

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2002

CIVIL PROCEDURE AND PRACTICE II
(WEDNESDAY, MAY 15, 2002)

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 relevant territory.
- (e) It is unnecessary to transcribe the questions you attempt.
- (f) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

- (a) Outline the procedure for Discovery of Documents.
- (b) AB Ltd. has been defrauded by clients of Sharpers Ltd. and seeks by a writ to trace the money into the clients' account. At the time of the issuance of the writ, AB Ltd. applied for an order against Sharpers Ltd. for immediate discovery of the accounts and of all documents and correspondence with the clients relating to these accounts from the date of the fraud.

Advise AB Ltd.

QUESTION 2

Frank Jones who resides in Iowa, instituted proceedings in your jurisdiction as guardian and next friend of Spring Breaker aged sixteen, against Scenic Tours Ltd. a company operating in the capital city of your jurisdiction. Frank Jones claims damages for injuries which Spring Breaker suffered when a coach owned by Scenic Tours Ltd. collided with the bicycle which Spring Breaker was riding.

Scenic Tours Ltd. in its defence and counterclaim/crossclaim alleged that Spring Breaker's negligence was the sole cause of the collision. Scenic Tours Ltd. also claimed \$150,000 or services rendered to, and for expenses incurred by Spring Breaker.

Scenic Tours Ltd. are now applying for an order for security of costs against Frank Jones.

Frank Jones seeks your advice as to –

- (i) the basis on which Scenic Tours Ltd. made the application; and
- (ii) whether he could in response to the application of Scenic Tours Ltd. seek a similar order against it and if so, on what grounds.

Advise him.

QUESTION 3

Shifty Wizzard a computer expert was employed to Compuda Ltd. He suddenly resigned his employment with immediate effect. Wizzard's action aroused his employer's suspicion and the company's records were checked.

It was then discovered that valuable, sensitive and confidential documents and plans relating to the company's manufacture of computer software were missing. There was every indication that Wizzard had stolen the documents and plans. The company has grounds to suspect that he sold some of the stolen items to a local rival company. In so doing, Wizzard would be in breach of his agreement not to disclose or make known the confidential documents and plans of Compuda Ltd.

Compuda Ltd. are alarmed at the possible damage and loss which they could suffer from Wizzard's action. They urgently seek your advice as to what legal action can be taken to protect their interest.

Advise Compuda Ltd.

QUESTION 4

The plaintiff has commenced an action against the defendant in negligence and claims damages. The defendant has served his defence and counterclaim/crossclaim. He placed the blame entirely on the plaintiff and claimed damages -

- (a) how is the matter likely to proceed if, when the matter comes on for hearing –
- (i) the plaintiff; or
 - (ii) the defendant; or
 - (iii) both plaintiff and defendant, fail(s) to appear?
- (b) indicate whether any redress may be available to either party adversely affected by any judgment that may be pronounced and, if so, what is the applicable procedure to be invoked in the pursuit of such redress.
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QUESTION 5

"At common law, there is no general requirement that a tribunal exercising judicial powers should give reasons for its decisions".

Discuss and advise whether this is an accurate statement of the law in your territory.

PART B

QUESTION 6

What are the various procedures to be used in making applications to the court under the Companies Act?

QUESTION 7

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

- (i) the admission of a new partner to a firm;
- (ii) distribution of profits of a company registered under the Companies Act;

Addis further tells you that he went to the land title's registry and he was told that a caveat/ caution against all dealings had been lodged against the title and remains in force.

Addis is anxious to be registered as the proprietor of Lot C. Advise him in respect of –

- (i) the procedure necessary to secure his registration as proprietor;
 - (ii) the alternative procedures that may be adopted with a view to have the caveat/caution removed.
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QUESTION 5

Dannie Govin owns two parcels of land which he agreed to sell to Trellis the client of Messrs. Integrity & Consistency with whom you are working. The title to one of the parcels is registered and the title to the other is unregistered. In addition, you note that Trellis is a citizen of Kuwait and will be paying for both transactions in cash. Messrs. Integrity & Consistency are very busy practitioners and they have requested that you investigate the titles to the parcels of land.

What would you bear in mind and what would you do in order to investigate title to these parcels of land?

QUESTION 6

- (a) State briefly the principles governing the priority of interests in registered land and indicate what circumstances may cause the postponement of a prior equitable interest to a later one.
- (b) Jerry is the owner of a parcel of land with a registered title which he agreed to sell to Griddy Lamb. Jerry's attorney-at-law, Mr. Kno, prepared a transfer and asked Jerry to sign it. It happened that a blank space was left for the purchaser's name to be inserted. Jerry pointed out the omission to his attorney-at-law who said that "it would be rectified in due course". Miss Martha Hi, secretary to Mr. Kno, unknown to Mr. Kno, filled the blanks with her son's name and had him registered as proprietor. When Mr. Kno discovered the fraud, Miss Hi absconded and Mr. Kno lodged a caveat/caution on behalf of Jerry.

Oneson Hi, Martha Hi's son, sold the estate to Mr. Born Nearloser whose transfer is now being obstructed by the caveat/caution. Mr. Kno wants to know who, as between Jerry and Mr. Nearloser, has the prior equity.

Advise Mr. Kno.

QUESTION 7

Pamella Dublin consults you and hands you a formal contract for sale from which you note inter alia that she is purchasing a condominium/strata unit from Angie Lopez and that Messrs. A B & Co. attorneys-at-law have the carriage of sale. Miss Lopez bought the unit six years ago, and owes a balance on the mortgage

on her unit. Miss Dublin tells you that she will be obtaining a mortgage from the Finance & Investment Co. Ltd., and the date fixed for completion is July 31, 2002.

- (i) what preliminary enquires, searches and requisitions would you make?
 - (ii) outline in proper order the procedural steps to completion of the entire transaction.
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QUESTION 8

- (a) Discuss the importance of the verification of abstracts and the acceptance of title by the purchaser as part of the conveyancing procedure.
- (b) You act for Prince who has contracted to purchase Red Acre, a freehold house, from Beres Ford under an open contract.

You are being requested by Beres Ford's attorney-at-law to approve the draft conveyance. The abstract of title shows the following in respect of Red Acre –

- 1955 - Voluntary Conveyance A to B;
- 1970 - Will of B appointing X and Y executors;
- 1978 - Conveyance on sale – X and Y to Q;
- 1985 - Will of Q appointing W and Z executors and R sole beneficiary;

1990 - Conveyance on sale – R to Stephen, subject to a right of way in favour of T over a strip of land;

2000 - Conveyance on sale Stephen to Beres Ford.

Advise Prince on title, indicating what requisitions and/or objections to title you consider warranted.

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND-YEAR EXAMINATIONS, 2002

LAW OF SUCCESSION
(TUESDAY, MAY 21, 2002)

Instructions to Students

- (a) Time: 3 ½ hours
- (b) Answer FIVE questions.
- (c) 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 relevant territory.
- (d) It is unnecessary to transcribe the questions you attempt.
- (e) Answers should written in ink.

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QUESTION 1

In 1993, Eunice, who was blind, executed a Will which was mainly typed but had certain parts written in ink. There was no attestation clause although Eunice had signed at the bottom of the second page of the three-page Will. Just above Eunice's signature were the signatures of the attesting witnesses Alice and Curtis, who at the time was engaged to be married to Angela, a beneficiary.

By her Will, Eunice left all her realty to Angela and provided that the personality should be shared between friends of Eunice whose names would be found in the back of her 1992 diary.

Two years later, Eunice executed a codicil to her Will, appointing new executors and leaving her freehold premises at Fern Glades to Charles but otherwise confirming her Will. The codicil was witnessed by Curtis, who is now married to Angela, and by another person.

It is now discovered that at the time the codicil was witnessed, the signatures of the witnesses were affixed whilst Eunice was in an adjoining room. The two rooms are separated by a glass block partition.

Write a legal opinion on the admissibility to probate of the Will and codicil.

QUESTION 2

Thomas Jones died on March 9, 1998, intestate leaving four adult children, Deborah, Mary, Tabitha and Michael from his marriage to Phyllis, from whom he

was divorced in 1996. At the time of his death, Thomas Jones had lived for eight years with Jennifer in a common-law relationship.

Thomas had three children with Jennifer; Andrew, who is seven years old, Desiree, who is six years old and Gideon, who is four years old. He left real estate valued at \$6,000,000, personalty valued at \$3,000,000 (including "personal chattels" valued at \$1,000,000).

- (1) Advise Jennifer as to -
 - (a) The persons entitled to share in or make a claim against the estate and the extent of such entitlement.
 - (b) The persons entitled to apply for the relevant grant of representation.
- (2) Describe the contents of the oath (or document corresponding to an oath) to lead the grant.

QUESTION 3

On January 6, 2001, Ollie West made a Will with the following dispositive clauses-

- (i) To my godson my 2000 shares in ABM & Co.;
- (ii) to my daughter, Cissy, the money which I have in my account at Liability Bank;
- (iii) to my son, Beau, the lease on my townhouse;

- (iv) to my cousin, Conrad, for life and after his death to all of my other cousins the vacation house at Ridge Beach;
- (v) to my wife, A. West, any money I may have;
- (vi) to my friend, Bob, the sum of \$15,000, and
- (vii) to the Orphans Society the residue of my property.

At the date of Ollie's death the following facts are revealed -

- (i) During Ollie's lifetime ABM & Co. was acquired by XYZ & Co. and Ollie was given 1000 shares in XYZ & Co. as compensation for the shares he held in ABM & Co. Further, Ollie had two godsons.
- (ii) The account at Liability Bank was in credit in the amount of \$150,000 but was held by the bank as security for a loan.
- (iii) At the time of the Will the lease of the townhouse was about to expire. It expired in March 2001 and Ollie obtained a new lease and duly executed a codicil in June 2001 confirming the Will.
- (iv) Ollie's wife, from whom he had lived apart for the last ten years, is Agnes West. Since then he has been living with Alice Brown who is known as Alice West whom he lovingly referred to as his 'wife'.
- (v) Ollie also had the following -
 - A sum on deposit in Zero Bank.
 - A share account in a credit union.
 - Government bonds withdrawable on one month's notice.
 - A fixed deposit which could be cashed without notice.
- (vi) Ollie owed Bob the sum of \$15,000.
- (vii) There was an Orphans Society at the time Ollie made the Will but it had ceased to exist.

Advise the executor on the dispositive clauses and how Ollie's estate should be distributed.

QUESTION 4

On February 10, 1994, Travis, who was 75 years old, executed his Will in which he left \$1,000 to each of his nephews and nieces and the remainder of his estate valued at \$3M to Lolita, his girlfriend. Travis' execution of his Will was witnessed by Nurse Pam and later that day by his neighbour Gloria.

On hearing of this, Travis' three sisters took the Will and tossed it in the garbage bin. The Will was never recovered. His three sisters made Travis drunk on March 8, 1995 and had him execute another Will which their attorney-at-law had prepared. By this Will the bulk of his estate went to his nieces and nephews and a legacy of \$5,000 was given to Lolita.

In 1999, Travis took a photocopy of the 1994 Will and taped over the amounts in the clauses giving the gifts to his nieces and nephews and then copied the pages. He then inserted \$10.00 where \$1,000 was previously written. Lolita was named therein as the residuary legatee and sole executrix. He then put the unaltered and altered pages together as his last Will and numbered each page. He took this Will to his bank and executed it in front of three witnesses. He left the Will with the bank manager for safekeeping.

Lolita has applied for probate of the 1999 Will. Travis' sisters have lodged a caveat to prevent Lolita getting the grant sought.

Advise Lolita on –

- (i) the validity of each of Travis' Wills;
- (ii) the documents, if any, which will be admitted to probate, and
- (iii) the effect of the caveat and the procedure for its removal.

QUESTION 5

- (a) By his Will dated June 6, 1994, Brain Schuler appointed Ross Marley and Cheryl Simpson as his executors and trustees. Schuler has recently died and Marley and Simpson wish to be advised as to the respective duties and responsibilities of the office of executor and trustee, and the importance of the distinction, if any, between the two offices.

Advise them.

- (b) What conditions have to be met before a trustee can purchase trust property?
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QUESTION 6

- (a) Sam is the sole executor and residuary beneficiary in his father's Will. In a fit of rage he threw a can of beans at his father, John, striking a fatal blow to his temple. He was consequently convicted of manslaughter and sentenced to life imprisonment. The other beneficiary and John's only other child is Angel who is twenty-one years old. Sam wishes to obtain probate of John's Will but Angel is objecting.

Advise Angel as to the type of grant which may be obtained and the procedure involved.

- (b) John died possessed of a coconut estate and a thriving chicken farm. The chickens are ready for market and the coconuts have to be reaped before they go bad. John's executors and beneficiaries, Lily and Sam, both live

abroad and do not have the time to come to your territory to deal with his estate. John's estate manager, Silas, is fearful that the estate will become bankrupt if he does not slaughter the chickens for market and reap the coconuts.

Advise Silas as to the type of grant which may be obtained and the procedure involved

- (c) Distinguish between a grant "de bonis non" and "double probate".
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QUESTION 7

Tom made a Will giving his house to his son, Arnie, the rest of his real estate to his daughter, Brenda, and his personal estate to his son, Charles. One of the witnesses to the Will was Arnie's wife. The executor was Donald, Tom's friend.

On Tom's death, a later Will was found in which Tom left his entire estate to his daughter Brenda. At the time of making this document Tom was ill. He had signed it and had asked his nurse to witness the signature, and told her that he would sort out the Will the next day. He died that very night.

Donald, without obtaining a grant, has started collecting Tom's assets. He has sold two valuable paintings to pay for the funeral expenses and his expenses in collecting the assets. He has put Tom's house up for sale. He has told Tom's children that he will 'fix things up so you will all benefit'. Two years have elapsed but he has done nothing further.

Advise Tom's children on –

- (i) the validity of the Wills and the gifts thereunder; and
 - (ii) the legality of Donald's actions.
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QUESTION 8

Tessa by her Will provided as follows –

- “1. I appoint my friend, Leroy, and my attorney-at-law, Stanley, as my executors.
2. I give to Stanley \$50,000 for his professional services to my estate.
3. I give \$100,000 and my 400 ABC shares to my daughter, Eve.
4. I give my house 'Nina' and the remainder of my money in my bank accounts after payment of all my debts to my husband.
5. I give my townhouse 'Maria' to my friend, Terry, free of all encumbrances to be paid out of my account at State Bank.
6. The residue of my estate to be divided as follows:- one third to Stanley, one third to Adam, one third to Eve.”

Tessa left the following assets and liabilities.

ASSETS

Account with Dell Bank	\$ 900,000
Account with State Bank	\$ 600,000
200 ABC shares	\$ 200,000
500 XYZ shares	\$ 600,000

Townhouse "Maria"	\$2,500,000
House "Nina"	\$5,000,000
Yacht "Pinta"	\$1,250,000

LIABILITIES

Credit Card	\$ 50,000
Mortgage on house "Nina" as security for loan to purchase yacht "Pinta"	\$3,000,000
Mortgage on townhouse "Maria"	\$1,000,000
Other debts	\$2,250,000
Funeral debts and testamentary expenses	\$ 200,000

Stanley was one of the witnesses to Tessa's Will.

Advise the beneficiaries as to the distribution of Tessa's estate.

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LEGAL EDUCATION CERTIFICATE
SECOND-YEAR EXAMINATIONS, 2002

OFFICE MANAGEMENT AND ACCOUNTING
(FRIDAY, MAY 24, 2002)

Instructions to Students

- (a) Time: 3 ½ hours
- (b) Answer FIVE questions, not more than THREE questions from any part.
- (c) Answer Part A and Part B on separate answer booklets.
- (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 relevant territory.
- (e) It is unnecessary to transcribe the questions you attempt.
- (f) Answers should be written in ink.
- (g) Calculators may be used.

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PART A

OFFICE MANAGEMENT

QUESTION 1

"A challenge for 21st century lawyers is to embrace the changes being or to be wrought by technology while retaining the qualities of the true professional."

Discuss.

QUESTION 2

Identify the elements of -

- (i) competitive advantage in a law practice;
- (ii) either –
 - (a) Porter's Five Forces Model or
 - (b) McKinsey's 7 'S' Model and

show how that model can be used to enhance a legal practice.

QUESTION 3

Explain -

- (i) The concept and purpose of a client's trust account.
 - (ii) What monies must be, need not be, and must not be placed in such an account.
 - (iii) When monies may properly be withdrawn from such an account.
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QUESTION 4

Calvin Upstart, a successful importer, has been raided and prosecuted by Trevor Fearless of Customs Enforcement twice in the last month. Calvin fears that Fearless is "out to get him!" Calvin pays his attorney-at-law, Mr. Gordon Brightspark \$200,000 on account of trial fees. As Calvin fears more trouble with Fearless, he pays Gordon a further \$200,000 to ensure that Gordon will act for him in such matters if they arise.

In the course of another raid Calvin's jaw is broken in a tussle with Fearless. Calvin instructs Gordon to sue Fearless for damages for assault. Calvin and Gordon orally agree that Gordon will be paid 40% as fees of the sum recovered. Gordon recovers \$2.5M for Calvin in a settlement plus \$100,000 for attorney's costs. He places the total sum on fixed deposit for 60 days.

While Gordon is on holiday his secretary, Alicia Breakheart, by mistake, has Mr. James Jacas, Gordon's partner, pay over the \$2.5M to Calvin without deduction of Gordon's 40%. Gordon refuses to hand over several titles he holds for Calvin

unless he is paid his 40%. Calvin urgently needs the titles to complete pending sales.

- (i) Is Calvin entitled to interest on any of the sums paid to Gordon? If so, for what period(s). If not, why not?
- (ii) Is Gordon entitled to his 40% or any sum at all?
- (iii) Can Gordon properly withhold Calvin's titles?
- (iv) What legal remedies, if any, are available to Calvin and Gordon?

Justify your answers to the above questions by reference to any relevant legal principles.

QUESTION 5

- (a) Summarize how Mazlow's Theory of Needs or Herzberg's Theory of Job Satisfaction can assist in the promotion of a successful law office.
 - (b) Summarize the essentials that an attorney-at-law should strive to practise in charging for professional services so as to promote client satisfaction as far as possible.
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