

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND-YEAR EXAMINATIONS, 2004

CIVIL PROCEDURE AND PRACTICE II

(WEDNESDAY, MAY 19, 2004)

Instructions to Students

- (a) Time: 3 ½ hours
- (b) Answer THREE questions from Part A and TWO from Part B.
- (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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

Alex was injured when he was a passenger in the front seat of a car driven by Tom which was involved in a collision with a car driven by Harry.

Proceedings have been commenced against Tom and Harry. Tom in his defence denies liability and blames Harry for the collision. Harry in his defence, denies liability alleging that his car skidded on loose gravel in the road. He also alleges that Alex was contributorily negligent in that he was not wearing a seat belt.

Alex has already lost earnings of \$500,000 over the last 15 months and is not likely to return to work for at least another six months. His savings have all been used up and he is indebted to several persons.

Alex seeks your advice. Advise him on –

- (a) The prospects of his obtaining an order for interim payment, against whom, and the principles which the court will apply in making such an order;
- (b)
 - (i) what should be covered in the evidence in support of his application for the order?
 - (ii) If his application is granted can he use that fact at the main trial to prove that he has a strong case against the defendants?

QUESTION 2

Air Lifts Ltd. rents a helicopter from an aerodrome in Greenshire to amateur pilots.

In 2003, a helicopter from Air Lift's fleet repeatedly flew very low over the farm of Horseman Jones, a well known race horse breeder. At the time, Mr. Jones had on the farm, several thoroughbred brood mares which were all in advanced stages of pregnancies.

The noise from the helicopter on its repeated flights over the farm, distressed the brood mares to the extent that they all lost the foals which they were carrying.

The loss of the foals is estimated at \$500,000 and that circumstance, has placed Mr. Jones in a serious state of nervous shock.

Mr. Jones wishes to sue the responsible pilot and he has without success sought the identity of the pilot from Air Lift Ltd.

Advise Mr. Jones on how he can obtain the necessary information from Air Lift Ltd. to commence proceedings against the pilot.

QUESTION 3

- (a) (i) If an order for disclosure of documents is made, what type of disclosure is required?

- (ii) What documents does such an order require the party against whom it is made to disclose?
 - (iii) What efforts must a party make in order to locate disclosable documents?
- (b) Pleasure Rides Ltd. operated small cable cars in a park it owned. Six months ago, while in operation, one of the cable cars collapsed and fell to the ground. The occupants of the cable car, who were children on a school outing, were all injured.

Two days after the accident, Pleasure Rides Ltd. requested its Safety Manager to investigate the accident and submit a report. The investigation was to determine the cause of the accident and to suggest ways in which such an accident could be avoided in the future.

Proceedings have been started for compensation of the injured children. An order for disclosure has been made in the proceedings in which Tom Smith is the claimant.

Pleasure Rides Ltd. has refused to allow inspection of the report from its Safety Manager on the ground of privilege.

Attorneys for Tom Smith have applied to the court for inspection. There is documentary evidence that when the report of the accident was requested, Pleasure Rides Ltd. was aware of possible claims for compensation from injured children.

Consider the arguments for and against the application for inspection.

QUESTION 4

- (a) How can the Rules relating to orders for costs be used to further The Overriding Objective?
 - (b) When and how should a Court consider making an order for wasted costs?
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QUESTION 5

- (a) Briefly set out the procedure for obtaining a Freezing Order.
 - (b) What are the rights and obligations of third parties who are served with a Freezing Order made by the Court?
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PART B

QUESTION 6

- (a) Outline the contents of the Annual Return required to be filed by a company limited by shares registered under the Companies Act.
 - (b) What is a combined register in common use? State its contents.
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QUESTION 7

State the procedural steps to effect **THREE** of the following:

- (a) Admission of a new partner to a firm.
 - (b) The expulsion of a member from a club.
 - (c) A member's voluntary winding up of a company registered under the Companies Act.
 - (d) The transfer of 40% of shares held by a shareholder of a private company registered under the Companies Act.
 - (e) A private company going public.
 - (f) Declaration of dividends.
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QUESTION 8

Indicate what documents are required for the formation of a company and outline the contents of each document.

QUESTION 9

Your client has a judgment for \$3,000,000 with costs taxed at \$10,000 against Longville Limited, a company registered under the Companies Act.

- (i) Outline the steps to be taken to wind up Longville Limited;
 - (ii) State the contents of the Petition to wind up the company.
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