

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1997
CIVIL PROCEDURE AND PRACTICE II

(Wednesday, May 21, 1997)

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COUNCIL OF LEGAL EDUCATION
MONA, KINGSTON, 7. JAMAICA

Instructions to Students

- (a) Time 3½ 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 territory.
- (e) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A**QUESTION 1**

Jones and Smith, in 1994, sued Brown, Black and White for the breach of an agreement for the sale of shares to them. In 1995, the defendants paid a sum into court in keeping with the applicable Civil Procedure Rule. In March 1996, further sums were paid in, to a total of \$550,000. Each payment was expressed to be in satisfaction of the plaintiffs' claim but was silent as to any apportionment of the sum paid in between the plaintiffs.

In April 1996, the plaintiffs rejected the amount paid in to court. One week later, the plaintiffs requested an apportionment of the sum on the ground that their claims were not identical. The attorney-at-law for the defendants refused the plaintiffs' request.

The plaintiffs contend that they have been embarrassed by the lack of apportionment of the amount paid into court. They seek your advice.

Advise them with reference to the rules of Civil Procedure and decided cases.

QUESTION 2

- (a) What is the 'Slip Rule'?

- (b) On May 15, 1996, the plaintiff obtained judgment against the defendant in an amount of "\$150,000 with costs certified for two counsel". The judgment was perfected on May 17, 1996. It is now discovered that the perfected judgment reads "\$15,000 and costs to be taxed".

The plaintiff seeks your advice. Advise him.

- (c) As attorney-at-law for the defendant, you discover that an order made in favour of the plaintiff contains an error as the result of a wrong interpretation of the relevant law by the judge in chambers.

The defendant wishes to have the error corrected.

Advise him.

QUESTION 3

You are representing a defendant at a trial. You intend to make a submission of no case for the defendant to answer.

- (a) Set out the procedure which is to be followed in so doing.
- (b) State the consequence of your submission being upheld or refused.
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QUESTION 4

- (a) Describe a writ of sequestration and state the principles, procedure and limitations as to its issuance.
- (b) Sleeper obtained an injunction prohibiting Maximum Decibel from causing a nuisance by noise. Maximum Decibel made adjustments to the amplifier of his sound system which he mistakenly believed would reduce the noise level so as not to breach the injunction.

Sleeper, not being satisfied with what Maximum Decibel did, applied for a writ of sequestration.

Discuss the merits of Sleeper's application.

QUESTION 5

- (a) State the guidelines for the granting and the execution of an Anton Piller order.
- (b) Tom, Dick and Harry were employees of A.B.C. Ltd. They resigned their positions from the company and took with them certain trade secrets and the names of the company's customers.

Tom, Dick and Harry set up a rival business to A.B.C. Ltd, They solicited and obtained contracts from A.B.C. Ltd. former customers whose names were contained in lists taken from that company. They also compiled lists of their own customers.

A.B.C. Ltd. sought and obtained an injunction against Tom, Dick and Harry. There were irregularities in the execution of the injunctive order. Later in the proceedings, an interlocutory injunction in wide terms was obtained by consent restraining the business activities of Tom, Dick and Harry. Their business collapsed as a consequence of the latter injunction.

The consent order enjoining Tom, Dick and Harry from doing business contained the usual undertaking as to damages. The matter has come up for hearing.

Discuss the chance of the success of the parties with reference to decided cases.

PART B

QUESTION 6

Outline the effect of the appointment of -

- (a) a Receiver by a debenture holder, and
- (b) a Liquidator by the court,

on litigation by and against a company registered under the Companies Act.

QUESTION 7

The past three years' financial statements of a company registered under the Companies Act show the following, inter alia -

1994	Loss on Profit/Loss Account	\$1,000,000
	Unappropriated profits	\$500,000
1995	Loss on Profit/Loss Account	\$1,000,000
	Unappropriated profits	\$500,000
1996	Profit on Profit/Loss Account	\$1,000
	Unappropriated profits	\$500,000
	Capital Reserve	\$10,000,000

(The notes to the 1996 financial statement state that one of the company's properties had been revalued for \$10,000,000 above its book value of \$100,000.)

The Chairman of the Board of Directors wishes to impress the shareholders at the coming 1997 annual general meeting and seeks your advice as to how best to deal with the situation of the company, in the light of the needs of the company to raise further capital for expansion and at the same time satisfy the shareholders who have been complaining that they have had no return on their investments for the past five years.

Advise him.

QUESTION 8**EITHER**

Draft standard form Articles of Partnership for a firm of lawyers made up of an elderly lawyer who has been practising for 35 years, a younger one who has been practising for 5 years and another who has just graduated and been called to the Bar.

OR

Outline the procedural steps to effect **three** of the following -

- (a) the voluntary winding up of a company registered under the Companies Act;
 - (b) registering an unincorporated club under one of the Societies Act;
 - (c) privatization of a Government controlled company registered under the Companies Act;
 - (d) raising capital for a company registered under the Companies Act;
 - (e) the redemption of Preference Shares.
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QUESTION 9

Give the procedural rules of the High/Supreme Court in respect of -

- (a) proceedings by and against unincorporated associations;
 - (b) applications to the Court under the Companies Act.
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