

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 2001

CIVIL PROCEDURE AND PRACTICE II

(Friday, May 18, 2001)

Instructions to Students

- (a) Time: 3 1/2 hours
- (b) Answer **FIVE** questions, not more than **THREE** from any part.
- (c) **Answer Part A and Part B on separate answer booklets.**
- (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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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

**PART A**  
**CIVIL PROCEDURE AND PRACTICE II**

**QUESTION 1**

The island of Ruralia comprises eight parish/district Councils. Public transportation within the island is in the form of mini-bus services. The provision and operations of the mini-bus services are governed by the Ruralia Mini-Buses Act. Section 16 of the Act imposes a duty on each Council to subsidise the mini-bus service within its area as it deems necessary in the interest of the community.

Melrosedeane parish/district Council resolves to subsidise the following:-

- (i) a mini-bus service from Melrosedeane to Blackwoods (which is outside Melrosedeane district);
- (ii) a daily coach service within Melrosedeane provided by Tour who is the brother of Joe, the Chairman of Melrosedeane Council;
- (iii) a weekly mini-bus service to Twin Palms Shopping Mall in Melrosedeane which is used almost exclusively by old age pensioners who are Joe's constituents.

Maxie, a mini-bus owner and a tax payer of Melrosedeane Council, has offered to provide a cheaper mini-bus service within Melrosedeane but his offer was rejected without reasons being given. He wishes to challenge the legality of the three resolutions above.

Advise Maxie.

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**QUESTION 2**

"Care must be taken by parties to litigation in the preparation of their lists of documents and no less care must be taken in offering inspection of documents disclosed. Ordinarily in my judgment a party to litigation who sees a particular document referred to in the other side's list, without privilege being claimed, and is subsequently permitted inspection of that document is fully entitled to assume that any privilege which might otherwise have been claimed for it has been waived."

Discuss the above quotation in relation to the doctrine of privilege in respect of the process of discovery.

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**QUESTION 3**

- (a) Distinguish between "formal" and "informal" admissions and give examples of each.
- (b) Jones suffered personal injuries when he was run over by a car owned by Thomas. Jones sued Thomas for damages for his injuries. Thomas in his defence denied liability and disputed the quantum of the claim.

Some weeks after, when new facts on the matter came to light, Thomas wrote to Jones admitting liability. No amendment was made to the defence and the action remains pending.

Two years after his admission, Thomas wishes to resile and withdraw it.

Advise Thomas.

**QUESTION 4**

Electronics Limited wish to commence proceedings against Airtight Systems Inc. (a company incorporated in Texas) for the sum of \$600,000 which they say is due in respect of goods supplied under a contract of sale. The contract provided for disputes to be referred to the Courts of your State. Airtight Systems Inc. have refused to pay on the ground that the goods supplied and delivered were totally defective.

Airtight Systems Inc. have equipment worth \$1,500,000 which is kept in a warehouse in the capital city of your State awaiting shipment to Texas within 10 days. They own no other assets in the jurisdiction.

- (a) Advise Electronics Limited as to the procedure necessary to obtain an injunction to prevent Airtight Systems Inc. from removing their assets from your jurisdiction or from selling or otherwise disposing of those assets.
- (b) Discuss the principles which would be applied if Airtight Systems Inc. apply to discharge the injunction.

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**QUESTION 5**

Frank and Ernest claimed damages for breach of contract against Black and Blue in separate causes of action. Black and Blue made payments into court said to be in satisfaction of all the causes of action but did not apportion the "payment in" between the claims of Frank and Ernest.

If the "payment in" had been apportioned equally between Frank and Ernest, Frank would have accepted the "payment in". Ernest would not have accepted.

The plaintiffs Frank and Ernest seek your advice on the matter.

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**PART B**  
**LAW OF ASSOCIATION**

**QUESTION 6**

Outline the effect on and against a company registered under the Companies Act:

- (a) where a Receiver is appointed by a debenture-holder;
- (b) where, on litigation, a liquidator is appointed by the Court.

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**QUESTION 7**

Outline the procedural steps in relation to any **THREE** of the following:

- (a) Distribution of profits of a company registered under the Companies Act.
- (b) Rectification of the Register of Members.
- (c) Expulsion of a member from a club.
- (d) Issuance of preference shares.

- (e) Dissolution of a partnership.
  - (f) An order for extension of time for filing a late charge.
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### QUESTION 8

B Ltd. is a company which operates a small variety store. Mary and Mark are the only shareholders and directors. The company now has got liabilities far in excess of its assets. They have decided to wind-up the company and seek your advice on how to proceed.

Advise them.

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### QUESTION 9

A and B are the sole shareholders and directors of Extra Limited in which they have an equal shareholding. The company has made huge profits over the years but recently communication between A and B has broken down and A has been operating the company as a sole proprietorship.

B is contemplating bringing an end to the state of affairs.

Advise B as to the appropriate action to be taken and set out the matters to be included in the document for filing.

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