

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
SECOND-YEAR EXAMINATIONS, 2003

CIVIL PROCEDURE & PRACTICE II

(WEDNESDAY, MAY 21, 2003)

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 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

The Claimant/Plaintiff, Stone Roofers Ltd., manufactured roof tiles by a special heating process.

Impatience and Brash, were employees who held key positions in Stone Roofers Ltd. They became dissatisfied with the management style of Bellicose Frank, the Chief Executive Officer of Stone Roofers Ltd.

Impatience and Brash resigned their positions with Stone Roofers Ltd. and formed a company I and B Ltd. which had the expressed intention of competing with Stone Roofers Ltd. in the manufacture of roof tiles.

Stone Roofers Ltd. in the belief that I and B Ltd. would be and were using its trade secrets and other confidential information, obtained and executed a search/Anton Piller order on I and B Ltd.

I and B Ltd. seeks your advice on the matter.

Advise I and B Ltd.

QUESTION 2

- (a) A freezing order/injunction must allow an individual defendant to use a reasonable sum, weekly or monthly, for ordinary living expenses.

What constitutes ordinary living expenses? Illustrate your answer by reference to decided cases.

- (b) James, a defendant in a claim by Morgan was allowed funds under a freezing order/injunction for ordinary living expenses.

James is a party in unrelated litigation with Carl. He seeks to use funds, allowed in the freezing order/injunction obtained by Morgan, to pay Queen's/Senior Counsel's fees in the unrelated litigation. James who is an art collector also seeks to purchase two expensive pieces of painting from the said funds.

Advise James.

QUESTION 3

- (a) State the usual conditions for granting Security for Costs in your territory.
- (b) Briefly discuss any three of those conditions making reference to decided cases.
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QUESTION 4

Beadle sues Thomas for personal injuries he sustained when he was hit by a car owned and driven by Thomas. Thomas is minded to settle the matter.

Advise Thomas as to –

- (i) what he may do;
 - (ii) the requisite procedure to be adopted to prosecute what is to be done;
 - (iii) the consequences of Beadle insisting on going to trial.
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QUESTION 5

Discuss with reference to decided cases:

- (a) What is Disclosure/Discovery?
 - (b) Can a third party be required to provide information as to the identity of a person who is a tortfeasor against a claimant/plaintiff?
-

PART B

QUESTION 6

What are the contents of EITHER –

- (a) the constitution of a members' club; **OR**
 - (b) a standard form of Articles of Partnership.
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QUESTION 7

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

- (a) a members' voluntary winding up of a company registered under the Companies Act;
- (b) the sale of 400,000 of 1,000,000 shares held by John Tripall in Copmin Limited, a private company registered under the Companies Act;
- (c) paying off the holders of \$300,000 shares in Mayhem Limited;
- (d) removal of a director of a company registered under the Companies Act;
- (e) the dissolution of a partnership;
- (f) raising capital for a company registered under the Companies Act.

QUESTION 8

Outline the procedural rules of the High/Supreme Court in respect of –

- (a) proceedings by and against unincorporated associations;
 - (b) proceedings by and against a firm.
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QUESTION 9

Your instructions from your client, Simone Harris, are as follows –

Your client and her husband, John Harris are signatories to the memorandum of association of Sinjo Limited, a private company incorporated under the Companies Act with a share capital of \$1000 divided into 1000 shares of \$1 each.

Simone and her husband hold equal shares in the company. Her husband occupies the position as managing director, while she acts as the other director and secretary.

No meetings were held and the company operated on an informal basis. The allegations against her husband are that he has usurped the management of the company and has been using the funds of the company for his personal use. He has purchased property in his own name from funds raised on the security of the company's assets.

Outline the procedure necessary and the contents of the documents to be filed to protect the interest of your client.

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

**LEGAL EDUCATION CERTIFICATE
SECOND-YEAR EXAMINATIONS, 2003**

CONVEYANCING AND REGISTRATION OF TITLE

(FRIDAY, MAY 23, 2003)

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 be written in ink.

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QUESTION 1

Ansel and Cathy have agreed to sell Bellamy a house which is the vendors' matrimonial home for \$5M.

The parties enter in the Agreement for Sale on January 2, 2003, and the initial payment of \$750,000 is paid by Bellamy.

Bellamy is given four months to complete under the Agreement for Sale.

Cathy, the wife dies. She is survived by her husband, Ansel, and her two daughters.

Ansel consults you for advice. He informs you that the house was owned by his late wife and himself as joint tenants and further that she has left a Will devising her share to him.

Advise Ansel.

QUESTION 2

- (a) The expression, "Strata Corporation/Body Corporate" in the condominium/strata legislation refers to what? State in detail the powers and the duties of that body.
- (b) Explain the concept and purpose of the unit entitlement in relation to a strata/condominium plan and a certificate of title under the relevant legislation.

QUESTION 3

Mary Ann Jones has agreed to sell a part of a larger parcel of registered land comprising two hectares to Peter Gallant for the sum of \$2M.

No formal agreement for sale has been entered into, but Mary Ann Jones has issued the following receipt to Peter Gallant –

“Received from Peter Gallant the sum of \$1M being deposit for the purchase of two hectares of land. Balance of \$1M plus costs to be paid on July 15, 2003. Time to be of the essence.”

Recently, Peter wrote to Mary referring to the agreement and the receipt, asking her to provide him with a plan of the land and informing her that his visual inspection of the property indicated that there are two tenants that must be removed prior to completion of the sale.

Mary replied that it was never a term of their agreement that she provide him with a plan or to remove any tenant and that in any event if he did not complete the sale by July 15, 2003, as agreed, she intends to forfeit the \$1M paid by him.

Advise Peter.

QUESTION 4

- (a) Lawrence contracted to purchase Lot A from Vivian. On presentation of the duplicate certificate/certificate and the transfer, Lawrence was informed by the registrar of titles that a caveat/caution was recently lodged

against the title forbidding all dealings with Lot A, unless it is made subject to the caveat/caution.

Advise Lawrence.

- (b) In what circumstances may the registrar of titles vest title in a party seeking to be registered as proprietor?
-

QUESTION 5

- (a) Duncan wishes to develop his land known as Lot B, by the construction of a strata/condominium complex thereon and consults you on the steps that should be taken to implement his scheme.

Advise Duncan.

- (b) In respect of the purchase of a strata/condominium unit, what preliminary enquiries, searches and requisitions would you make? Would different considerations apply if the strata/condominium complex is now being constructed or if it had been in existence for some time?
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QUESTION 6

Peter has agreed, subject to contract, to purchase a freehold property with vacant possession from Vernon. On receipt of the draft contract, Peter discovers that Vernon purports to sell as mortgagee under his statutory power of sale.

- (i) To what extent, if at all, does Peter need to be satisfied about Vernon's right to sell?
 - (ii) Is it material to either party that the purchase price appears to be below the market value by some 20%? Give reasons.
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QUESTION 7

Outline the requirements and procedure in respect of foreclosure against registered title.

QUESTION 8

Advise the purchaser who is concerned, after the execution of the agreement for sale and before completion in each of the following cases –

- (i) the vendor is selling subject to existing tenancies which were described as monthly tenancies. In fact, the vendor overlooked that one of the tenancies is for five years, with six months remaining

unexpired, and he is threatening to forfeit the deposit unless the purchaser meets the completion date which is a month away;

- (ii) the property being sold for \$1M is described as containing five and one half acres. In fact, it is five and one quarter acres. The vendor is now willing to accept \$0.8M. The purchaser insists on rescinding the contract;

 - (iii) the Surveyor's identification report shows that the vendor has occupied land not belonging to him for a period in excess of twelve years. The purchaser demands that the vendor reduces the sale price by the amount that it would cost to acquire the additional land under the legislation applicable to such acquisition. The vendor counters by insisting that the sale price should be increased by the value of the additional land less the cost of acquisition.
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COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

**LEGAL EDUCATION CERTIFICATE
SECOND-YEAR EXAMINATIONS, 2003**

LAW OF SUCCESSION

(TUESDAY, MAY 27, 2003)

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 be written in ink.

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QUESTION 1

Thomas Rowland migrated to England in 1997 and established a fantastic reputation as an impresario. In 1999 he died there testate, leaving personal and real property in England, the United States of America and in his native Caribbean country.

Probate was obtained in England by Mary and Devon, Thomas' executors, whose permanent residence is in England. The property in the USA is valued at US\$300,000 and that left in Thomas' native country is valued at \$4,000,000.

- (a) Advise the executors as to:
- (i) the procedure to be taken to administer the estate in the native country; and
 - (ii) whether this procedure is applicable to the property in the USA. Give reasons.
- (b) List the documents to be prepared and filed in relation to (a)(i).
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QUESTION 2

On July 16, 2002, Grace Farmington died after a short illness. Two days later her Will was discovered in her safe. Upon inspection of the Will it was noted that Farmington's signature had been obliterated and was no longer visible.

Farmington is survived by her husband, Junior, from whom she was separated since October 1989. She is also survived by her 15 year old daughter Marie, a product of her marriage to Junior, by her son David, 25 years old, from a

previous common law relationship and by her "spouse" Mervin Jensen with whom she had been living since 1993.

Junior visits you at your chambers and informs you that by her Will, Grace left her entire estate, valued at \$5,800,000, to Mervin, Marie and David in equal shares. Mervin was also appointed the sole executor.

Advise Junior as to:

- (i) the validity of the Will and the type of grant to be sought;
- (ii) the distribution of Grace's estate; and
- (iii) detail the contents of the Oath (or other documents corresponding to an Oath) to lead the grant.

QUESTION 3

Stephen Willow died suddenly in March, 2002 leaving an estate valued at \$4,000,000. Deborah Willow, his daughter, has applied for probate of a Will dated April 16, 2001, allegedly left by Stephen in which Deborah is the sole beneficiary and sole executrix.

Leon, Stephen's only other child, has learnt of Deborah's actions and is surprised as he has in his possession a Will dated January 18, 2002, made by his father and which Stephen had handed to him for "safekeeping". In the 2002 Will, Stephen's estate is left to Deborah and Leon in equal shares.