

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2015

CIVIL PROCEDURE AND PRACTICE II
(WEDNESDAY, MAY 13, 2015)

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 black or dark blue ink.
- (g) Calculators may be used and are provided.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

John Go-tay, a citizen of the United States of America, resides in Tampa, Florida. While vacationing in Monito Bay, in your jurisdiction, last November, he was hit by a motor vehicle owned by your client, New Wave Limited (“NWL”) and driven by its employee, Jeffrey Sandune. Mr. Go-tay’s injuries were stabilized in a local hospital and he was thereafter flown to a hospital in Florida for further treatment.

In January this year Mr. Go-tay commenced a claim for negligence in the Supreme/High Court in your jurisdiction against NWL. He seeks damages for personal injuries sustained from the accident.

Your client believes it has a good defence to the claim as Mr. Sandune was on a frolic of his own at the time of the accident.

Your client has received information that Mr. Go-tay has not been able to return to work because of his injuries and that he and his family have been using his savings to meet living expenses. The savings will soon be depleted. NWL is therefore concerned that if it were to successfully defend the claim it would not be able to enforce any order for costs, made in its favour, against Mr. Go-tay.

Your research indicates that the sum likely to be payable to NWL on an order for costs, at the conclusion of trial, is the equivalent in the currency of your jurisdiction of US\$8,000.

The case management conference is scheduled to be held next month.

You are required to prepare –

- (i) a draft notice of application for court orders, in the light of your client’s concerns; and
- (ii) an outline of the submissions that would be made in support of the application.

(The relevant form is provided)

QUESTION 2

On May 1, 2014, your client, Aminotech Limited, (“AL”) signed an agreement with Lets Equip You Limited (“LEY”). Under the terms of this agreement LEY was to provide AL with computers, headsets and various other items needed to outfit a call centre (“the equipment”). As agreed, your client paid LEY a deposit of the equivalent in the currency of your jurisdiction of US\$50,000 on May 15, 2014. LEY failed to deliver the equipment on the promised date of May 29, 2014. To date the equipment has not been delivered.

In June 2014 your client commenced a claim against LEY for damages resulting from breach of contract. The Case Management Conference was held on May 4, 2015. At the conference an order was made for standard disclosure.

Draft a letter to your client advising on its duties and responsibilities under this order. Your letter must fulfill your obligations with regard to advising your client as required by your civil procedure rules.

QUESTION 3

Your client, Percy Hammer, succeeded in his claim against Tina Simone, in the Supreme/High Court in your jurisdiction. Judgment was entered in his favour for the equivalent in the currency of your jurisdiction of US\$350,000 on April 30, 2015.

The Defendant has, to date, ignored demands for payment and your client has asked you to advise on how to proceed.

Investigations have revealed that the Defendant owns the following assets:-

- (i) a lien-free 2014 Nissan Pathfinder worth approximately the equivalent in the currency of your jurisdiction of US\$45,000; and

- (ii) an apartment worth approximately the equivalent in the currency of your jurisdiction of US\$200,000. Outstanding mortgages on the apartment total the equivalent in the currency of your jurisdiction of US\$250,000.

It has also come to your client's attention that Ms. Simone has a bank account with a balance of the equivalent in the currency of your jurisdiction of US\$80,000 and is expected to sing at the Be Free Concert scheduled for December this year. She is to be paid the equivalent in the currency of your jurisdiction of US\$45,000 for that performance.

Your client has no further information on assets owned by Ms. Simone.

Advise your client.

QUESTION 4

- (a) What issues will the court usually consider in deciding whether to permit a party to rely on an expert?
- (b) Consider the statement below which is an extract from the decision of Rattray J. in the Supreme Court hearing of the Financial Institutions Services Limited v Panton et al delivered September 17, 2004:-

"Mr. Avey himself, in an Affidavit sworn to on the 16th August 2004, also stated that his firm had been retained by the Government of Jamaica and subsequently through the Financial Institutions Services to investigate the reasons for the failure of the Blaise Financial entities. He further stated that subsequently his firm was retained to investigate two other major banking groups and that he led the team of forensic and investigative accountants that carried out these contractual arrangements.

The argument then is that based on the information set out above, Mr. Avey cannot be considered an unbiased, impartial or independent witness and the defendants strenuously object to Financial Institutions Services being allowed to rely on any report to be prepared by Mr. Avey.”

- (i) What provisions of your civil procedure rules and/or principles governing the appointment of experts would likely be offended by Mr. Avey being permitted to give his expert opinion in the claim?

 - (ii) Was the argument stated in the extract successful? Why/why not?
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QUESTION 5

You act for and on behalf of a Claimant in a civil claim in the Supreme/High Court of your jurisdiction for damages arising out of a motor vehicle accident.

Your client did not attend the trial of the claim on May 11, 2015. You were in attendance. The trial judge, Henry J., agreed to stand the matter down for half an hour.

Your attempts to contact the client were unsuccessful. You so advised the court and Henry J. decided to proceed with the matter in the absence of the Claimant.

Without hearing any evidence, he gave judgment for the Defendant on the Claimant’s claim as well as on the Defendant’s counterclaim.

It was the second time the matter had been set for trial and both you and your client had been absent on the previous trial date.

You were contacted by your client's spouse the following morning and advised that the client did not attend court as the police had arrested him on his way to court on an outstanding warrant. Your client was released on May 12, 2015.

Prepare the appropriate application for court orders and advise the client on the strength of the application.

(The relevant form is provided)

PART B

LAW OF ASSOCIATION

QUESTION 6

Ella is a freelance event planner with a growing clientele. She specialises in weddings but also provides services for other like events. When she is unable to take on a project because of prior commitments, she usually recommends Louis, another event planner whose work she admires. Louis usually returns the favour and reciprocates whenever he is asked to do an event and is overbooked.

Lately, Ella has been thinking about her business and has concluded that, in order to grow it, she must have additional capital as well as the manpower to take on more projects. To start, she is thinking of approaching Louis, in whom she has great trust, with a business proposition.

Ella has come to see you to discuss her proposed plan of action. She has indicated that she envisages entering into a formal arrangement with Louis which will see them combining their businesses. However, she wants the business vehicle chosen to be subject to as little regulation and public scrutiny, and to be as flexible, as possible.

Advise Ella on:

- (i) the type of business vehicle which would best serve her needs, giving reasons;
 - (ii) the recommended procedure for forming the vehicle identified by you at (i) above; and
 - (iii) the recommended content of any document(s) involved in that procedure.
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QUESTION 7

The Kingwood High School was founded in 1955 and is celebrating its 60th anniversary this year. The school has produced some fine citizens. This is a feat of which they are justly proud because the school has traditionally served disadvantaged youth whose families find it very difficult to provide for their needs.

A group of past students, including Henry Able, has been exploring ways of celebrating the upcoming anniversary. The group wishes to do something tangible to mark the occasion while, at the same time, provide support to students.

One idea, which seems to have gained some traction, is the establishment of a charitable foundation whose primary purpose will be to seek donations and engage in fund-raising activities in order to fund worthy projects at the school.

Henry has learnt that the foundation can be incorporated under the Companies Act and has emailed you for advice with respect to the matter. Advise Henry, by letter, as to:

- (i) the type of company you would recommend that they form, giving reasons; and
- (ii) the steps and documents required to establish the company, including, a description of the contents of these documents; and

- (iii) if applicable, a brief indication of any additional applications or registrations you would recommend they pursue with respect to the company, given their charitable objectives.
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QUESTION 8

Georgia Bent has, together with her four siblings, recently incorporated a private company limited by shares under the companies legislation in your jurisdiction. She incorporated the company without any legal representation but finds that she would now like professional guidance with respect to some aspects of the company's operations.

Her particular concern is corporate decision-making by way of shareholder meetings and the related practice and procedure. Accordingly she wants your advice on the following:

- (i) any requirements to hold annual shareholder meetings pursuant to companies legislation, with an explanation of the purpose and usual agenda of these meetings;
- (ii) what other types of shareholder meetings are provided for under companies legislation and their purpose;
- (iii) the criteria to be satisfied in order to ensure the validity of shareholder meetings; and
- (iv) the usual procedure applicable to the taking of decisions at shareholder meetings.

Advise Georgia.

QUESTION 9

Martha's Weddings Limited has operated successfully in your jurisdiction for some thirty years. The owners of this small private limited liability company are two spinster ladies who are now ready to retire from the business. They are currently looking at two possible approaches to the matter, both of which would involve the termination of the company.

The first approach would be to attempt to sell the entire business of Martha's Weddings Limited to a competitor company, Gordon's Bridals Limited. In that event, their company would be left as a mere shell which would need to be terminated.

The second approach would be to simply bring the company, as it presently stands, to an end. The company, is solvent and is possessed of assets, including stock, real estate and equipment. There are also active contracts with customers and suppliers.

Martha Leon, one of the owners, has contacted you for advice on the matter.

Write a letter to Martha:

- (i) advising her on the most suitable way of terminating the company in each of the possible scenarios described, giving reasons; and
- (ii) outlining the procedure involved if they were to bring the company, as it now stands, to an end (instead of selling the business to Gordon's Bridals) and were to adopt the approach identified by you at (i) above as the most suitable in those circumstances.

END OF PAPER