

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2000
CIVIL PROCEDURE & PRACTICE II

(Friday, May 19, 2000)

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 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 territory.**
- (e) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

Question 1

John Brown was fatally injured in a road accident on January 27, 1994. On March 16, 1998, Cilla Hopeful issued a Writ against Jayne Eyre and Tom Stokes the owner and driver of the motor vehicle in which John Brown the deceased was a passenger. The Writ claimed damages for relatives of the deceased.

In May 1999, the defendants consented to an extension of time within which to file and serve a Statement of Claim. The matter remained dormant for sometime thereafter. That circumstance provoked the defendants to apply to have the action dismissed for want of prosecution. They contended for a dismissal of the action on the ground that their witnesses had become unavailable due to the delay by the plaintiff in prosecuting her case. In March, 2000, a judge in chambers dismissed the action for want of prosecution.

Cilla Hopeful seeks your advice as to a possible appeal.

Advise her.

Question 2

- (a) Outline the procedural steps which are to be followed when applying for the prerogative order of Certiorari. What are the limitations, if any, in invoking this form of redress?
- (b) Kay Cee Ltd. instituted disciplinary proceedings against one of its foremen, Bill, in accordance with the disciplinary procedures

agreed upon between the company and Bill's union. The disciplinary Committee ordered the demotion of Bill and his suspension from work for three months without pay. Bill alleges that the Committee lacked jurisdiction to discipline him and that he was denied a fair hearing.

He seeks your advice. Advise him.

Question 3

- (a) Write notes on the following:-
- (i) Costs in the cause;
 - (ii) Reserved Costs;
 - (iii) Plaintiff's costs in the cause;
 - (iv) Plaintiff's costs in any event.
- (b) In an action by James against Black, Judge Dread refused to grant certain orders or to grant any relief whatsoever. On delivery of the judgment there was no application for costs and the judge awarded none to Black. Black thereupon took out a summons for an award of costs in the action. The Judge in his discretion declined to make such an award and derided the facts and circumstances as presented. Black is aggrieved and seeks your advice in contemplation of an appeal.

Advise him.

Question 4

What is the procedure for obtaining a Mareva injunction and the criteria applicable to the affidavit in support?

What are the main pre-conditions for the grant of a Mareva injunction?

Refer to decided cases including West Indian cases.

Question 5

In an action between Mary Judd, Plaintiff, and Jane Desperate, Defendant, the Plaintiff obtained judgment against the Defendant, a cosmetologist, in the sum of \$750,000 and costs. The Plaintiff also obtained judgment against the Defendant for the giving of possession of a parcel of land comprising five acres situate at Trincity in the Ward of Utopia in the Republic of Caribe and known as 12 Bellevue Gardens.

This parcel of land is valued at \$800,000.

The Defendant has the following assets:

- (a) a motor car valued at \$300,000;
- (b) furniture and household effects, valued at \$250,000, which are on hire purchase;

- (c) tools and equipment used in the beauty parlour including hair dryers, stools, swivel chairs, glass shelves and display cupboards, a water heater, standing and desk lamps, two desks, scissors, trimmer and gloves, all valued at \$300,000;
- (d) cash which is kept in a filing cabinet in the beauty parlour.

The Plaintiff is desperately in need of ready cash as she has waited over three years and has spent a substantial sum in pursuing her claim against the Defendant who refuses to pay as she has a serious financial problem because business is extremely slow.

The Plaintiff also has to repay an existing mortgage on her house including an overdraft which she obtained from her bankers.

How can the Plaintiff in these circumstances recover the \$750,000, judgment debt and costs of the action?

PART B

Question 6

- (a) The promoters of Tees Co. Ltd. wish to form a company.

Advise them on the advantages, if any, for registering the company initially as a private company instead of a public company.

- (b) Outline the procedure for converting Tees Co. Ltd. from a private to a public company.
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Question 7

- (a) Advise the directors of Don Limited as to procedures to be followed and the matters to be taken into consideration in declaring a dividend to be paid to shareholders.
- (b) Don Limited is a public company whose freehold property includes a substantial number of retail shops which have recently been revalued at \$30M over book value. The directors are proposing to pay a dividend of \$48M out of the revaluation surplus despite a current trading loss of \$10M and seek your advice.

Advise the directors.

Question 8

Outline the procedural steps required to effect any **three** of the following:-

- (a) the sale of 50,000 of the 100,000 shares held by Charles Jones in Pandora Limited, a company registered under the Companies Act;

- (b) the dissolution of a partnership;
 - (c) the removal of a director of a company registered under the Companies Act;
 - (d) increasing the share capital of Pandora Limited;
 - (e) the issuance of bonus shares.
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Question 9

- (a) Outline the various ways by which a company may be wound up/liquidated.
- (b) Your client, James has a judgment for the sum of \$500,000 and taxed cost of \$100,000 arising out of a successful action against Roofing 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".

Advise James on the matters to be included in a petition to wind up/liquidate Roofing Limited.
