

NOT TO BE TAKEN AWAY

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1992

CIVIL PROCEDURE AND PRACTICE II

(Thursday, May 21, 1992)

Instructions to Students

- (a) Time: 3 1/2 hours
- (b) Answer THREE questions from Part A and TWO questions from PART B
- (c) Questions selected from PART B 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.

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PART A

QUESTION 1

(a) Thomas sued Henry claiming damages for personal injuries sustained by him when he was knocked down by a motor car owned and driven by Henry.

Henry paid an amount of money into court in satisfaction of the cause of action in respect of which Thomas claimed and gave the requisite notice. Thomas did not accept the amount paid in and the case went to trial. Judgment with costs was given in favour of Thomas but in an amount less than the amount which was paid in by Henry.

Thomas contends that he is entitled to full costs since the judgment was given in his favour.

Advise him.

√(b) Draft a Notice of Payment into Court.

QUESTION 2

"The order on a Summons for Directions is a condition precedent to an action coming on for hearing in the Supreme/High court".

Explain the quotation with reference to decided cases.

QUESTION 3

A sued B for damages in negligence. In his Statement of Claim A pleaded inter alia -

- (a) particulars of B's negligence;
- (b) res ipsa loquitur;
- (c) breach of statutory duty.

At the trial before Mr. Justice Blank without a jury you are the attorney-at-law for B.

In your opinion, A has failed to prove the pleadings (a), (b) and (c) above.

(a) How would you deal with such a situation? Describe the procedure which you would adopt in doing so.

(b) If Mr. Justice Blank was sitting with a jury would your dealing with the situation be any different?

If so, describe the procedure.

QUESTION 4

On January 14, 1992, A obtained judgment against B in the amount of \$15,000 and it was ordered that the said amount of \$15,000 be paid by February 14, 1992. The money has not been paid and you have now been consulted by A as to how he may obtain his \$15,000. He instructs you that B is a woodworker who operates a shop at Big Woods Lane where he manufactures desks and chairs for sale to the government. B also owns his dwelling house at the same premises.

- (a) Advise A as to the appropriate method of enforcing the judgment.
- (b) Draft the requisite documents for the method of enforcement.
-

QUESTION 5

John Smith sued Alfred Jones and George Brown, owners and drivers of two motor trucks respectively, for damages for personal injuries which he suffered in a collision between their trucks.

Appearances have been entered service thereof acknowledged. Defences have been filed and a Summons for Direction has been taken out and the matter is now set down for trial more than one year after the defences have been filed.

Smith by his attorney-at-law now wishes to discontinue his action against Alfred Jones.

- (a) Advise whether he can discontinue and if so, the consequences thereof.
- (b) Draft the relevant documents, if any, based on your advice.
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PART B

QUESTION 6

What are the rules of the High/Supreme Court relating to legal proceedings-

- (a) by and against a members' club;
- (b) by and against a firm?
-

QUESTION 7

Outline the procedural steps for any THREE of the following -

- (a) voluntary liquidation of a company registered under the Companies Act;
- (b) raising capital for a company registered under the Companies Act;
- (c) expulsion of a member from a club;
- (d) distribution of the profits of a company registered under the Companies Act;
- (e) transferring 30% of shares in a company registered under the Companies Act from a vendor to a purchaser.

QUESTION 8

Answer EITHER (a) OR (b)

- (a) Draft the Articles of Partnership for a firm of lawyers.
- (b) Advise the President of Federation of Musicians, an unincorporated association, on how to register his Federation under an Act of Parliament.

QUESTION 9

Re-draft the following document for immediate filing -
SUIT NO. C.L. M 210 of 1991

IN THE SUPREME COURT OF JUDICATURE
IN COMMON LAW

BETWEEN

CHARLES HENRY

PLAINTIFF

AND

KARL DISHER

DEFENDANT

TAKE NOTICE THAT THE HUMBLE PETITION of Charles Henry
showeth:

1. That on the 20th day of May, 1991 your petitioner was induced by the Defendant to invest \$60,000 in TUTTS HOLDINGS LIMITED which has been operating since 1988.

Your Petitioner was promised:

- a) 20% of the shares of the said company;
- b) a Debenture for the sum of \$58,000;
2. That on the 21st day of May, 1991, relying on the abovementioned inducement your Petitioner paid the Defendant the sum of \$60,000.
3. That the directors of the company are the Defendant, his wife, Mary Jane and his son, Donald.
4. That on the 1st day of April, 1992, at a members' meeting of said company your Petitioner and the Defendant had a quarrel over whether it was the turn of your Petitioner to be appointed a director of the company.
5. That since then your Petitioner has ben excluded from all meetings of the said company by the Defendant and your Petitioner has discovered the following facts:

PARTICULARS

- (i) No Annual Returns have ever been filed on behalf of the company.
- (ii) The directors of the company are being paid salaries

of \$400,000 per annum.

- (iii) No financial statements or accounts of the company have been prepared; no dividends ever declared.
 - (iv) The Debenture has not been registered.
6. In the circumstances, your Petitioner submits that the affairs of the company are being conducted in a manner oppressive to him. Your Petitioner has lost faith in the commercial integrity of the Defendant. It is therefore just and equitable that an Order should be made with a view to bringing to an end the matters complained of by your Petitioner.

FILED etc.
