

# FINAL DRAFT

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 2007

CIVIL PROCEDURE AND PRACTICE II

(WEDNESDAY, MAY 16, 2007)

## 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 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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **PART A**

### **QUESTION 1**

Under the Land Development Act, no property is to be subdivided without approval of the Land Development Commission. Twelve weeks ago, the Commission granted approval for Richard Robb to subdivide into 3 lots his property in the Large Lands Community. No member of the Large Lands Community Association (a club whose members are the property owners in the Large Lands Community) was aware of any planned subdivision until 8 weeks ago, when they started to see trucks carrying construction material to Mr Robb's property. A member of the Association then made checks with the Commission, as a result of which the Association eventually learned of the approval that had been granted.

A copy of the approval indicates that the Commission thought the character of the area in which the Large Lands Community is situated has changed, and that smaller properties and townhouses are becoming more popular. The Commission's approval further expresses the view that once adequate provision has been made for sanitary and other conveniences, smaller lots were acceptable. Members of the Association consider the reasons ridiculous, as although there have been subdivisions in neighbouring communities, there have been no subdivisions of the huge lots in the Large Lands Community, and the whole idea of subdividing the lots is contrary to the idea of having large lots which is the basis on which they bought lots there.

You recently met with the Large Lands Community Association, they having approached you regarding their concerns about the approval that has been granted. You are required to prepare -

- (a) an application for permission to apply for judicial review (you are not required to prepare the affidavit in support); and
  - (b) skeleton submissions addressing the issues the Court should consider at the hearing of the application for permission.
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## **QUESTION 2**

### **Answer both (a) and (b)**

- (a) A claim filed by the Attorney General in your jurisdiction turns primarily on the question of whether a document was written and signed by your client, the defendant. The defendant has denied signing it. Most handwriting experts in your jurisdiction are contracted to the Government, through its Ministry of National Security, either as consultants or as employees. This is so much so that you have been able to locate only one expert who you have engaged to analyse the handwriting and signature on behalf of the defendant.

The case management conference was held in December 2006, and a month thereafter witness statements were exchanged. Recently, the Attorney General's Department has applied for permission to rely on the expert evidence of John Hanson, a forensic expert and employee of the Ministry of National Security.

Advise the defendant on when and how the reliance by the Attorney General on Mr Hanson's report may be challenged, and what you would expect to be the outcome of that challenge.

- (b) An application is made to set aside a regularly obtained judgment in default of defence. Since the filing of the default judgment, an assessment of damages commenced and was part-heard. The application to set aside the default judgment has been heard and granted. Indicate the terms of the order for costs the Court would be expected to make. Explain the terms of the order and why that order would be appropriate.
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### **QUESTION 3**

Your client, Taribbean Beer Limited has been selling beer in your jurisdiction under the brand name “Taribb Beer” since January 2, 2006. Yesterday, your client was served with an injunction obtained on May 11, 2007, restraining it until trial from selling beer in your jurisdiction under the name “Taribb Beer”. The injunction was obtained by Taribbean Bottlers Limited, local distributors of “Tarib Beer” on the basis that your client is passing off its beer as that of Tarib Beer. Along with the order for injunction, your client received the claim form, statement/particulars of claim, application for injunction and affidavit in support. All these documents were filed May 9, 2007.

The affidavit in support was sworn by Jan Wommann, Taribbean Bottlers’ in-house attorney-at-law, who also represented them at the hearing. The full contents of the affidavit, apart from setting out Ms Wommann’s address, occupation and address, were as follows:

- “1. Taribbean Bottlers has been selling its beer under the brand name ‘Tarib Beer’ throughout the Caribbean, and in this country, for over 15 years and the brand is well known here.

2. Since early last year, we have seen Taribb Beer distributed in shops throughout the country.
3. I understand that many persons have bought Taribb Beer, thinking that it was either no different from Tarib Beer, or that as the names were so close, they had to be part of the same brand.
4. Taribbean Beer Limited is a company incorporated as a non-resident company in Tortola, British Virgin Islands, and a search at the companies office there revealed no information indicating who its owners are. It is registered to do business in this country as a foreign company registered in the British Virgin Islands.
5. Taribbean Bottlers is therefore fearful that if its claim against Taribbean Beer Limited eventually succeeds, it will not be able to recover any damages from them.
6. We therefore humbly pray that this Honourable Court will see it fit to grant an injunction in the terms in the application filed herewith.”

Your client sees no basis to take issue with any of the allegations at paragraphs 1-4 above of the affidavit, save that they can see no reason why persons should confuse “Taribb Beer” with “Tarib Beer” as the shapes of the bottles are significantly different. They wish to have the injunction discharged.

- (i) Prepare the grounds to be inserted in the notice of application and the terms of the order the court will be asked to make.
- (ii) Advise your client on whether the Court is likely to make an order in terms of your application.

#### **QUESTION 4**

A claim was commenced in relation to a motor vehicle accident between the claimant (your firm's client) and the defendant. Due to an oversight, the defendant's defence did not respond to a paragraph in the claimant's statement/particulars of claim which said that the accident was caused due to the negligence of the defendant. Subsequent paragraphs in the defence, however, averred that the accident was caused "at least partly" through the negligence of the claimant. At the case management conference, you complained about the deficiency in the defendant's defence. His attorney-at-law apologized and said that his client accepted that he was partly to blame for the accident, but said that the claimant was also partly to blame. No amendments to the statements of case were requested or done, and the Court made various case management orders, including an order for standard disclosure.

The defendant supplied its list of documents, which included a report from its loss adjuster on the accident. The list indicated that the defendant was claiming the report to be privileged. However, when you requested inspection, a copy of the report was sent to you. Attached to the report was a statement signed by the defendant in which he accepted that he had been speeding at the time of the accident, by reason of which he was not able to stop in time to avoid a dog that had run into the road, and veered right, thereby colliding with the claimant's vehicle (which he said was also going very fast).

Witness statements have been exchanged. In his witness statement, the defendant says that his speed was not excessive, and gives evidence of having gone back to the area and noticed that the speed limit was 80 km/h, which is the speed at which he was traveling immediately before impact. The defendant's attorney-at-law has also written to say that the loss adjuster's report and the attached statement should not have been sent to you and that they should be returned and should not be used in evidence.

A partner in your firm has requested you to prepare a memorandum to her, advising on how she should handle the issues that have arisen given the defendant's witness statement and the recent letter from the defendant's attorney-at-law.

Prepare the memorandum.

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### **QUESTION 5**

Karen Robinson has made a claim against her neighbour, Paula Samuels, seeking damages for nuisance. Karen's claim alleges that dust from construction on Paula's property has caused significant damage to all Karen's furniture, with the result that all the furniture has to be replaced. Replacing the furniture, according to Karen, will cost the equivalent in your currency of US\$20,000. Paula's view is that, while there was dust from the construction which would have gone over to Karen's house, the true cause of the damage to Karen's furniture is that Karen does not clean her house and furniture, and the furniture is therefore dirty from the natural accumulation of dust, as well as other construction in the area over the years. Paula also thinks that Karen's claim is exorbitant, and that the furniture would be worth closer to US\$12,000.

Recognizing that the Court is likely to consider her at least partly responsible for the damage and inconvenience, and that she may not be able to substantiate all her contentions in evidence, Paula has consulted with a partner in your firm who has asked you to -

- (a) prepare a draft offer to settle, which is to be without prejudice save as to costs, pursuant to the Civil Procedure Rules; and

- (b) prepare a letter to Karen advising her on why your firm is advising that she make an offer on the terms of your draft offer.
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## **PART B**

### **QUESTION 6**

Betty and Kay are two young entrepreneurs who are the principals behind Bat & Ball Internet Company Ltd (Bat), a private company limited by shares and incorporated under the laws of your jurisdiction.

Bat was incorporated for the purpose of offering high speed Internet services from the cricket stadium in the jurisdiction. The target market for these services was intended to be the many international cricket fans expected to attend the matches to be played at the stadium. It was anticipated that with all the exciting moments that a cricket game could bring, fans would want to be able to communicate all the happenings, ball by ball, via the Internet from the stadium.

Game Bank plc granted a loan of \$5 million to Bat.

Bat has been in operation for six (6) months and business has been disappointing to date. The number of patrons attending the matches has been significantly lower than projected. Also the level of competition for the same or similar services is higher than anticipated. Betty and Kay have had regular quarrels as increasing pressure from Game Bank plc to keep up with the aggressive payment scheme under the loan agreement has impacted negatively on their relationship.



Betty has come to you for advice, having received a letter from Game Bank plc indicating that the business concept was fundamentally flawed in the first place and that the bank could not guarantee its continued support.

Betty thinks that it might be a good idea to get out of the business, since her relationship with Kay has deteriorated to the point that they only communicate on a business level.

Given the situation as outlined by Betty, advise her on the following -

- (i) The various approaches that can be taken to terminate Bat, indicating your recommended approach in the circumstances.
  - (ii) Based on your recommendation outline the procedural steps to be taken to terminate Bat, taking into account the role of the various parties who would be involved in the process.
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## **QUESTION 7**

Johnathon Stingray, a well known social activist, has asked that you advise him on forming a group in his parish with the mission to promote the historical and ideological significance of adult suffrage.

He tells you that he feels strongly about the lack of knowledge and enthusiasm in his parish, particularly among the young people, about things political and generally the real significance of the democratic process.

Johnathon is confident that the mission of the group will quickly spread throughout the island and perhaps beyond.

- (i) Advise Johnathon on the options that are available to him for forming a community group with the mandate he has outlined and your recommended approach in the circumstances.
  - (ii) Based on your recommendation outline the procedural steps that Johnathon will be required to take to form the group.
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### **QUESTION 8**

The firm in which you are employed has been instructed by a group of four owners of small and micro businesses in your jurisdiction. Thus far the group has been operating as a think tank for that sector of the business community, putting together ideas that would benefit small and micro businesses.

The response to the work of the group has been overwhelming to date. The members of the group are of the view that they can translate this activity into a viable business option. The group wants to maintain its current membership and prefers an arrangement that would not require significant regulatory oversight or a high level of regulatory compliance.

Advise the group on the option(s) available to it in order to transform the think tank group into a business, taking into account the concerns relative to the structure of any arrangement.

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## **QUESTION 9**

Mr Bizzy Wilmot, a businessman, has instructed you to incorporate a company under the laws of your jurisdiction. Mr Wilmot intends to offer private garbage collection services to commercial entities through the company.

He tells you that at this stage his two sons, Dusty and Dirty Wilmot, will be part of the business and will be shareholders and directors in the company together with him.

Mr Wilmot further tells you that as the business grows he would like to take the company public, but that this was a future plan.

Advise Mr Wilmot on -

- (i) the procedural steps to be taken to incorporate the company, listing the relevant document(s) and summarising their contents; and
  - (ii) any further procedural steps that would be required in the event that he decides to take the company public.
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