

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2010

CIVIL PROCEDURE AND PRACTICE II

(MONDAY, AUGUST 16, 2010)

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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **PART A**

### **QUESTION 1**

John Neighbour and Jack Beside have been having a long and bitter dispute in relation to a building Mr Beside plans to construct on his property near the boundary between their adjoining properties. Mr Neighbour's contention is that the proposed building would be too close to the boundary, would contravene the restrictive covenants applicable to Mr Beside's property and would cast a shadow over half of Mr Neighbour's property.

Eventually, as construction was about to begin, Mr Neighbour sought and obtained an injunction, without notice, restraining the construction from proceeding. However, the Judge, the Honourable Mr Justice Solomon, discharged the injunction when it came up for further consideration. He did so because Mr Beside's evidence revealed that Mr Neighbour was heavily indebted and may not be able to honour an undertaking as to damages. Mr Neighbour has asked for an injunction pending appeal, but Mr Beside has contended that this would, in effect, amount to the Court granting the injunction that had just been discharged.

Mr Justice Solomon has asked you, his judicial clerk, to prepare a memorandum advising him on the decision he should make in respect of Mr Neighbour's application.

Prepare the memorandum.

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## **QUESTION 2**

Marcia Alcott Limited obtained a search order against Krystle Limited. The search order required Krystle Limited and its agents to permit a search of their business premises. The order contained no guidelines in relation to when and how it was to be served. At 7:45 this morning, the following persons turned up at the business place of Krystle Limited in respect of the service of the order: Mr Maurice Alcott, minority shareholder of Marcia Alcott Limited (and son of its majority shareholder); Mr Colin Blake, attorney-at-law for Marcia Alcott Limited; and Constable John Brown.

Present at Krystle Limited's business place was Mrs Krystle Downes, managing director of Krystle Limited, as well as Ms Janet Jacobs, the administrative assistant and sole employee of the company other than the managing director.

No other persons were present at the time of service. Mr Blake advised Mrs Downes that she could consult an attorney-at-law, but by 9:45 a.m. she needed to allow them to enter the property. After spending over an hour trying to get an attorney-at-law, she was finally able to contact you at 9:30 a.m. and seeks your advice.

Advise Mrs Downes as managing director of Krystle Limited.

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## **QUESTION 3**

Discuss the procedure for commencing an appeal of the following decisions of the High/Supreme Court in your jurisdiction -

- (i) an order striking out a claimant's claim, the claimant having failed to file a list of documents and witness statements; and
- (ii) an order refusing a claimant's application for a freezing order.

If each appeal succeeded, what order for costs of the appeal and of the application in the Court below would be appropriate and why?

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#### **QUESTION 4**

At a case management conference held on January 11, 2010, the parties were ordered to provide standard disclosure by March 31, 2010 and exchange witness statements on or before April 23, 2010. The Claimant did not provide her list of documents until April 16, 2010, but provided copies of all the documents disclosed the day after serving the list. On April 23, the Defendant was ready to exchange witness statements but the Claimant said she was not. When asked, the Claimant's attorney-at-law said that she could not commit to a time when the Claimant would be ready. The witness statement has still not been provided.

It is now the first week in August. The pre-trial review is set for September 20, 2010 and the trial for October 20, 2010. Your client, the Defendant, wishes advice on the ways in which he can proceed in the circumstances and which course you would recommend.

Advise him.

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## **QUESTION 5**

Carpenters Limited, a small manufacturing company, has brought a claim against Alcott Limited for failing to supply raw material used by Carpenters Limited in its manufacturing processes as required by a contract between them. Alcott Limited has in its Defence admitted its failure to supply, but contends that there are numerous other suppliers and, given that most suppliers charge about the same amount for the raw material, has questioned whether Carpenters Limited should receive more than nominal damages.

Carpenters Limited has just engaged a new accountant and is experiencing cash flow difficulties because the new accountant requires a substantial deposit for her services. In the circumstances, Carpenters Limited has asked you to seek a payment now of the equivalent in your currency of US\$7,500, towards the judgment it is expecting to receive after trial.

You are required to prepare –

- (i) a letter to your client advising on how it should proceed and whether the order proposed is likely to be made; and
- (ii) a draft of the [notice of] application for court orders.

(The relevant form is available.)

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**PART B**  
**LAW OF ASSOCIATION**

**QUESTION 6**

Fat Chance Lottery Company Limited is a private limited liability company. There are fifteen shareholders, five of whom are directors of the company. The company runs several lottery games in the jurisdiction under a licence granted by the Gaming Commission. The licence is due to expire in December 2010 and in keeping with requirements under the relevant Gaming Act, the company submitted an application for renewal of the licence to the Gaming Commission in July 2010. The Commission, in its response to the application, has stipulated as a condition precedent to renewal of the licence, that there must be wide public participation in the ownership of the company.

Given the critical importance of the licence to the company's business, the directors have decided that steps must be taken to satisfy the condition laid down by the Commission. Accordingly, the managing director, Mr Ricardo Chance, has made an appointment to see your supervising partner, Oscar Grant, for the purpose of obtaining advice on the matter.

To assist him with the upcoming interview, prepare a memorandum to Mr Grant outlining in detail –

- (i) the course of action you would recommend to Mr Chance to achieve the goal of fulfilling the condition laid down by the Commission; and
- (ii) the procedure to be followed and the steps and documents involved in implementing that course of action.

## **QUESTION 7**

Olive Levy, Jenny Soy, Sunny Flower and Canola Green are accountants and founding partners in the firm of Levy, Soy, Flower and Green. They have no written Partnership Agreement.

Sunny Flower, the managing partner, has requested your advice in respect of the following situations:

- (a) She has been approached by a third party who alleges that accounting work done for them by Jenny Soy was poorly executed and has resulted in them suffering loss. They have provided proof that they paid her some \$200,000 by cheque for her services. The cheque was made out in her name. The other partners knew nothing about this client, there is no file for the client at the firm's offices and the \$200,000 cheque in question has never been paid into the partnership bank account. The third party has shown Miss Flower the cancelled cheque which appears from the back of it to have been deposited to Miss Soy's personal account.
- (b) Canola Green will be 70 in a few months. She has been slowing down for some time now and although turning up at the office virtually every day, is essentially working the equivalent of a three day week. The firm needs to have the services of a full-time partner and Miss Flower really thinks that Miss Green needs to go and a replacement found. She has in mind inviting into the partnership a young woman who currently works for a rival firm.
- (c) Unknown to her fellow partners, Olive Levy commissioned a painting of the four of them by a prominent artist to be hung in the firm's conference room. A bill has been rendered to the firm in the sum of \$500,000. The other partners, including Miss Flower, are in an uproar and are insisting that Olive pay the bill. Olive is equally adamant that the firm must pay. The artist is getting impatient with the delay and is talking about "going to his lawyer".

Advise Sunny Flower on the law applicable to the issues which are raised by the scenarios at (a), (b) and (c) above and the steps that you recommend she take in respect of each.

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### **QUESTION 8**

Your client Horace Grey, an intrepid entrepreneur, is involved in several businesses in your jurisdiction. He comes to see you to get guidance on a number of matters pertaining to them as follows:

- (a) He wants to remove and replace two of the directors of one of his companies and needs to know whether this can be done and how. One of the directors has an employment contract with the company as its operations manager.
- (b) He wants to effect a change of name of one of his companies. He needs to know if he can do so and what is involved in effecting the change.
- (c) He formed a company a few years ago in connection with one of his many business ideas but abandoned the venture shortly after. The company has no assets or liabilities and all its statutory filings are up to date. He wants to know what his options are for terminating the life of the company and the procedure involved.

Advise Mr Grey.

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## **QUESTION 9**

Gerry is a ten year university graduate, having pursued successfully first and second degrees in English Literature. Now a teacher in a prominent high school, Gerry is concerned that poor oral and writing skills which have become evident in the print and electronic media in his country, in his classroom and in fact, in all quarters of society, have become major obstacles to national progress. Wanting to do something about it, however small, and believing in the value of reading, he has started to host evenings at his house where persons, whom he invites, meet to read set books, to analyse them and to write about them.

Although at first Gerry had to use all his powers of persuasion to convince persons that they would actually enjoy these activities, the book evenings have been a great success. In fact, the group has grown too large to meet in Gerry's small living room and one of the members has indicated that he would be prepared to give them premises which he inherited from an old aunt in an unfashionable but safe part of town and for which he frankly has no use. Gerry, for his own part, would like to formalise the group anyway and this promise of premises has added some impetus to the matter. Someone has told him that he must form a company but he does not wish to do so. He has accordingly sought your advice.

Advise Gerry on the type of association which, given your instructions, would best suit his purpose and on the steps and documents required to form it. Include in your advice the recommended content of these documents and the approaches the association may take in respect of how the property, which has been promised to the group, is held.

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