

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2019**

**CIVIL PROCEDURE AND PRACTICE II
(AUGUST 00, 2019)**

Instructions to Students

- (a) Time: **3 ½ hours**
- (b) Answer **THREE** questions from Part A and **ALL QUESTIONS** from Part B.
- (c) Answer Part A and Part B on separate answer booklets.
- (d) In answering any question, a candidate may reply, in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **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. Erasable pens are not allowed.
- (g) Calculators may be used and are provided.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

You are an associate attorney-at-law in the firm of Saddles, Rein & Horsays. This morning, John Stroke, a senior partner in your firm and head of the litigation department, invited you to attend a meeting held with a potential client, Siren Highpitch.

Siren is a police officer in the Jurisdiction Constabulary Force (JCF), the police constabulary force in your jurisdiction. She instructs you that she was recently advised that she would not be re-enlisted in the JCF. The Commissioner of the JCF did not provide her with reasons for that decision.

Siren further instructs you that every police officer, at her level, is engaged on contract for a term not exceeding five years. The officer is then required to apply to be enlisted for a further period, not exceeding five years, at least three months prior to the expiration date of the contract.

Siren's most recent contract ended on August 2, 2019. She had applied to the Commissioner of the JCF for the contract to be renewed in April 2019, to ensure that she was within the requisite time period. Siren had been employed as a police officer for 15 years and the last application was therefore her third for re-enlistment.

She instructs you that, as far as she knows, there was no reason her application should have been rejected, as her record of performance is exemplary. She had recently received a reference letter of high commendation from the senior officer she reports to. She had not been invited to attend any hearing on the matter and had simply had delivered to her yesterday, a letter indicating that her contract would not be renewed.

You conduct research on the matter and discover that the Jurisdiction Constabulary Force Act provides that where a police officer is not being re-enlisted the Commissioner of Police must provide reasons in writing for the decision.

You further note from case law that where a police officer has been re-enlisted on more than one occasion, before such an application is denied, the officer must first, before such denial, be allowed a

fair hearing on any issues or concerns that may exist. The officer should also be afforded the opportunity of having counsel present at such a hearing.

Advise Siren on the procedure to be undertaken to pursue a matter such as this, the relief that would be sought and the likelihood of success.

QUESTION 2

You are an attorney-at-law acting for and on behalf of Alethea Halsburger, a defendant in a claim brought by the claimants Jerrymander Publishers Inc (“JPI”) and Kyesha Morant. Kyesha is resident in your jurisdiction and JPI is a company incorporated outside of the jurisdiction.

Alethea is an electrician and author. Last year, she published a book titled *Fix-It-All – A Novice’s Guide to Fixing all your Home Electrical Issues*.

Kyesha’s claim is for damages resulting from losses suffered by her as a result of following the instructions given by Alethea in her book on how to fix her electric stove. She alleges that after following the instructions in the book, she turned on the stove to fry some fish, and it exploded. She suffered injuries to her face, neck, hands and arms and her kitchen was destroyed.

JPI’s claim against Alethea is for losses resulting from their settlement of numerous claims against them (JPI) from persons in various jurisdictions. The persons they settled with claimed that they had suffered injuries following their use of Alethea’s book.

Alethea has defended the claims on the grounds that (i) she had included in the preface of the book a disclaimer indicating that she would not be responsible for losses resulting from the reader’s use of the book; (ii) Kyesha did not properly execute the instructions included in the book; and (iii) she included an exclusion clause in the contract with JPI.

Your client today attends your office and indicates that she has heard that Kyesha has put her house on the market for sale. She (Kyesha) is in desperate need of money, as she has not been able to do her job as a beautician since suffering the injuries when the stove exploded.

Alethea further instructs that she is confident that she will be successful in the claims against Kyesha and is concerned that she will not recover the money she is paying you to represent her, as counsel, in the matter.

Advise Alethea of the option(s) available to her and the likelihood of success.

QUESTION 3

You are an associate, attorney-at-law, at the firm of Ready, Steady & Knot. You are contacted by the head of your litigation department, Sandra Suretank, and you are asked to assume conduct of four files, which she hands to you.

Suretank asks that you review the files and advise on the likely orders as to costs in the circumstances of each file. The circumstances are set out below.

- (i) Your client is a claimant in a personal injury matter arising out of a motor vehicle accident. Your client has claimed against both the driver of the taxi she was a passenger in, at the time of the accident, as well as the driver of the bus that collided with the taxi. The court is likely to hold that the taxi driver did not cause the accident and that it resulted entirely from the bus driver's negligence.

Your client is destitute, having lost her job as a result of the injuries sustained in the accident and the trial is to be held next week.

- (ii) Your client is seeking an order to set aside a judgment in default of defence. The default judgment should not have been entered against it, as your client had filed a defence within the time required by the civil procedure rules in your jurisdiction.

- (iii) Your client is a defendant and is making an application to rely on expert evidence at the upcoming case management conference.
- (iv) Your client is the claimant in a matter and is applying to the court, without notice to the defendant, for a freezing order.

Draft a memorandum to Suretank advising on the appropriate orders as to costs in each situation listed, giving reasons.

QUESTION 4

You act for and on behalf of Gentle Folk, a successful claimant in a claim against Riotous Sort, his cousin, for damages resulting from personal injury.

At the trial of the matter, the court awarded, as damages, a sum the equivalent of US\$500,000 in your currency, together with interest amounting to a sum the equivalent of US\$52,000 in your currency and costs, which have been assessed at a sum the equivalent of US\$48,000 in your currency.

You have made numerous requests for payment of the sums due and owing from Sort, however the sums remain outstanding. Sort has filed a notice to appeal the decision of the trial judge.

Your client instructs you that he (Folk) knows that Sort owns the following assets:

- (i) a bank account at Nation's Bank Limited with a sum the equivalent of US\$100,000 in your currency; and
- (ii) a large house valued at a sum the equivalent of US\$200,000, with valuable furniture and other expensive items. The house has a mortgage registered on it. A sum the equivalent of US\$100,000 in your currency remains due on the mortgage.

Advise Folk on the steps he may take to recover the judgment debt.

QUESTION 5

You are the attorney-at-law acting for and on behalf of Jai Normous, the first defendant in a claim for damages resulting from a breach of contract.

You recently attended a case management conference at which the court granted a summary judgment application in favour of the claimant, against the defendants, jointly and/or severally, for a sum the equivalent of US\$200,000 in your currency, interest at a commercial rate of 10% per annum and costs to be assessed.

You are today served with the perfected order. It wrongly states that judgment was granted against each defendant for a sum the equivalent of US\$200,000 in your currency, interest at a commercial rate of 10% per annum and costs to be assessed.

- (i) Detail the steps you need to take on behalf of your client in the circumstances, giving reasons.
- (ii) Prepare a draft of the submissions you would present to the court.

PART B

LAW OF ASSOCIATION

ANSWER BOTH QUESTIONS 6 and 7

QUESTION 6

Terique and Monique Soprano operate an informal wrecker service business. Their services are most frequently engaged by car marts and large garages. Recently, they had a terrible incident which resulted in extensive damage to the high-end motor vehicle they were transporting as well as injury to their friend, who often assisted whenever the workload was heavy.

They were required to cover the cost of the repairs to the car and take care of their friend's hospital expenses. The incident caused them to have serious concerns about the way they have been operating their business and their unlimited exposure to personal financial liability.

Their business has been very successful and they wish to be able to take on a few employees, expand with ease (whenever they are ready), and also include their son Jason, so that he will gain the exposure necessary to later take charge.

They have decided to seek legal advice on formalising their business structure.

Advise them on:

- (i) the type of business entity that would be most suitable for their operations, giving reasons for your recommendation; and

- (ii) the procedural steps and relevant documents required for formalising the entity, as well as a summary of the contents of the documents.
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QUESTION 7

Bruce Tention is the youngest, brightest but most impetuous of the four Tention brothers who have worked at Tention Elite Furniture Limited (the Company) since graduating from university. Their aunt, Roseta, who recently died, leaving all her estate to her nephews equally, was the sole shareholder, owning 800 of the Company's 1000 shares. The remaining 200 shares are unissued.

The Company was profitable, had several branches within the jurisdiction and was well known for its high-end furniture. Roseta was connected to some wealthy families, some of whom were friends and admirers of the Company and often expressed their interest in investing in the business. Roseta had appointed Claudette and Grace, her closest friends, as directors, because of their selfless involvement in the Company and their expertise in the industry.

The Company's shares were quite valuable and so, upon learning of the large amount of money to which he would be entitled when the shares were divided, Bruce immediately told his brothers that he would prefer to be paid for his shares. He indicated that he would like to be a director because he believed his expertise would be useful to the Company. He did not want to cut all ties with what he considered to be a 'family enterprise'.

His brothers were annoyed because they felt that Bruce was being selfish since he was fully aware that their plans to expand the business into overseas markets required more money than the Company had. They did not want to take loans and preferred to keep the Company as a private enterprise.

Having sold his shares to his brothers over six months ago, Bruce departed for a vacation in the South of France. Upon his return a week ago, he realized that the Company now has five directors and he is not one of them. Bruce kept calling his brothers to find out why he was not appointed as he had requested.

- (a) Wanting to proceed with the plans to expand the Company, the directors seek advice from your law firm in relation to:
- i. the matters they should consider in order to raise capital through the issue of shares, other than borrowing from a bank or going public;
 - ii. the procedural steps they would be required to take if they were to consider going public in order to raise the needed capital; and
 - iii. the purpose and usual contents of the prospectus.

Advise them.

- (b) The directors also seek your opinion as to whether there is any obligation, legal or otherwise, to appoint Bruce to the Board.

Give your opinion.

END OF PAPER