

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2015

CIVIL PROCEDURE AND PRACTICE II
(AUGUST 10, 2015)

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.
- (g) Calculators may be used and are provided.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

Your client, Beatbox Limited, is the defendant in a claim in negligence for damages for personal injuries. The claimant, Penelope Sail, was a member of the masquerade band, Joncanoo, which participated in carnival celebrations last year.

Joncanoo had hired a truck to provide music during the road march held on the final day of celebrations.

While “chippin down di road” with Joncanoo, Penelope ignored a sign on the Beatbox’s truck which read “Do not climb onto truck while it is moving.” Penelope tried to climb on the side of the truck while it was moving, and fell to the ground. The truck then slowly ran over her leg, fracturing it.

In a letter from her attorneys-at-law, Magnum, Fire and Malta, Penelope offered to accept a sum, the equivalent of US\$500,000, in full and final settlement of the matter. The letter is not “without prejudice” to Penelope’s claim.

You review previous cases by successful claimants with injuries similar to those complained of by Penelope, and conclude that a sum, the equivalent of US\$200,000 in your jurisdiction, is the sum generally awarded as damages in such matters. It is your further opinion that the court is likely to find that Penelope was at least 50% responsible for her losses.

Prepare:

- (i) a draft offer to settle pursuant to the Civil Procedure Rules; and
- (ii) a letter to Beatbox setting out why you are advising that it:
 - (a) not accept the offer received from Magnum, Fire and Malta; and
 - (b) make an offer on the terms of your draft offer.

QUESTION 2

A manager of the branch of Fabulous Furniture Inc., located in the parish of Saint Eustacious, in your jurisdiction, today attends your office.

He hands you a number of court documents including a claim form, particulars/statement of claim and an order obtained two days ago, without notice, from the Supreme/High Court with a number of orders including, *inter alia*, the following:

“That the Defendant, its employees and agents be restrained until judgment or earlier order of the Court from disposing of, dealing with or diminishing the value of any of its assets within the jurisdiction.”

Fabulous has been sued by Couchella Hotels Limited for damages arising out of an alleged breach of contract. Fabulous intends to defend the claim.

Fabulous was incorporated in Chula Vista, California, but owns two commercial lots in Saint Eustacious. In your jurisdiction, it also holds bank accounts at two banks and an investment account with a financial services company.

An affidavit relied on by Couchella in the without notice application states that Fabulous has a branch in Saint Eustacious but does not refer to any other assets of Fabulous in the jurisdiction.

Fabulous requests that you apply to discharge the order.

You are required to prepare -

- (i) a draft [notice of] application for court orders applying for the discharge of the order on all grounds that may be arguable based on the instructions above; and
- (ii) a brief letter to the Defendant assessing the likelihood of success of the application to discharge based on the grounds relied upon.

(The relevant form is available.)

QUESTION 3

You have been an Associate in the law firm of Chuckles, Laughs and Mirth since being admitted to practise law in your jurisdiction four years ago. The first file you worked on comes on for trial in November of this year. Your firm acts for and on behalf of the Claimant.

At a pre-trial review for the claim held in June this year, an order was made for your firm to file a core bundle of documents.

In correspondence with the attorneys-at-law acting for and on behalf of the Defendant concerning the documents to be included in the bundle, you note their intention to rely on a letter dated March 3, 2011, from your client to your firm. This letter sets out the details of the matter and requests legal advice.

Panicked, you review the content of the letter as well as the List of Documents that you had prepared and filed pursuant to an order for standard disclosure at the case management conference. You realise that the letter includes statements that are harmful to your client's claim. You also note that you had, in error, included the letter in Part 1 of Schedule 1 of the List of Documents. It had been included in the documents forwarded by the legal clerk in your office to the attorneys-at-law for the Defendant.

It is of utmost importance that the letter not be used in the trial.

You are required to prepare the following:

- (i) a draft [notice of] application for court orders applying for such order(s) as would be appropriate in the circumstances; and
- (ii) a memorandum to your senior counsel in the matter advising on the options that may be available to prevent the admission of the evidence at trial.

(The relevant form is available.)

QUESTION 4

You are engaged by Palikados Miners Limited, a company which specialises in the production, procurement and sale of equipment for mining. In light of the sensitive nature of some the equipment, for example explosives, the laws of your jurisdiction require companies, such as Palikados, to have a licence to conduct its business. The licence must be renewed yearly.

You are instructed that Palikados first obtained the licence in 2006 and has successfully applied for renewal every year since then. Applications for licences and renewal are made to and granted by the mining council.

This year, Palikados received a letter from the mining council refusing to renew its licence. Contrary to relevant legislation, the letter fails to disclose the reason for the refusal.

Advise your client on the recourse available to it, describing the various stages of taking the process through the Supreme/High Court of your jurisdiction.

QUESTION 5

Describe 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?

PART B
LAW OF ASSOCIATION

QUESTION 6

Your friend, Sonny Solo, is one of four partners in a firm of architects. He advises that the firm, a general partnership, has no written partnership agreement and that he needs your guidance on the following:

- (a) One of his partners, Simply Cher, is quite pretentious and often takes unilateral decisions on matters relating to purchases of items for the firm. Her behaviour has caused friction in the past but recently things really got out of hand when she purchased letterhead paper for the firm at a cost which was ten times that which they usually paid. As she put it, that particular grade of vellum was “absolutely essential” for a firm of their “stature”. The suppliers are demanding payment and while, for a peaceful life, his other partners just want to settle, he does not see why they should pay for her folly.
- (b) He discovered, just two days earlier, that one of his partners, Darell, whose sister is also an architect in a competing firm, had been told of an opportunity to tender for work in respect of a proposed new shopping complex. Darell had not advised his partners of the opportunity but instead had passed the information on to his sister who tendered for and got the contract. Having investigated Darell’s activities more closely, Sonny has also discovered that this is not the first time that Darell has sent work, which the firm could do, to his sister. Sonny wants to expel him from the partnership.
- (c) Sonny is very unhappy about the way in which profits are shared. For the last three or four years he has been the most profitable fee earner by far, earning at least 50% more fees than anyone else in the firm. However, the profit is shared equally. What is more, Sonny is the managing partner and accordingly takes on a lot of additional administrative work for which he receives no compensation. Though he has, fairly frequently, hinted strongly at the unfairness of it all, his partners have consistently ignored him. He wants to know what the legal position really is, both in respect of

profits and the lack of compensation for the additional duties he has as managing partner.

- (d) Finally, Sonny wants to know whether any useful purpose(s) would be served, in general, by formalising the partnership with a written agreement and how, if at all, any such agreement could address the situations at paragraphs (a), (b) and (c) above which have caused him so much concern.

Advise Sonny.

QUESTION 7

Your firm has received an email from Mario Boracelli, a lawyer who represents Valentino SpA, a leading public limited company incorporated in Milan, Italy.

Valentino SpA is engaged in the business of leather and leather goods in all its aspects. The company is seeking to expand its business outside of Europe by establishing retail outlets for its high-end goods in targeted jurisdictions and is proposing to open a store in a prime tourist area in your jurisdiction. The company has no desire to incorporate a subsidiary but simply wishes to do business from this location.

Mr. Boracelli has been retained to advise the company on the legal hurdles standing in the way of implementing this proposal and the procedure to be followed to surmount them. In his email he specifically requests advice from your firm on:

- (i) whether there are any requirements under companies legislation in this regard and if so, what they are and the steps which need to be taken to satisfy them; and
- (ii) what the company's ongoing obligations under that legislation would be, once permission to operate was granted.

Your senior partner has asked you to respond to Mr. Boracelli by return email.

Prepare the response.

QUESTION 8

Ferdinand Industries Limited is an electrical supplies company in your jurisdiction. It is a private company limited by shares, owned by members of the Ferdinand family. For some time, it was only modestly successful, largely due to lack of attention by the majority shareholder and sole director of the company. Under the leadership of Gregory Ferdinand, a recent university graduate and newly appointed general manager, the company has expanded its clientele exponentially. In fact, Gregory has had difficulty bidding for and accepting certain contracts because of under-capitalisation.

The current shareholders do not have the funds to put towards increased capitalisation of the company and Gregory is thinking about broadening the shareholder base of the company by going public. He knows it involves a prospectus but not much else.

Gregory has asked for your advice on:

- (i) whether going public is the only approach the company may take to raising capital by the issue of shares to new shareholders and, if not, what other approach he might consider;
- (ii) the factors he should take into account in deciding whether to go public or adopt any other approach suggested by you at (i) above; and
- (iii) the procedural steps and documents involved in going public, should he ultimately decide that this is the approach he wishes to take, with a brief explanation of the content and purpose of the prospectus.

QUESTION 9

You are the newly appointed general counsel and company secretary of Betton's Hardware Company Limited. The managing director of the company has sent you the following memorandum:

"Inter-Office Memorandum

To: General Counsel
From: Managing Director
Date: August 3, 2015
Subject: Proposed Change of Name

As you are aware, at the last meeting of the board, some board members mooted the possibility of changing the name of the company from Betton's Hardware Company Limited to Universal Hardware Company Limited.

While no decision has yet been taken on the matter, I would appreciate your letting me know what changing the name of the company, as proposed, would entail. Kindly also advise whether there are any legal implications of which I should be aware in relation to the change itself or the new name which has been put on the table.

I look forward to receiving your memorandum in response at the earliest."

Prepare the response to the managing director.

END OF PAPER