

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2014

CIVIL PROCEDURE AND PRACTICE II

(AUGUST 11, 2014)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

You act for and on behalf of Jack Sprat, one of the two Defendants in a claim for breach of contract brought by Jill Hill. The most damning evidence against your client is a handwritten letter allegedly sent by him to the Claimant. Your client denies writing the letter. It is therefore essential that the services of a handwriting expert be engaged to advise the court on whether or not the handwriting is that of your client.

You have identified Dr. Ino Writin, PhD, as a suitable person to act as an expert in the claim. Dr. Writin has approximately fifteen years' experience in the field and has acted as a handwriting expert in a number of civil claims in your jurisdiction.

It has come to your attention that Jill Hill also intends to apply to the court for permission to rely on another handwriting expert.

- (i) Draft the application for court orders for your client to rely on Dr. Writin as an expert.

- (ii) Advise your client on the possible order(s) the court may make in light of the desire of the Claimant to apply to rely on an expert of her own.

- (iii) Indicate what order for costs is likely to be made on the hearing of the application.

The relevant form is available.

QUESTION 2

Your client, Jericho Investments Limited, is the Claimant in a claim against its customer, Ms Scoun Drel, for the equivalent of US\$50,000 in the currency of your jurisdiction. The said sum is that which remains due and owing by Ms Drel under a loan to purchase a 2012 Range Rover motor vehicle, after the vehicle was sold by your client under its powers in a Bill of Sale.

At the case management conference held on June 20, 2014, an order was made for standard disclosure.

Write to your client advising on its duties and responsibilities under this order.

QUESTION 3

Your client, the Claimant, successfully obtained a judgment against the Defendant for a sum, the equivalent of US\$200,000 in the currency of your jurisdiction. The Defendant has filed a Notice of Appeal and applied for a stay of execution of the judgment.

The Defendant has a house, owned jointly with his mother, valued at a sum, the equivalent of US\$600,000 in the currency of your jurisdiction. The Defendant is the sole owner of an apartment valued at a sum, the equivalent of US\$300,000 in the currency of your jurisdiction. The apartment has a mortgage registered on it by Andie's Building Society Limited.

Advise your client on whether he may proceed to enforce the judgment and, if so, how.

QUESTION 4

You act for and on behalf of Frodo Goods Manufacturing Limited (“FGM”). FGM is the Claimant in a claim against Machine Value Limited (“MVL”) for a sum due and owing for goods sold and delivered to MVL by FGM. The claim is in the Supreme/High Court of your jurisdiction.

Your client did not attend the case management conference. The judge proceeded with the conference and set dates for the pre-trial review and the trial. You advised your client in writing of the orders made at the conference. Your client attended the pre-trial review.

On the trial date your client did not attend court. You were in a motor vehicle accident on the way to court and therefore did not attend the trial. You were not able to return to work until one week after the accident.

On your return to work you contacted the Defendant’s attorney-at-law who indicated that he was present at the trial and that the trial judge heard the evidence of the Defendant’s witnesses, and gave judgment for the Defendant.

Draft: -

- (i) a letter to your client advising on the procedure which you recommend be made; and
- (ii) the relevant application for court orders.

The relevant form is available.

QUESTION 5

Ms Merika Melfi, Managing Director of Jonkonoo Pickney Limited (“JPL”), a party supplies company, attends your office. She instructs you that JPL has a contract with International Party Supplies Limited (“IPSL”). The contract provides that IPSL is to provide JPL with party supplies ordered from time to time.

The parties have been operating under this contract for approximately three years. The contract requires payment in advance for all products ordered.

In June 2014, JPL paid IPSL a sum, the equivalent of US\$50,000 in the currency of your jurisdiction, for goods to be delivered on July 1, 2014. To date the goods have not been delivered. IPSL has failed to respond to numerous demands made by JPL for the goods to be delivered.

Ms Melfi further instructs you that she has visited the office of IPSL and observed what appeared to be moving and auction house vans loading assets of IPSL.

She believes that IPSL has a substantial account at Kapital Commercial Bank Limited in your jurisdiction. Payments made by JPL to IPSL are usually directed to that account.

Advise Ms Melfi on the step(s) you recommend JPL take to protect its interest, setting out the matters which will be considered by the court.

PART B

LAW OF ASSOCIATION

QUESTION 6

You are an associate attorney-at-law in the law firm of Keenan, Hodge and Doyle. You have received a memorandum from your supervising partner, Henry Doyle which reads as follows:

"INTER-OFFICE MEMORANDUM

To : Eager Associate
From : Henry Doyle
Date : August 4, 2014
Subject: Phillip Scott, Dave Northover and Frank Long

The clients at caption are to see me on September 1, 2014 in relation to a proposed transportation business. Though I suggested a limited liability company they seem not to be inclined to go that route. I want to explore the matter more fully with them on the 1st. They have indicated that they wish to name the entity to be formed 'SNL Global Transport'.

Kindly prepare for my use notes on the legal implications of which they should be aware if they take the alternative route of forming a general partnership, and the advantages and disadvantages of partnership as opposed to incorporation. Kindly also include in your notes any issues arising from their choice of name. As I do not know at this point whether the clients will form a partnership or a company, your note should address the name in the context of both options.

Your immediate attention would be appreciated. You should also be prepared to join me in the meeting with the clients on September 1. The proposed time is 10:00 a.m.”

Prepare the notes as instructed.

QUESTION 7

- (a) Tom and Jerry are brothers who are avid footballers as well as computer and video game fanatics. They often get together with friends to watch international football games and are regular players of the latest football-themed video and computer games, Football Manager 2014 and FIFA 14 included. They not only enjoy the games but also the socializing, which usually involves one or two beers or other strong drink.

Jerry has suggested to Tom that they take their casual get-togethers with friends to “the next level” so that more persons with like interests might be involved. Jerry thinks they should form a club and use a large old house they inherited as its headquarters.

You are a newly admitted attorney-at-law and Tom has asked for your advice on the proposal. His instructions are that while the general membership of the club would be allowed to participate in many of the decisions concerning its membership and activities, he and Jerry want the final say on certain fundamental ones, including financial decisions. While profit is not their main motive, they hope that they will make some profit from the venture.

Advise Tom on:

- (i) whether, in light of his instructions, the formation of a club would be appropriate, and if so, what type of club you would recommend, giving reasons ; and
- (ii) whether registration of the club will be required, giving reasons.

(b) Henry, a businessman, is desirous of forming a darts club with several other persons who enjoy playing the game. It will be a members' club run by the members for the members but he wishes the club to be incorporated. This is because it is envisaged that real property will be acquired and he believes that it will be most convenient for the property to be registered in the company's name.

Advise Henry on:

- (i) any special measures which will need to be taken in structuring the club to ensure that the character of a members' club is maintained despite incorporation; and
- (ii) any alternative approach to incorporation which a members' club may take in respect of the holding of the property.

QUESTION 8

George Boyce, an accountant, is the recently appointed company secretary of a private company limited by shares. The company was incorporated on April 16, 2013. It has 20 shareholders, two of whom are themselves private companies limited by shares. Three of the company's individual shareholders are the directors of the company and until the appointment of Mr. Boyce one of them was named as the company's secretary but in fact performed none of the duties associated with the position.

Mr. Boyce is concerned that from his perusal of the company's files no shareholders' meetings have been held and has sought your guidance in respect of the matter. He specifically requires your advice on:

- (a) the company's obligations to hold annual shareholders' meetings, including specific advice on any time deadlines he faces for calling such meetings;
- (b) the usual agenda for these meetings; and
- (c) the relevant steps and documentation required for calling these meetings and the usual procedure for voting thereat.

QUESTION 9

Henry Hendricks is the managing director of Imperial Technologies Limited (ITL), a private company limited by shares incorporated in your jurisdiction. The company has been in operation for some 15 years and 51% of its shares is owned by another company in your jurisdiction, Imperial International Limited (IIL). There are 10 other shareholders who own the remaining 49% of the shares in ITL.

At a recent meeting of the board of directors of ITL, Mr. Hendricks advised that IIL wished to liquidate its investment in ITL and was therefore offering its shares to the remaining shareholders for purchase. He further advised that IIL had indicated as much to the other shareholders who were not minded to continue in the business without the involvement of IIL. Instead, their preferred course was to wind up ITL and thus liquidate their investment in that company.

ITL is solvent and has assets in the jurisdiction including real and personal property.

Mr. Hendricks has written to you and outlined the facts as stated above. He has also asked for your advice on the procedure for winding up the company.

Advise Mr. Hendricks on the steps and documents required, including in your advice a summary of the process from commencement of the winding up to termination of the life of the company.

(END OF PAPER)