

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

SECOND YEAR EXAMINATIONS, 1994

CIVIL PROCEDURE AND PRACTICE II

(Tuesday, May 24, 1994)

Instructions to Students

- (a) Time 3 1/2 hours
- (b) Answer THREE questions from Part A and TWO from Part B.
- (c) Questions selected from Part B must be answered on a separate answer booklet.
- (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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART AQUESTION 1

An order for discovery of documents has been made against Joint Ventures Limited, building contractors, the defendants in an action brought by Tom Jones for injuries sustained in an accident on a building site.

The defendants are in possession of a report prepared by them shortly after the accident and before action was filed for use by themselves and their insurers. The report gives details of the accident. It appears from the report that the defendants were in breach of several safety regulations and that their conduct amounted to gross negligence and recklessness. Indeed, another person who was injured in the accident has since died.

The insurers required the report to enable them to seek legal advice and the defendants required it to enable them to improve their safety measures.

Write a short opinion as to whether the defendants should produce the report for inspection and how and by what means they should respond to the order.

QUESTION 2

D incurred debts during the course of his business of selling repaired second-hand cars. He also repaired cars for owners or sold them on their behalf.

P obtained judgment against D for money owing to him and when the judgment debt was not paid a Writ of Fieri Facias was obtained and delivered to the Bailiff/Marshal directing the seizure and sale of D's goods.

The writ was duly executed and cars at D's premises were seized and sold at auction.

Claims were made against the Bailiff/Marshal by owners whose cars were on D's premises at the time of execution of the Writ of Fieri Facias.

Advise the Bailiff/Marshal citing relevant Civil Procedure Rules and cases.

QUESTION 3

Tom Stokes obtained a judgment against Joe Brown on January 10, 1994, requiring Brown to erect a brick wall which he had contracted to erect around Tom Stokes' house.

The judgment which was served on Brown on January 14, 1994, has not been obeyed and Stokes is anxious to have it enforced as his property is being vandalized.

Tom Stokes seeks your advice.

Advise him.

QUESTION 4

James suffered injury in an accident at his workplace. On April 6, 1991, he issued a writ against XYZ Co. who were his employers, claiming damages in negligence.

XYZ Co. denied liability and alleged that James was injured as a result of his own negligence. On May 6, 1991, XYZ Co. paid \$15,000 into court in satisfaction of the claim. James did not accept the payment in and on February 20, 1992, the case came on for trial.

During the trial after he had been examined and cross-examined, James' chances of success were severely diminished. His attorney-at-law applied in open court to have the \$15,000 paid out to James. The application was opposed by the attorney-at-law for XYZ Co. and the judge refused the application and ordered a new trial.

James wishes to appeal the judge's decision.

Advise him as to his chances of success, citing Civil Procedure Rules and case law.

QUESTION 5

What is meant by "setting down" an action for trial?
Set out the requisite steps in the procedure.

PART BQUESTION 6

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

- (a) by and against a member's club;
 - (b) by and against a partnership?
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QUESTION 7

Outline the procedural steps of any THREE of the following -

- (a) increase of share capital of a company registered under the Companies Act;
 - (b) reduction of share capital of a company registered under the Companies Act;
 - (c) distribution of profits of a company registered under the Companies Act;
 - (d) admitting a new partner into a firm;
 - (e) having an unincorporated club registered under the Companies Act.
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QUESTION 8

Draft a standard form of a Deed of Partnership.

QUESTION 9

Re-draft the following document for immediate filing -

SUIT NO. C.L. J110 of 1994

IN THE SUPREME COURT OF JUDICATURE

IN COMMON LAW

BETWEEN	EXTON LIMITED	PETITIONER
AND	MERIOP LIMITED	RESPONDENT

TAKE NOTICE THAT the FULL COURT will be moved at 10.00 p.m. in the afternoon of the 17th day of June 1994 or so soon thereafter as counsel may be heard on the hearing of an application by Exton Limited of 218 Old Harbour Road, Spanish Town, in the parish of St. Catherine for an order that the Respondent be wound up.

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

- (a) The Respondent has its registered office at 17 Marcus Garvey Avenue, Kingston.
- (b) The Respondent gave the applicant a cheque dated the 10th day of January, 1994, drawn on the Manchester Credit Bank for the sum of \$40,000 for goods supplied by the Applicant to the Respondent.
- (c) The said cheque was returned by the said Bank with a note "NO FUNDS".

- (d) The applicant has been trying to get the Respondent to pay for the said goods but without success and on the 1st day of April, 1994, served a notice under the Companies Act requiring immediate payment.
- (e) The Respondent was incorporated on the 10th day of June 1990 and had as its objects -
- (A) to construct houses and to develop and subdivide lands;
 - (B) to deal in goods, commodities and equipment of all descriptions.
- (f) To date the Respondent has not paid the Applicant wherefore it is just and equitable to wind up the Respondent.

DATED THE 3RD DAY OF MAY, 1994.

per: _____
CHARLES COODE
Attorney-at-Law for the Applicant
