

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2017

CIVIL PROCEDURE AND PRACTICE II

(WEDNESDAY, MAY 10, 2017)

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. Erasable pens are not allowed.
- (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 the 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\$128.00 -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.

QUESTION 1

Ciara West, a resident of Atlanta, United States of America, while visiting your jurisdiction, was involved in a motor vehicle accident involving a taxicab, in which she was a passenger, and another motorcar. That motorcar was owned and driven by Luke Cage. Ciara's aunt, Tina Tiara, a resident of your jurisdiction, was also a passenger in the taxicab.

At the time of the accident, Ciara was not wearing her seatbelt and was thrown forward from the rear passenger seat and suffered injuries when her head hit the windshield. Tina, whose seatbelt was not working, was also thrown forward and sustained injuries to her wrists and neck when she tried to prevent her face from hitting the headrest of the driver's seat.

Ciara and Tina have brought a claim in the Supreme/High Court in your jurisdiction seeking damages for negligence from Luke. You act for and on behalf of Luke who has defended the claim on the grounds that the accident was caused wholly or partially by the negligence of the driver of the taxicab. Luke has, in fact, brought an ancillary claim against him.

Tina is a popular hairdresser and is currently unable to earn any income as a result of the injuries sustained in the accident.

Your client is concerned that if he is successful in defending his claim he would have no way of enforcing any costs order which may be made in his favour.

- (i) Draft the Notice of Application for Court Orders to address your client's concern regarding the enforcement of any costs order.
- (ii) Write brief notes on the likelihood of the order(s) being sought being granted in light of the local claimant.

(The relevant form is available.)

QUESTION 2

Khaleesi Drogo has claimed against Hot Shots Entertainment Limited (“Hot Shots”) for damages resulting from injuries sustained by her while she was performing at The Ultimate Jazz Fest held January 30, 2016 in your jurisdiction. The festival is organised by Hot Shots, and Khaleesi sustained injuries when a lighting fixture over the stage fell on her while she was singing.

Hot Shots has defended the claim on the ground that Khaleesi had ventured to a part of the stage that was out of bounds to performers and that she had been so advised at the dress rehearsal held earlier in the day.

The matter is proceeding to trial and at the case management conference held on May 6, 2017 an order is made for standard disclosure and inspection.

You are the attorney-at-law acting on behalf of Hot Shots.

- (i) Write a letter to your client advising them of the standard disclosure order and their obligations arising from it.

- (ii) After the filing and service of the List of Documents on behalf of Hot Shots, a copy of a document, correctly listed in Part 2 Schedule 1 of the List, was accidentally sent to the attorneys-at-law acting for and on behalf of the claimant, in response to their request for inspection. What steps may be taken, and by whom, concerning the use of the documents in the proceedings?

QUESTION 3

You act for and on behalf of Central Hospital Limited, the defendant in a claim brought in the Supreme/High Court in your jurisdiction, by Diana Rose for damages allegedly suffered by her as a result of the negligence of the hospital and/or Dr. George Mikal.

Diana claims that she contracted an infection while at the hospital to deliver her firstborn. The result of the infection is that she is unable to bear any more children. The hospital has defended

the claim on a number of grounds, including that Dr. Mikal was wholly responsible for the injuries suffered by Diana as he failed to follow proper procedure in the execution of the surgery and introduced the infection to the claimant. Dr. Mikal is an independent surgeon who utilised the operating theatre under a contract with the hospital.

The hospital has suggested that its employee, Dr. Miranda Bailey, Chief of Surgery, serve as an expert witness in the matter. Dr. Bailey has practised as a general surgeon for over 20 years and is the recipient of the distinguished Harper Avery Award for her innovative work in the field.

- (i) Draft the Notice of Application for Court Orders for permission to appoint Dr. Bailey as an expert witness and for a report to be submitted by her. (The relevant form is available.)
- (ii) Advise your client on the likely objection to this application, and whether or not the objection would be upheld.

QUESTION 4

You act for and on behalf of Solid Cement Factory Limited (“Solid Cement”), the defendant in a claim for nuisance brought by Malia Sasha in the Supreme/High Court of your jurisdiction. The claimant has claimed for damages, interest and costs, for losses suffered as a result of emissions from one of Solid Cement’s factories. The claim for damages includes special damages for a sum the equivalent of US\$200,000 in the currency of your jurisdiction.

Solid Cement has defended the claim brought by Malia on a number of grounds including that it is protected by statute, which permits the factory to carry on operations in its current location. Solid Cement is however desirous of maintaining good relationships with the persons that live in communities near its factories, and has indicated to you that it is therefore willing to settle the claim as Malia genuinely seems to have suffered loss.

You have conducted research on similar matters and are of the opinion that the court is likely to award, as damages, a sum the equivalent of US\$300,000 in the currency of your jurisdiction to

Malia, as well as a sum the equivalent of US\$20,000 in the currency of your jurisdiction, as interest, and a sum the equivalent of US\$10,000 in the currency of your jurisdiction as costs.

Draft a letter of advice to your client addressing the following:

- (i) the merits of making the offer to settle under Part 35 of your civil procedure rules;
- (ii) the features of such an offer;
- (iii) the sum that should be put on the table for it to be legal and effective; and
- (iv) the effect of the offer being refused.

QUESTION 5

Your client, the claimant, successfully obtained a judgment against the defendant for a sum, the equivalent of US\$500,000 in the currency of your jurisdiction. The defendant has filed a Notice of Appeal of the judgment. No other document has been filed by the defendant.

Your client advises you that the defendant lives in a large house, owned by her mother, valued at a sum, the equivalent of US\$600,000 in the currency of your jurisdiction. The house is subject to a mortgage with a sum, the equivalent of US\$100,000 in the currency of your jurisdiction, still due and owing.

Your client is also certain that the defendant is the sole holder of a bank account at United Bank Limited in the sum the equivalent of US\$100,000 in the currency of your jurisdiction. The defendant also owns a lien-free Range Rover motor vehicle valued at a sum the equivalent of US\$100,000 in the currency of your jurisdiction.

Advise your client, by way of letter, whether he may proceed to enforce the judgment and, if so, how.

PART B
LAW OF ASSOCIATION

QUESTION 6

You have recently gained employment as the legal officer and company secretary of Castle Technologies Limited (“CTL”). CTL is an unlisted public limited liability company. CTL has only recently set up a legal/corporate secretarial department, having previously outsourced those services. Like you, the other staff members in the department are new.

CTL is proposing to purchase the business of Axis Digital Services Limited, another company incorporated in the jurisdiction, for the sum of US\$650,000. To do so it will need to borrow the sum of US\$500,000. Under Articles 30 and 45 of the Articles of Association/Incorporation of CTL the borrowing and the purchase, respectively, can only be effected with the authorisation of the shareholders by way of special resolutions. It is proposed that both transactions (borrowing and purchase) be submitted for approval at the annual general meeting (“AGM”) of CTL which is due to be held in another two months. CTL’s financial year runs from April 1 to March 31.

One of your staff members, Eager Beaver, an administrative assistant, has also submitted to you, for your comments, a draft of the notice for the upcoming AGM which reads as follows:

“NOTICE IS HEREBY GIVEN of a meeting for the purposes of doing the following:

- (1) Receiving the accounts for the year ended March 31, 2017***
- (2) Reappointing the Auditors, Harlan and Jones***
- (3) Reappointing the following named directors who retire from office in accordance with Article 25 of the Company’s Articles:***
 - a. Betty-Ann Hamilton***
 - b. Neil Gorshaw***
 - c. Kirsten Gambray***
- (4) Authorising the purchase by the Company of the entire undertaking of Axis Digital Services Limited for US\$650,000***
- (5) Authorising the borrowing by the Company of the sum of US\$500,000 for the purpose of the abovementioned purchase.***

***Just Arrived
Secretary”***

Draft a memorandum to Mr. Beaver in which you:

- (i) provide your comments on the suitability of the draft notice;
 - (ii) explain the requisite statutory majority and notice period required for passing a special resolution; and
 - (iii) indicate what, if any, additional steps will need to be taken, pursuant to requirements in the Companies Act/Ordinance with respect to the said special resolutions.
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Question 7

Paddy, Leslie and Mike have been doing business as partners in a general partnership under the name “White Cake Bakery” for the past 10 years. As the name suggests, the business of the partnership is the operation of a bakery and, additionally, a pastry retail outlet. The partnership has been operating quite informally and without a written partnership agreement. While this has not posed many problems so far, Paddy is concerned that, as the business grows and additional partners are added, it might be better to formalise the arrangement by putting a written agreement in place. In fact, they have already been talking about a prospective candidate for partnership.

Paddy intends to approach his partners with this proposal but has sought your assistance in

- (i) formulating sound reasons for entering into a written partnership agreement, giving examples, where appropriate, to illustrate the reasons being advanced;
- (ii) putting together a list of the types of clauses which the agreement should contain; and
- (iii) identifying the possible conditions precedent they might include in the partnership agreement for the admission of new partners to the firm.

Advise Paddy.

Question 8

Since March 2005, Mary, Sue and Ellen have been operating a clothing store through a private limited liability company called Couture Clothes Limited. The store, and consequently the company, has been a highly profitable venture. However, events have occurred which are

causing the ladies, who are the shareholders and the directors of the company, to contemplate closure of the business.

Happily, these events have nothing to do with its feasibility and the store continues to do very well. The company has several assets and is currently servicing a loan from its bank.

Sue, who is principally responsible for the administration of Couture Clothes Limited as its Managing Director, has sought the advice of your firm on terminating the life of the company.

Advise Sue as to:

- (i) the most suitable method of voluntarily terminating the life of the company in these circumstances, giving reasons; and
- (ii) the procedural steps involved in the method recommended by you at (i) above.

Question 9

Chris King is a software designer and Martin Duke, a computer hardware specialist. Each operates a sole proprietorship as an information technology consultant and is highly successful in his own right. King and Duke regularly collaborate on commercial projects.

The proprietors of a new telecoms company are looking for computer hardware and software design services in respect of a major project being undertaken by them. They have put the job out for tender but bids are only being accepted from registered companies which offer both sets of services.

King and Duke are very interested in submitting a bid and are seeking assistance from you in the matter. They intend to form a company in order to qualify and fancy calling it RoyalTech Services Company.

Advise King and Duke as to:

- (i) the type of company they should incorporate in the circumstances, giving reasons for your choice;
- (ii) any issues which may arise with respect to the name chosen; and

- (iii) the steps and documents (including a brief description of their contents) required to incorporate the type of company recommended by you.

END OF PAPER