

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

2/22/17

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 1995

CIVIL PROCEDURE AND PRACTICE II

(Monday, May 22, 1995)

Instructions to Students

- (a) Time  $3\frac{1}{2}$  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.

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PART AQUESTION 1

Frank, who alleges that he suffered a blow to his head and now continues to experience recurrent severe headaches, instituted proceedings against his employers BP Limited for damages. On March 8, 1995, BP Limited paid \$20,000 into court in full and final settlement of Frank's claim. Thereafter, on March 31, 1995, BP Limited received a report from their specialist medical doctor in which he firmly expressed the opinion that Frank's headaches are not consistent with the injury he sustained and cannot be attributed to any such accident. As a result of this information, BP Limited decided to withdraw the notice of payment in and the payment into court. Frank has now decided to accept the \$20,000 paid into court on March 8, 1995, and gave notice to that effect to BP Limited.

Advise Frank -

- (a) as regards the significance and effect of his notice of acceptance of the payment in;
- (b) as to whether or not BP Limited will be able to withdraw the money paid into court, and if so, on what basis and by what process.

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QUESTION 2

(a) Describe the writ of fieri facias and outline the procedure with regard to its issue.

(b) Trving Man Services Ltd has obtained a judgment against Construction and Demolition Ltd in the sum of \$250,000 and costs for work done on a construction site.

The judgment remains unsatisfied.

The judgment creditor has become aware that an amount of \$500,000 is in an account in the name of Construction and Demolition Ltd in the Carib Commercial Bank Ltd.

Outline the procedure which may be adopted on behalf of the judgment creditor to have his judgment satisfied against the account.

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QUESTION 3

(a) You are representing the defendant at the trial of a claim made against him for trespass and nuisance. You intend to make a no case submission on his behalf.

(i) Set out the procedure which is to be followed in so doing.

(ii) State what the consequences of your submission would be where it is upheld or refused.

(b) How is a matter set down for trial likely to proceed if, when the matter comes on for hearing -

(i) the defendant; or

(ii) both the plaintiff and the defendant, fail to appear?

(c) Indicate whether any redress may be available to the parties adversely affected by any judgment that may be pronounced

at (b) above and, if so, what applicable procedure may be involved in obtaining such redress.

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QUESTION 4

(a) Peter instituted proceedings against Adam and Bobby for damages for negligence arising out of a collision involving all three parties. Peter alleged that the other parties were to be blamed for the collision. Peter obtained judgment against Adam in the agreed sum of \$80,000 and costs to be taxed. The action against Bobby was dismissed with costs to be taxed and paid by Adam. Adam is dissatisfied with this order as to costs made against him and seeks your advice.

Advise Adam.

(b) Explain and illustrate the significance, meaning and effect of each of the following orders as to costs -

- (i) action dismissed with costs to be taxed and paid by the plaintiff to the defendant;
  - (ii) the costs of and incidental to this application and all costs thrown away be the plaintiff's in any event;
  - (iii) the costs of this application be costs in the cause.
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QUESTION 5

Paul Evans, a computer expert, was employed to Computata Limited. He suddenly tendered his resignation from the company with immediate effect. A check of the company's records revealed that valuable, sensitive, secret and confidential documents relating to the computer software manufacture of the company were missing. All indications were that Evans had stolen these documents. The company have good reason to suspect that he had sold some of the documents to another company also incorporated in your country. In so doing, Evans will be in breach of his agreement not to disclose or in any way to make known any of the company's secrets and confidential data.

Computata Limited are alarmed at the irreparable harm, damage and loss that they could suffer and as a matter of urgency seek your advice as to what procedure could be invoked to protect their interests.

Advise Computata Limited.

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PART BQUESTION 6

Your client has a judgment for \$130,000 with costs taxed at \$2,000 against Merrivale Limited, a company registered under the Companies Act.

Draft a Petition to wind up Merrivale Limited.

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## QUESTION 7

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

- (a) a members' voluntary liquidation of a company registered under the Companies Act;
  - (b) a private company registered under the Companies Act going public;
  - (c) the transfer of 30% of the shares of Don Jones, a member of a company registered under the Companies Act to Henry Doe, a purchaser;
  - (d) the dissolution of a partnership;
  - (e) the registration of an unincorporated club under the Companies Act.
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## QUESTION 8

Outline the usual adaptations to the standard form of a Memorandum of Association and Articles of Association in the Schedule to the Companies Act.

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## QUESTION 9

- (a) Outline the procedure used to effect the following -
  - (i) rectification of the Register of Members of a company registered under the Companies Act;

(ii) late Registration of a charge on lands owned by a company registered under the Companies Act;

(iii) confirmation of a resolution to reduce the share capital of a company registered under the Companies Act.

(b) Outline the evidence necessary to support the applications.

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