

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1990

CIVIL PROCEDURE AND PRACTICE II
(Wednesday, May 30, 1990)

Instructions to Students

- a) Time: 3½ hours
- b) Answer THREE questions from PART A and TWO questions from PART B.
- c) Questions selected from PART C must be answered on a separate sheet.
- d) In answering any question a student 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.

PART A

QUESTION 1

John Brown on August 4, 1987, filed an action for damages in negligence against Tom Stokes and Bill Careless as first and second Defendants. Stokes did not enter a defence to the writ and judgment in default of defence was entered against him on July 30, 1988.

Bill Careless filed his defence in October 1988 and in July 1989, Notice was filed setting down the matter for trial on the 10th November, 1989. On October 2, 1989, John Brown filed a Notice of Discontinuance of the action against Careless. Subsequent to the filing of the Notice of Discontinuance, on a motion, John Brown seeks leave to discontinue against Careless and for a "Bullock Order".

Advise John Brown on his chances of success.

QUESTION 2

- (a) Outline the procedure for Discovery of Documents.
- (b) AB Limited has been defrauded by clients of Sharpers Limited and seeks by a writ to trace the money into the client's accounts. At the time of the issue of the writ AB Limited applies for an order against Sharpers Limited for immediate discovery of the state of accounts and of all documents and correspondence with the clients relating to these accounts from the date of the alleged fraud.

Advise AB Limited.

QUESTION 3

You are representing the defendant in a case in court. At the end of the plaintiff's case you wish to submit that the defendant has no case to answer.

- (a) Set out the procedure which is to be followed in making the submission.
 - (b) State the consequences of your submission if it is upheld or refused.
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QUESTION 4

Write notes on:-

- (a) reserved costs,
 - (b) costs in the cause,
 - (c) plaintiff's costs in any event;
 - (d) costs of the day.
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QUESTION 5

John Brady, a company director with Fastfoods Limited, is required to keep and use one of the company's cars in the performance of his duties. On April 18, 1990, Mary obtained a judgment in the sum of \$80,000 against Brady consequent upon a running down action brought against him by Mary. On May 1, 1990, the Marshal/Bailiff levies execution of Brady's furniture valued at \$25,000, Brady's entire electronic musical system valued at \$20,000, the motor car valued at \$45,000 and his newly acquired book case and encyclopedia set valued at \$10,000 which he bought on hire purchase from Booksellers Limited. Fastfoods Limited and Booksellers Limited claim that the Marshal/Bailiff has levied on their property and indicate that they wish to recover their motor car, and the bookcase and encyclopedia set respectively which will be put up for sale within the next two days. They seek advice.

Advise them as to the relevant steps and applicable procedure which may be taken and followed to recover their property.

PART B

QUESTION 6

What are the contents of any THREE of the following:

- (a) a combined register in common use for a company registered under the Companies Act;
 - (b) the constitution of a Member's Club;
 - (c) a Statement in lieu of Prospectus under the Companies Act;
 - (d) a standard form Articles of Partnership;
 - (e) the Annual Returns for a company registered under the Companies Act?
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QUESTION 7

Outline the procedural steps to effect any THREE of the following:

- (a) members voluntary winding up of company registered under the Companies Act;
 - (b) reduction of capital;
 - (c) transfer of 40% of the shares held by a member of a company registered under the Companies Act;
 - (d) change of name of a company registered under the Companies Act;
 - (e) removal of a director of a company registered under the Companies Act.
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QUESTION 8

Your client has a judgment for the sum of \$10,148 and taxed costs of \$2,137 arising out of a successful action against Extoc Ltd. for damages for breach of contract to repair his house; the bailiff for the parish of St. Andrew has just returned the Writ of Seizure and Sale endorsed "nulla bona".

Draft the petition to wind up Extoc Ltd.

QUESTION 9

Comment and advise on the following document :

SUIT NO. C.L. of 1990
IN THE SUPREME COURT OF JUDICATURE
IN MISCELLANEOUS

BETWEEN	HENRY LUGG	PETITIONER
AND	BEDLAM LTD.	DEFENDANT

TAKE NOTICE THAT this Honourable Court will be moved on the day of 1990 at 10 o'clock in the forenoon or so soon thereafter as counsel can be heard on the hearing of an application by HENRY LUGG, Director/Debenture Holder, that it is just and equitable that orders be made pursuant to the Companies Act to bring to an end the oppressive manner in which the affairs of the Defendant, BEDLAM LTD. are being conducted, namely:

- 1) that the register of members be rectified to include the name of Henry Lugg;
- 2) that alternatively, that I be repaid the \$100,000 I paid towards the Share Capital of the company;
- 3) that the time within which a debenture held by the said Henry Lugg be extended to permit registration of the said debenture;

- 4) that the directors account for and pay over to the said company all moneys of the company that they have used to purchase properties in their own names;
- 5) that further or in the alternative, the said company be wound up.

AND FURTHER TAKE NOTICE THAT the grounds of this application are as follows:

- (a) that although the Petitioner has paid up 50% of the issued share capital of the company, his name is not on the Register of Members neither has he got his share certificate;
- (b) that if your Petitioner cannot get his share certificate, he wants his money back;
- (c) that the debenture is dated 1st May, 1986, he has been receiving instalment payments and interest thereunder but it has just come to his notice that the debenture was not registered;
- (d) that the other two directors have been diverting most of the lucrative business away from the company to themselves;
- (e) that in the premises, it is just and equitable to wind up the company dated the 14th day of May, 1990.

TO THE REGISTRAR

SUPREME COURT

Filed by Shore & Bright, Attorney-at-law of 108 Queens Avenue, Kingston.
