent. Her vehicle

was completely written off. Ms Dowman does not wish to use insurance proceeds to pay for her surgery and replace her vehicle as she fears the significant increase in future insurance premiums that would result. She has filed a claim against Danway Corporation and John Don, but is very much aware that Mr Don does not have sufficient resources to satisfy her claim. It also turns out that Danway Corporation is incorporated in the Turks and Caicos Islands and that their insurance coverage in your jurisdiction over the vehicle in question is minimal. Ms Dowman is therefore very concerned that she may not be able to get sufficient money from the defendants and wishes an appropriate application to be brought against either or both of them.

You are required to advise Ms Dowman as to:

- (i) what interim application may be made in the circumstances and against whom it should be made;
- (ii) what evidence is required in support of the application; and
- (iii) whether the application is likely to succeed.

QUESTION 3

Following a motor vehicle collision between vehicles driven and owned by Jack Careless and Jean Reckless, in which each accuses the other of being responsible, reports are made by them to their respective insurance companies. The insurance companies, in the course of conducting investigations, engaged loss adjustors who examined the damage to the vehicles and reported to the insurance companies. Each loss adjustor reported to the company that engaged

him that the other company's insured was primarily responsible for the accident but with there being a small extent of contributory negligence. In due course, a claim was commenced in which Jack Careless claimed against Jean Reckless, with Jean Reckless in turn filing an ancillary claim against Jack Careless. The insurance companies had instructed their attorneys-at-law to bring the claim and counterclaim.

An order for standard disclosure has been made, and you are one of the attorneys-at-law in the firm engaged by the insurance company who had provided coverage for Jean Reckless. To assist a senior attorney-at-law with whom you are working on the case, you are required to:

- (i) briefly outline the required contents of each Schedule and each Part of each Schedule in the List of Documents; and
- (ii) indicate in respect of each of the following documents whether it should be included on Ms Reckless' List of Documents and (if so) where it should be included, and whether there is any basis for each document to be withheld from inspection or from being put into evidence:
 - a) letter from Mr Careless' insurance company to Ms Reckless' insurance company proposing a settlement in which neither party pays the other and both release each other;
 - b) letter from Ms Reckless' insurance company to Mr Careless' insurance company indicating that the matter had been referred to their attorneys;
 - c) the loss adjustor's report prepared for Ms Reckless' insurance company;
 - d) the statement given by Ms Reckless to the police made immediately following the accident; and

- e) letter from your firm to the attorneys-at-law representing Mr Careless requesting additional time to file the Defence to the claim.

Reasons must be given to support your views.

QUESTION 4

At the close of the claimant's/plaintiff's case in a civil claim, the defendant's counsel indicates that he wishes to make a no case submission. He commences making the submission but 15 minutes into hearing the submission, the Court adjourns for the day.

The following morning, before counsel resumes his submission, the claimant's/plaintiff's counsel says that she wishes the defendant to be made to elect. Counsel for the defendant contends that he should not be required to do so.

After hearing arguments, the judge stands the matter down but then has to leave to deal with an emergency. In the meantime, the judge has asked that you (her judicial clerk) prepare a memorandum setting out how she should rule on the issue being argued and what is the consequence of each alternative ruling she might make.

Prepare the memorandum to advise the judge.

QUESTION 5

You are required to indicate what order for costs should be made in each of the following circumstances, fully explaining the meaning of each order and the reasons you consider it to be appropriate:

- (i) an application by the claimant/plaintiff for an interlocutory injunction until trial is dismissed by the Court on the basis of material non-disclosure by the claimant/plaintiff when it had obtained the initial order for an injunction without notice;
- (ii) an order is made setting aside a regularly obtained default judgment;
- (iii) an application for judicial review is refused by the Court following a final hearing;
- (iv) after 2 days of argument, an application by the claimant/plaintiff for summary judgment considered at the case management conference is dismissed;
- (v) an order is made permitting the claimant/plaintiff to rely on an expert report, the application having been considered at the pre-trial review.

PART B

QUESTION 6

Phyllis Minott and Daisy Redwood are accountants who have practised in partnership for many years. Phyllis and Daisy do not have a written partnership agreement. They have always shared profits equally. In terms of decision-making, Daisy has tended to leave most matters to Phyllis who is far more business oriented and interested in management issues generally.

Both ladies are now in their sixties and Daisy, who has never been of particularly good health, is becoming more frail and is absent from work with increasing frequency. Phyllis wants to bring her daughter Melinda, who is a qualified accountant, into the firm as a partner. She also thinks that Daisy really needs to retire from the practice and that in the interim, her drawings of profit be reduced in light of her inability to devote adequate attention to the business of the firm.

She has shared her plans and views with Daisy who now seeks your advice on the following:

- (a) Phyllis' ability to force her to retire/leave the partnership;
- (b) her rights with respect to the admission of Melinda to the partnership;
- (c) whether she can resist Phyllis' proposal in respect of her profit drawings and the basis on which it can be resisted;
- (d) her rights with respect to the management of the business generally;
- (e) her liability for partnership debts should she cease to be a partner; and

- (f) should she decide to agree to Melinda's admission to the partnership, whether in your opinion she should formalize the arrangement with a partnership agreement and why.
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QUESTION 7

Delroy Barnaby is a 24 year old unemployed video game fanatic. He has long rued the fact that these games are incredibly expensive and that once a player has beaten the game he has no interest in playing it any longer although the game is usually still in very good condition. Delroy has a vast collection of Nintendo, Xbox and Playstation games for which he has no more use but which are in excellent condition. He decides that what is needed is a club for video game lovers like himself and that he could make a decent profit from the operation of such a club. The club would facilitate secondhand game purchases and sales as well as rental of games. Members could socialize and test games in a members' arcade where Delroy plans to sell drinks and snacks.

Advise Delroy on a suitable structure for his proposed club. Give reasons for your advice and the steps he should take to form the club. Outline the contents of any document(s) required.

QUESTION 8

Honold's Blinds Limited is a private limited liability company whose liabilities far exceed its assets. It has been unable to pay its trade creditors, several of whom now have unsatisfied judgments against the company. One of them, Verona

Plastics Limited, has decided to take the step of putting the company into liquidation and has come to you for advice on the matter.

Advise Verona Plastics Limited of the procedural steps required to commence the liquidation and describe the process leading up to the final dissolution of the company. Your advice should include information on the role and duties of the liquidator.

QUESTION 9

J & S Limited is a private company limited by shares. It has 3 shareholders who also serve as the directors of the company. One of them also serves as the secretary of the company. They have invested all their money in the business but are in need of more funds in order to take advantage of a business opportunity with potential for profit which they consider to be extremely compelling. They also feel that it is one which would appeal to and ought to be participated in by a broad range of persons. They therefore wish to invite members of the public to subscribe for shares in the company.

Advise J & S Limited on the procedural steps to be followed, outlining the contents of any document(s) required.
