

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

SECOND YEAR EXAMINATIONS, 1993

CIVIL PROCEDURE AND PRACTICE II

(Tuesday May 25, 1993)

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 booklet.
- (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.

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PART AQUESTION 1

On March 31, 1993, Fincor Limited obtained a judgment against Peter Payne for \$150,000 and costs to be taxed. On May 14, the Bailiff/Marshal levied execution on Payne's furniture valued at \$50,000, a brand new motor car valued at \$100,000, a station wagon valued at \$25,000 and a stereo system valued at \$10,000.

- (a) Peter Payne is aggrieved that he was not given any notice or warning of the levy and wishes to have the levy set aside and to claim damages for wrongful levy and trespass by the Bailiff/Marshal.
- (b) Fincor Limited seeks a return and delivery of the motor car to them as being its property since they had loaned Payne, its employee, the money to purchase the motor car which he was required to keep in the performance of his duties with the company.
- (c) Mary Midas seeks a return of the station wagon stating that it is her property in her own rights
- (d) Music Stores Limited also seeks a return of the stereo system which is the subject of a hire purchase agreement with it.

Advise each of the parties as regards their respective rights and claims and the applicable procedure which they may make in order to protect their respective rights and interests and to obtain a return of property claimed.

QUESTION 2

- (a) What is the function of interrogations?
 - (b) What steps must be taken before interrogatories can be administered?
 - (c) When will they be allowed, and what objections can be taken to them?
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QUESTION 3

What is the meaning of the following?

- (a) (i) Costs follow the event;
 - (ii) Costs thrown away;
 - (iii) Costs of the day.
 - (b) Explain and illustrate the meaning of each of the following orders as to costs -
 - (i) Costs in the cause;
 - (ii) defendant's costs in the cause;
 - (iii) plaintiff's costs in any event;
 - (iv) costs reserved to the trial judge.
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QUESTION 4

- (a) What is the meaning of 'payment into court'?
 - (b) When and by whom may it be used?
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QUESTION 5

What steps should be taken by a defendant where the plaintiff has in his possession a material document which the plaintiff has mentioned in his affidavit of documents but refuses to discover?

Can the plaintiff justify his refusal by claiming that the document is privileged?

PART BQUESTION 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.

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 Anton Limited for damages for breach of contract to repair his house; the bailiff has just returned the Writ of Seizure and Sale endorsed "nulla bona".

Draft the petition to wind up Anton Limited.

QUESTION 9

Comment and advise on the following document:

SUIT NO. C.L. of 1993

IN THE SUPREME COURT OF JUDICATURE

IN MISCELLANEOUS

BETWEEN DEVON GREEN PETITIONER

AND MARDOC LTD. DEFENDANT

TAKE NOTICE THAT this Honourable Court will be moved on the day of 1993 at 10.00 o'clock in the forenoon or so soon thereafter as counsel can be heard on the hearing of an application by DEVON GREEN 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, MARDOC LTD. are being conducted, namely:

- (1) that the register of members be rectified to include the name of DEVON GREEN;

- (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 DEVON GREEN be extended to permit registration of the said debentures;
- (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, 1993, 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, 1993.

TO THE REGISTRAR

SUPREME COURT

Filed by Shore 7 Bright, Attorney-at-law of 108 Queens Avenue,
Kingston.
