

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2016

CIVIL PROCEDURE AND PRACTICE II
(WEDNESDAY, MAY 11, 2016)

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

INSTRUCTIONS FOR PART A

All figures referred to in Part A of this paper are stated in United States Currency.

You may either:

- (i) use the figure as is, assuming that it is sufficient for the matter to be before the Supreme/High court of your jurisdiction; or
- (ii) update the given figure to an equivalent sum in the currency of your jurisdiction using the following exchange rates.

- Jamaica: J\$120.00 -US\$1.00
- OECS: XCD\$2.70 – US\$1.00
- Belize: BZD\$2.00 - US\$1.00

The claims are not for United States currency.

The questions are all based on a matter for which you have conduct as an associate attorney-at-law at the firm acting for and on behalf of the claimant.

Although they concern the same parties to the matter each question is to be read independently.

Any application or other activity appearing in one question is relevant to that question only and does not impact on the other questions on the examination.

QUESTION 1

You are an associate attorney-at-law at the firm of Jill, Jack & Co.

Your firm acts for and on behalf of Charles Diggles in a claim brought by him against Clean Deals Supermarket Limited for damages resulting from personal injuries.

Diggles, who was at all material times an employee of Clean Deals, sustained injuries while using a pallet jack, which operates in a manner similar to a forklift. The pallet jack is used to stack shelves in the supermarket.

While Diggles was in the process of using the jack to stack a shelf, in the Jump Street branch of Clean Deals, the shelf capsized causing Diggles to suffer several broken bones and injury to his lungs. Diggles contends that the shelf capsized because it had not been sufficiently secured.

Clean Deals has defended the claim on the ground that the incident was caused by the negligence of Diggles who had not been authorized by Clean Deals to operate the jack.

On November 4, 2014 you receive a letter from attorneys-at-law on the record for Clean Deals set out in its entirety below.

***“Sweet, Sick & Pour
Attorneys-at-Law***

84 Luke Mountain Avenue
Shondaland
Your Jurisdiction

WITHOUT PREJUDICE

November 4, 2014

Jill, Jack & Co
Attorneys-at-Law
104 Duke Street
Your Jurisdiction

Dear Sirs:

Re: Claim No. 5 of 2014 Charles Diggles v. Clean Deals Supermarket Limited - Part 35 Offer to Settle

Reference is made to the captioned matter.

Our client has instructed us to make an offer of \$250,000 in full and final settlement of the claim herein inclusive of interest and costs as follows:-

Damages	\$200,000.00
Interest	\$ 30,000.00
Costs	<u>\$ 20,000.00</u>
Total Offer	<u>\$250,000.00</u>

This offer is made pursuant to Part 35 of the Civil Procedure Rules and is entirely without prejudice to our client's Defence filed herein.

We hereby reserve the right to make the terms of this offer known to the Court **after judgment is given** with regards to the allocation of costs of the proceedings.

The offer herein will remain open for acceptance until **December 31, 2014**.

Yours truly,

Jennifer Lee
Attorney-at-Law"

You conduct your own research on the injuries received by Diggles and conclude that the likely award for damages in this matter is \$500,000. You are of the view that the sums stated in the letter dated November 4, 2014 for interest and costs are reasonable.

Assume it is November 10, 2014.

Draft a letter of advice to your client, setting out the possible consequences of the letter received, whether the offer made should be accepted and the sum Diggles should offer to settle the claim under Part 35, giving reasons for suggesting the said sum.

QUESTION 2

You are an associate attorney-at-law at the firm of Jill, Jack & Co.

Your firm acts for and on behalf of Charles Diggles in a claim brought by him against Clean Deals Supermarket Limited for damages resulting from personal injuries.

Diggles instructs you that, as a former employee of Clean Deals, he still has relationships with current employees of the company. He has therefore received credible information concerning the financial state of the company.

He has been advised that Clean Deals has listed one of its rental properties for sale for a sum below its market value. Clean Deals has been forced to do so to meet debts incurred on invoices for goods purchased wholesale for retail in its stores. Diggles has also seen newspaper notices issued by Clean Deals advising its customers that it is closing two of its fourteen locations.

Diggles has been assured that Clean Deals has savings and investment accounts at Nations Investment Bank Limited.

The case management conference for the claim is scheduled to occur five (5) months from now.

Diggles is concerned about what would happen if Clean Deals closes operations before his claim is tried.

The senior partner at your firm asks you to draft a memorandum setting out:

- (i) the appropriate application in the circumstances;
- (ii) matters Diggles should bear in mind in deciding whether to pursue the application;
- (iii) the procedure to be taken up to and immediately after the hearing of the appropriate application; and
- (iv) the likelihood of success of the application.

Draft the memorandum.

QUESTION 3

- (a) You are an associate attorney-at-law at the firm of Jill, Jack & Co. and the attorney-at-law with conduct for the matter of Charles Diggles, the claimant, in a personal injuries claim for damages against Clean Deals Supermarket Limited.

You have advised your client about his obligations and the consequences of any failure to carry out those obligations pursuant to an order for standard disclosure made at the case management conference.

The client carried out a reasonable search and submitted all directly relevant documents within his control to you, and advised of those no longer in his possession.

Said documents are as follows:-

- (i) letters dated January 7, 2014, March 4, 2014, September 2, 2014, January 6, 2015, August 10, 2015 and November 3, 2015 between Jill, Jack & Co. and Diggles regarding substantive issues in the claim.

- (ii) a letter dated April 2, 2014 from Jill, Jack & Co. to Sweet, Sick & Pour, Clean Deals's attorneys-at-law, consenting to the filing of the Clean Deals defence out of time;
- (iii) a letter dated November 4, 2014, headed "*Without Prejudice*", from Sweet, Sick & Pour to Jill, Jack & Co., asking whether your client would accept \$250,000 in full and final settlement of the claim;
- (iv) a letter bearing the date February 3, 2015 from Jill, Jack & Co. to Diggles, advising him to attend the case management conference for the claim;
- (v) the employment contract for Diggles with Clean Deals dated sometime in 2004. Your client cannot find a copy of this contract and believes he lost it when his family moved to a new house in 2013;
- (vi) a letter from Clean Deals to Diggles dated December 10, 2013, offering to pay his hospital bills in exchange for his agreeing not to bring a claim against the supermarket for his injuries;
- (vii) a copy letter dated January 21, 2014 from Jill, Jack & Co. to Clean Deals, rejecting the offer set out in their letter dated December 10, 2013 and demanding that the supermarket pay Diggles damages for all his losses resulting from his injuries failing which they would proceed to bring a claim against them; and
- (viii) various court documents including statements of case, applications and affidavits filed in the claim.

Prepare a List of Documents and briefly explain your treatment of each document.

- (b) After the filing and service of the List of Documents on behalf of Diggles, a copy of a document, subject of legal professional privilege, included in Part 2 Schedule 1 of the List, was accidentally sent to Sweet, Sick & Pour in response to their request for inspection.

Discuss what steps may be taken, and by whom, concerning the use of the documents in the proceedings and what is the likely outcome of those steps.

(The relevant form is available.)

QUESTION 4

You are an associate attorney-at-law at the firm of Jill, Jack & Co.

Your firm acts for and on behalf of Charles Diggles in a claim brought by him against Clean Deals Supermarket Limited for damages resulting from personal injuries.

On the day the matter was set for trial, as you were heading to court, you felt dizzy and had sharp pains in your chest. The next thing you remember is waking up in the emergency room at Nomor Sic Hospital. You realise that you had been unconscious for a day and are told it happened because your blood sugar was low.

You are treated and released the day following that set for the trial. On your release, you contact your client and conduct inquiries regarding what happened when the matter was called up the previous day.

You discover that your client had not been present at the trial. Diggles tell you that he waited in Court Room 2 for the matter to be called and when, in the afternoon, it had not been called he asked what had happened and was told that his matter had been transferred to Court Room 5. He had immediately rushed to that Court Room but it was empty when he got there.

An attorney-at-law from Sweet, Sick & Pour, the defendant's attorneys-at-law, was present at the trial, but did not know why Diggles was absent. She also did not know why no one from Jill, Jack & Co. had attended.

The trial judge, in the absence of the claimant and his attorneys-at-law, gave judgment for Clean Deals.

Prepare:

- (i) the appropriate application for court orders; and
- (ii) a letter to Diggles advising him on the strength of the application.

(The relevant form is available.)

QUESTION 5

Your client, Charles Diggles, has succeeded in his claim against Clean Deals Supermarket Limited, in the Supreme/High Court in your jurisdiction.

Judgment was entered in his favour for the sum of \$400,000 for damages, together with interest and costs.

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) Two delivery vans valued at \$30,000.00 each.

- (ii) A three-bedroom townhouse worth approximately \$200,000 with a total of \$250,000 outstanding in mortgages. The property is rented to a third party and earns \$1,500 per month.
- (iii) A one-bedroom apartment worth approximately \$50,000. This property is also rented to a third party and earns \$1000 per month.

It has also come to your client's attention that Clean Deals has a bank account with a balance of approximately \$300,000.

Your client has no further information on assets owned by Clean Deals.

Advise your client.

PART B
LAW OF ASSOCIATION

QUESTION 6

Amber Ambitious started her working life as a housekeeper for a wealthy family in your jurisdiction. Having learnt a great deal, she eventually left their employ and started her own house-cleaning business. At first, the business consisted solely of her offering her services to various clients, many of whom she had met while employed as a housekeeper. At the present time, she not only offers her own services, but also has a pool of cleaners with whom she contracts, on an ad hoc basis, to provide cleaning services to clients.

Now aged 45, Miss Ambitious is looking to cease doing this kind of work herself but still wants to continue offering house-cleaning services to clients, utilising her pool of cleaners, as she does

now. She might ask her daughter, Crystal, to join her in the business, but her mind is not entirely made up in respect of the matter. Miss Ambitious has also been fraternising with other small business owners who keep telling her that she should incorporate her business.

Miss Ambitious has sought advice on the matter from the firm to which you are employed as an associate attorney-at-law. One of the partners has requested that you prepare a draft letter to Miss Ambitious:

- (i) explaining to her the benefits and burdens of incorporating her business;
- (ii) identifying the type of company best suited to her needs, giving reasons for your selection and advising whether her daughter or any other person would need to join with her in forming it; and
- (iii) listing the procedural steps involved in forming the type of company identified by you at (ii) above.

Prepare the draft letter.

QUESTION 7

Howard Henry, Kevin Kendrick and Bernard Browne are considering entering into a joint business to conduct extra lessons in the secondary school science subjects. Messrs Henry, Kendrick and Browne are specialist teachers in physics, chemistry and biology respectively.

Mr Kendrick has consulted the firm, to which you are employed as an associate attorney-at-law, in respect of the proposed business. While the business vehicle through which the business will be conducted has not been decided, he instructs that Mr Henry seems to be leaning towards forming a general partnership.

Mr Kendrick, who has decided to be separately represented by your firm, is anxious to learn whether any special provision would need to be made within the partnership agreement to address the following concerns, namely to:

- (a) ensure that each of the partners participates in the profit of the business on a merit basis, as opposed to equal sharing of profit irrespective of such contribution, and that there is some kind of distribution of their earnings during the financial year, as he must have income to live on until profits for the year are determined and distributed;
- (b) prevent Messrs Henry and Browne from “ganging up” on him for some reason and forcibly removing him from the partnership;
- (c) ensure that a managing partner is appointed to deal with administrative matters relative to the operation of the business and that, if he, Kendrick, is made managing partner, he is separately compensated, financially or otherwise, for taking on that role;
- (d) ensure that he is credited with interest on his capital contribution, which is going to be more than that of the other two partners, and to ensure that any accretions of capital are credited to them in proportion to their original contributions;
- (e) allow him, or any other of his partners, to retire from the partnership; and
- (f) ensure that the right of the partnership to use premises owned by Mr Henry, which are ideally suited for the purposes of the business, is secure.

Prepare a letter of advice to Mr Kendrick indicating:

- (i) in respect of each of the above concerns listed from (a)-(f), whether provision needs to be made in the partnership agreement in respect of the concern, giving reasons;

- (ii) for each concern requiring a provision in the agreement, the recommended content of the appropriate clause in which the concern would be addressed (**DO NOT DRAFT THE ACTUAL CLAUSES**); and
 - (iii) for each concern not requiring a provision in the agreement, whether there is any benefit in addressing the concern in the agreement, giving reasons and the recommended content of the appropriate clause in which it would be addressed (**DO NOT DRAFT THE ACTUAL CLAUSES**).
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QUESTION 8

Hinton Brothers Company Limited is a private company limited by shares incorporated in your jurisdiction. The principal business of the company is the operation of natural juice retail outlets at various locations in the jurisdiction. The company was originally incorporated by the Hinton brothers who were inspired to go into the business by a lifetime of enjoying fresh fruit juice made from fruits grown by their father on his farm.

The business has been quite successful, but the brothers are keen to take it to the next level and have employed a marketing consultant to help the company do just this. One of the recommendations that has been made is that the company change its name to Just Juice Limited.

Brad Hinton, the managing director of the company, has consulted your firm for advice on the matter. Specifically he wants to be advised as to:

- (i) whether the change of name will have any impact on the company's legal status and what, if any, legal issues could arise in respect of the proposed new name; and

- (ii) details of the procedure involved in changing the name of the company.

Prepare a letter of advice to Mr. Hinton.

QUESTION 9

Alain Moreau is a rising entrepreneur in Lyon, France. A fashion designer and native of Martinique, his line of clothing reflects a unique blend of European and West Indian design which is in high demand by retailers of women's and men's fashion in the Caribbean and Europe. He conducts his business in France through a French company called Mode Caribbean S.A. but wants to start direct retailing of his clothing line in the Caribbean.

While Alain conducts the necessary market research for his proposed venture, his attorney-at-law, Henri Martin, is conducting due diligence in the various territories of the region, including your jurisdiction, concerning the legal ramifications of Mode Caribbean S.A. setting up a place of business there.

Your firm has received an email from Henri requesting the following information with respect to Alain's proposal:

- (i) the requirements which would have to be fulfilled under any applicable companies legislation in order for Mode Caribbean S.A. to set up a place of business in your jurisdiction; and
- (ii) once the place of business has been properly established in accordance with those requirements, any ongoing obligations which the company would have under that legislation.

Prepare a response to Henri.

END OF PAPER