

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1998

CIVIL PROCEDURE AND PRACTICE II

(Friday, May 22, 1998)

Instructions to Students

- (a) Time 3 ½ 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**

John Thomas sues Carry All Bus Company to recover damages for injury which he sustained when the company's bus collided with his motor car.

John Thomas pleaded inter alia -

- (a) the negligence of the driver of Carry All Bus Company, and particulars of that negligence;
- (b) Res Ipsa Loquitur;
- (c) Breach of Statutory Duty.

The matter is now at trial before Jones J. alone and you are the attorney-at-law for Carry All Bus Company.

You are of the opinion that John Thomas has failed to prove any of the pleadings at (a) to (c) above.

- (i) State how you would deal with such circumstances and describe the procedure you would adopt in so doing.
 - (ii) Would your dealing with the circumstances be any different if Jones J. was sitting with a jury? If so, describe the procedure.
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QUESTION 2

Eastern Pharmaceuticals Ltd. (hereafter referred to as E. P. Ltd.) developed in its Veterinary Laboratory, a drug for the treatment of equine disease. The drug has been duly patented. E. P. Ltd. are aware that their patent is being infringed by importers whose identities are known to a third party, A. B. Distributors Ltd.

E. P. Ltd. seeks your advice as to whether -

- (i) it may by court action against A. B. Distributors Ltd. obtain disclosure of the names of the importers who are infringing the patent;
- (ii) it would be able by any such action to obtain any information other than the identities of the importers;
- (iii) E. P. Ltd. must evince a real interest in suing the infringing importers before their identities may be disclosed.

Advise E. P. Ltd. with reference to decided cases.

QUESTION 3

- (a) What is a writ of fieri facias and how is it issued?
- (i) What are the essential requirements which must be satisfied before such a writ is issued?
- (ii) Are there any, and if so what limitations to the issue and execution of such a writ?
- (b) The Bailiff / Marshall levied execution on the judgment debtors furniture and other household items. Bail Out Ltd. claimed all the items so taken in execution and so informed the Bailiff / Marshall in writing.

Advise the parties as to the applicable procedure to be followed having regard to the claim of Bail Out Ltd.

QUESTION 4

You are instructed by Global Liners Ltd., a Ruritania incorporated shipping line, registered and doing business in your state as a foreign company. Global has been served with a writ by Ship Chandlers Ltd. claiming \$200,000 being costs of repairs done to one of their ships in September 1997.

In addition to the writ, Ship Chandlers Ltd. have also obtained an ex-parte injunction which enjoins Global from removing from the jurisdiction one of their ships which is at berth in the port of your capital city.

You are instructed that -

- (a) Global Liners have not paid Ship Chandlers Ltd. because the repairs were not completed in a satisfactory or timely manner so that a scheduled voyage had to be cancelled.
- (b) The dispute between the parties had been under correspondence since November 1997. The fact of the correspondence and the financial circumstances of Global were not fully disclosed to the court on the ex-parte hearing.
- (c) Global Liners who are well established in the shipping world -
 - (i) are apprehensive that a further voyage may be inhibited by the injunction;
 - (ii) are at present unable to meet their ordinary expenses (including legal costs) in your capital because of restrictions on their bank account contained in the ex-parte injunction.

Advise Global Liners.

QUESTION 5

What is meant by "setting down" an action for trial?

Set out the requisite steps in the procedure.

PART B**QUESTION 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.

QUESTION 7

Outline the procedural steps for any THREE of the following -

- (a) voluntary liquidation of a company registered under the Companies Act;
- (b) removal of a director of 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) change of name of a company registered under the Companies Act.
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QUESTION 8

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

- (a) by and against a members' club;
 - (b) by and against a partnership.
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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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