

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2013

CIVIL PROCEDURE AND PRACTICE II

(MONDAY, AUGUST 12, 2013)

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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **PART A**

### **QUESTION 1**

During your internship you are engaged as a judicial clerk at the Supreme/High Court of your jurisdiction and are assigned to Justice Wisden. At the close of the Claimant's case in a trial before Justice Wisden, the Claimant's attorney-at-law sought the judge's permission to make a sensitive application. Justice Wisden permitted Counsel to proceed with the application.

The Claimant's attorney-at-law informed the court that the Defendant had made an offer to settle the claim pursuant to Part 35 of the Supreme/High Court Civil Procedure Rules. The offer, which had been made three (3) months before the trial, had been supported by a payment into court. The Claimant had not responded to the offer and the Defendant had not withdrawn the sum. The Claimant's attorney-at-law indicated that the Claimant was now accepting the offer and seeking the permission of the Court to withdraw the sum.

Counsel for the Defendant vigorously opposed the application and argued that Justice Wisden had no authority to grant the permission sought in light of such opposition. The Defendant's attorney-at-law further argued that Justice Wisden must recuse himself because he now had knowledge of the offer and supporting payment.

The judge, after hearing arguments from both sides, adjourns the matter for one week to consider the merits of the application and whether his position has been compromised.

Write a legal opinion to Justice Wisden advising him on:-

- (a) the nature of a part 35 offer to settle;
- (b) the scope of his authority in this matter and in particular --

- (i) whether or not he has the right to make the order for payment out; and
  - (ii) whether or not he needs to recuse himself.
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## **QUESTION 2**

Cutting Edge Software Limited ("CES") is a software design company which is registered in Florida, United States of America. It develops software for which it retains ownership and makes significant income by granting licences to various users throughout the world.

On January 2, 2012, Uwin Energies Company Limited ("UEC"), the main energy provider in your jurisdiction, entered into a licensing agreement with CES to lease CES's online billing software ("Onbill") at a cost of the equivalent in your currency of US\$20,000 per year. The sum of US\$5,000 was paid on execution of the agreement and the balance was to be paid on December 31, 2012.

UEC failed to make its December 2012 payment and on February 16, 2013, CES filed a claim in your jurisdiction against UEC for the recovery of the sum due and owing.

Your firm acts on behalf of UEC which instructs you that it will not pay the sum because Onbill did not perform in a satisfactory manner. You have filed and served the Acknowledgment of Service and Defence as per your instructions.

Mr. Senior Partner in your firm asks you to advise him on whether or not a security for costs application should be made in this case on behalf of the client.

Prepare:

- (i) an opinion to Mr. Senior Partner in which you set out the principles the court will consider in deciding whether or not to grant the order and the likelihood of success; and
  - (ii) a draft of the application for security for costs.
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### **QUESTION 3**

Waistcoat Suppliers Limited (“WSL”) is a wholesale supply company. WSL’s business model utilizes door-to-door sales persons to conduct transactions on behalf of the company. Carla James, one such sales person, is therefore able to work from home. A ‘stay-at-home mom’, Carla finds this a very convenient way to earn money. Paper records of the transactions are generated by the individuals and mailed to WSL for safekeeping.

Builders Hardware Store Limited (“BHS”) placed an order through Carla for lawnmowers valued at the equivalent in your currency of US\$500,000. The payment was made and the lawnmowers delivered as agreed. Carla did not mail the paper records of the calls to WSL.

BHS commenced a claim against WSL for the return of the sum they paid for the lawnmowers, alleging that they were defective. WSL has defended the claim, stating that BHS did not follow the assembly instructions for the machines.

You act on behalf of WSL. In the Case Management Conference various orders were made including for witness statements to be exchanged by September 19, 2012.

- (a) Assume it is now September 18, 2012, and all your witness statements are ready. A witness summary was prepared for Carla as you have not been able to contact her. Counsel for BHS advises that their witness statements are not yet ready.

What are the steps that you would take to ensure that your client does not breach the court order for filing the witness statements? Your recommended steps must ensure that the Claimant is not privy to the information in your witness statements before filing theirs.

- (b) Assume further that it is now May 15, 2013. The trial of the claim is scheduled for May 30, 2013. The parties have complied with all the orders made at the case management conference.

You are faced with the challenges set out below.

- (i) You have not been able to get Carla to cooperate but are of the opinion that her evidence and the records in her possession are vital for the trial.
- (ii) Your client informs you that on May 14, 2013, they discovered a copy of a letter sent from them to BHS. It had enclosed a copy of the manual relating to the lawnmowers. You determine that the letter is directly relevant to the proceedings.
- (iii) The existence and details of the letter in (ii) had not been included in your client's witness statement.

Draft a letter to your client advising on the steps you propose to take to address the challenges detailed in items (i) to (iii).

#### **QUESTION 4**

On January 11, 2011, Poppy Producers Limited ("PPL") entered into a lease agreement with Jelly Real Estate Company Limited ("JRE") pursuant to which PPL leased 100 acres of farming land from JRE for a period of five (5) years. The property is not subject to rent restriction legislation.

In January 2013, PPL breached numerous covenants under the lease agreement. JRE issued letters to PPL demanding that they rectify the breaches. PPL ignored the letters and refused to rectify the breaches.

On July 23, 2013, JRE attempted to gain entrance to the leased premises but were prevented from doing so by security personnel engaged by PPL. JRE left the leased premises but advised that they would return the following week to enter and take possession of it.

On July 30, 2013, JRE received, among other documents:

- (i) a Claim Form and Particulars/Statement of Claim indicating that PPL has filed suit against JRE claiming among other things that JRE breached the covenant for PPL's quiet enjoyment of the property;
- (ii) an Order prohibiting JRE from entering the premises and/or otherwise disturbing PPL's quiet enjoyment of same for a period of twenty-eight days from July 29, 2013 or until further order of the court. The Order indicates that the matter will be further considered on August 22, 2013; and
- (iii) the Application for Court Orders and Affidavit in Support pursuant to which the Order described in (ii) were obtained.

The Vice-President of JRE attends your offices this morning. He gives you the documents listed at (i) to (iii) above together with a copy of the lease. He instructs that in his opinion JRE lawfully re-entered the premises as the lease gave them the authority to do so in the event of PPL breaching covenants.

On reviewing the Affidavit in Support in (iii) you note that it does not contain any information concerning PPL's breaches of the covenants.

Draft:

- (a) an appropriate Application for Court Orders in light of the instructions received; and
- (b) a letter to your client advising on the type of application recommended and the likelihood of success.

(The relevant form is available.)

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### **QUESTION 5**

The land surveyors' board in your jurisdiction is a public body responsible for the issuing and renewal of licences to individuals authorising them to practise as land surveyors. Under the law, land surveyors must apply for renewal of their licence every five years. If the application is denied, the legislation requires that reasons be given.

Jenny Surveyan has been a registered land surveyor since first receiving her licence to so practise in 1988. Her licence has been renewed every five (5) years since then. In accordance with her usual practice, she submitted her application for her licence to be renewed. On July

31, 2013, she received by hand a letter of the same date advising her that her application for a licence had not been approved. The letter provided no reasons for the decision.

You met with Jenny yesterday and she instructed you to apply for judicial review of the decision of the board.

Advise Jenny on the process to be undertaken to obtain judicial review including the issues that the court will be required to consider at each hearing involved in the process.

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

**QUESTION 6**

Ms. Pettigrew has just been appointed the first female managing director of Star Services Ltd. and is anxious to show her mettle as a female executive in a male-dominated industry.

At a recent meeting of the board of directors, it was unanimously agreed that the company's name did not adequately reflect its core business of private garbage collection and sanitation services. As a result of this, the company was not benefiting financially from the opportunities presented by a failing public sanitation service in your jurisdiction. It was therefore decided that the name should be changed to SaniClean Limited and Ms Pettigrew was mandated to attend to the matter.



Acting on this mandate, Ms. Pettigrew issued the following instructions to her administrative assistant:

*"Miss Gracie,*

*(a) Please prepare the following resolution for my signature as Managing Director, ASAP.*

*'WHEREAS on the 2nd day of August, 2013 the Board of Directors, at a meeting held at the Head Office of the Company, unanimously agreed that the name of the company be changed to SaniClean Limited*

*BE IT RESOLVED that the company's name be changed as aforesaid with immediate effect.'*

*(b) Send a notice, immediately upon my signing the resolution, to all local television and radio stations advising the public of the name change. Please request that the notice be read in that day's news broadcast.*

*(c) Have the company's website and facebook page updated.*

*(d) Order new stationery reflecting the new name."*

Mr. Furrows, a shareholder who heard the notice of the name change on the radio, is concerned that the required legal procedure was not followed and now seeks your advice.

Advise Mr. Furrows on the legality of the instructions given by Ms Pettigrew and, if you agree that there are grounds for his concern, explain to him, in detail, the procedure which ought to have been followed.

## **QUESTION 7**

You are the legal officer and corporate secretary of Reliable Synthetics Limited, a private company limited by shares, incorporated in your jurisdiction.

The board of directors of the company has been reviewing the company's options for raising significant financing in order to expand production capacity. The directors, having discussed the matter thoroughly at their last board meeting, have eliminated the debt financing option and are looking instead to raise equity financing.

You have been requested by the chairman to prepare a memorandum to the board outlining:

- (i) the approach(es) which the company may take to raising the required equity financing;
  - (ii) the possible legal issues raised by the suggested approach(es); and
  - (iii) the steps and documents which would be involved.
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## **QUESTION 8**

Roberta Carrington is a retired bank executive. Being of some means and with time at her disposal, she has been considering how she might occupy her time and, at the same time, make some money in order to better secure her financial future in these highly inflationary times.

Roberta has always been captivated by the notion of a “Ladies’ Club” which would offer facilities along the lines of the old-time “Gentlemen’s Club”. It would, accordingly, be a place to which professional ladies could retreat for a cocktail (or tea for that matter) and have conversation with each other. Breakfast, lunch and dinner would be available for purchase and perhaps even meeting facilities could be provided in the event they were required.

Roberta has in mind that it would be a “ladies only” club and that only those approved for membership could use its facilities. She is not sure what the legal structure of such a club might be. At one point she was a member of a book club but no particular person was the owner of that club. She has come to you for advice.

Advise Roberta on:

- (i) the type of club which would best suit her purposes;
- (ii) the legal structure and characteristics of such a club, distinguishing it from the likely structure and characteristics of the book club to which she previously belonged; and
- (iii) the steps and document(s) required to establish the club recommended by you at (i) above, giving an outline of the main document(s) involved.

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## **QUESTION 9**

Fanciful Limited is a private limited liability company which was incorporated in your jurisdiction in 1995. The company’s core business is the manufacture of women’s clothing and, for a time, it did this quite successfully.

The company bought raw material for its production line from several other companies and businesses. These suppliers extended credit to the company on its purchases, due to its excellent track record for paying its debts. Even when it began to take longer for the company to make these payments, these suppliers continued to extend credit because of the goodwill that had developed between the parties over the years. Eventually, it became evident that Fanciful Limited had fallen on hard times, apparently because of fierce competition from cheaper imported clothing. Indeed, at the present time the company is insolvent.

You have been retained by Fabrics R' Us Limited, one of Fanciful Limited's largest creditors, which wishes to take steps to dissolve Fanciful, with the objective of recovering what it can from available assets.

Draft a letter to be sent to the managing director of Fabrics R' Us Limited explaining:

- (i) how companies may be dissolved in your jurisdiction and your recommended approach in the circumstances; and
- (ii) the procedure involved in your recommended approach.

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**END OF PAPER**