

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 2018

CIVIL PROCEDURE AND PRACTICE II

(WEDNESDAY, MAY 09, 2018)

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.

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**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**

You are a student at the Norman Manley Law School, and are currently working as a judicial clerk in the Supreme/High Court in your jurisdiction. You have been assigned to assist Duhaney J and have attended a number of her matters, including those set out below.

You are required to indicate the costs order(s) that should be made by Duhaney J in each of the following circumstances. You must fully explain the meaning of each order and the reasons you consider it to be appropriate.

- (i) An order is made setting aside a regularly obtained default judgment.
- (ii) An order is made permitting a Claimant to serve a Defendant outside of the jurisdiction.
- (iii) An order is made permitting a Claimant to rely on an expert report, the application having been considered at the case management conference.
- (iv) An order is made at the end of a trial in which an insolvent Claimant has claimed against two defendants and succeeded against one and failed against the other. The court is of the opinion that it was reasonable for the Claimant to bring the claim against both defendants.

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## **QUESTION 2**

You have today been engaged to act for Mrs Violetta Grange, retiree, who tells you that several years ago her son, Henry Grange, borrowed money from National Bank Limited. At the time he borrowed the money, Henry told your client that he needed a loan from the bank to meet his family's financial obligations, such as putting his young children through school.

Since he owned no property that would have been acceptable security for the bank, the bank's branch manager visited your client, along with Henry, and asked her to sign a guarantee and mortgage over her home in which she lived. This home is owned solely by her and has been in her family for three generations.

The meeting, according to your client, took five minutes, as essentially what was said to her was that her son needed to borrow some money and needed her to sign “some documents”. She said she signed without knowing or understanding fully what she was signing, although the documents were headed “Mortgage Instrument” and “Instrument of Guarantee”. She thought that everything would be fine, as her son assured her that the family lawyer had reviewed the documents.

Your client says she recently saw, in a leading newspaper, an advertisement for the sale of the property at public auction by National Bank Limited. The advertisement says that the auction is to be held on a date that is eight days away from today.

Yesterday, when she asked her son about it, he said that the loan had actually been for his business and that it was in default as the business was having some cash flow problems. He said he knew what the bank intended to do, but was trying to make some arrangements and hoped to handle the matter before the auction date. He said he had been too ashamed to tell her anything.

Mrs Grange, after considering the matter, has decided to come to you. She wishes to stop National Bank Limited from proceeding with the sale of her property.

You are required to prepare a draft of each of the following based on your client’s instructions:

- (i) a notice of application for court orders; and
- (ii) an outline of your proposed submissions to the court on the matter.

(The relevant form is provided.)

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### **QUESTION 3**

You act for and on behalf of Jennifer Soares, jeweller, of 18 August Road, in your jurisdiction. She is the Defendant in a claim against her for damages for breach of contract. Fancy Jewellery Limited trading as Fancy Jewels has brought the claim against her. Fancy Jewels is one of the largest local retailers of jewellery in your jurisdiction.

The claim is to recover losses incurred by Fancy Jewels for payments made to their customers. The customers had experienced allergic reactions to the jewellery purchased by them from Fancy Jewels. Jennifer made this jewellery.

Jennifer has defended the claim on a number of grounds including that (i) Fancy Jewels had knowledge of the material her jewellery was made from and had been advised to issue warnings to their customers in that regard but had failed to do so; and (ii) the contract between them included a clause which released her from any liability for such losses.

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

Your client today attends your office and advises you that she has good reason to believe that Fancy Jewels is going bankrupt. She informs you that several of her colleague jewellers had reported to her that Fancy Jewels had not paid their bills for goods delivered for a number of months. She further informs you that a number of the store's locations had been closing and that she had seen an advertisement online suggesting that Fancy Jewellery Limited was opening a store in Florida. She suspects they are shipping their inventory to the new store as the display cases in the locations that are still open are quite bare.

Your client states that she is worried that if she successfully defends the claim, which she is confident about, she will not be able to recover the costs of defending the claim against her.

Your client asks you to advise her on whether she may protect herself against this risk.

Draft a letter of advice to your client. The letter should include, inter alia, the following:

- (i) whether there are any steps she may take to protect her costs, providing details of same;
- (ii) the grounds upon which she may take these steps, if any; and
- (iii) the likelihood of success of the recommended steps.

#### **QUESTION 4**

You act for and on behalf of Albert Aires, a Claimant in a personal injury claim against Sayed Rambolah. Early last month, judgment was entered in favour of your client for a sum the equivalent of US\$400,000 in your currency in the Supreme/High Court in your jurisdiction.

Sayed has, to date, ignored demands for payment of the judgment and has recently filed a notice of appeal.

Albert has informed you that his investigations have revealed that Sayed, a real estate mogul, owns at least three motor vehicles as follows:

- A 2016 Jeep Grand Cherokee valued at a sum the equivalent of US\$40,000 in your currency;
- A 2017 Range Rover Velar valued at a sum the equivalent of US\$190,000 in your currency; and
- A 2018 Aston Martin Vantage valued at a sum the equivalent of US\$200,000 in your currency.

All three vehicles appear to be lien-free.

Albert also advises you that Sayed has a bank account at Nations Bank Limited but he does not know how much money is in it. Albert also notes that Sayed has a sum, the equivalent of US\$150,000 in your currency, due and owing to him from High Sharp Limited. The sum represents one year of rental income for a five-acre property in the city.

Your client has no further information on any other assets of the Defendant.

Advise Albert on how he may proceed to recover the sum due to him by the Defendant.

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#### **QUESTION 5**

You are an Associate in the firm of Madeira & Walters, Attorneys-at-Law. You have been assigned to the senior partner, Eustace Augustus Brown. He asks you to provide him with your opinion on the appropriate steps to take in each of the circumstances set out below.

- (i) The firm represents the Claimant in a matter. The Defendant filed an application to strike out the claim on the ground that it disclosed no reasonable grounds for bringing the claim. The application was heard today and dismissed. It was not heard at the case management conference. The order has not yet been filed or perfected. Eustace forgot to ask the court for his client's costs.
- (ii) The firm represented one of two defendants found liable at a trial for a personal injury claim. The judge awarded damages, interest and costs against both defendants, jointly and/or severally, for a sum the equivalent of US\$20,000 in the currency of your jurisdiction. The judgment filed by the Claimant, which has been perfected, states damages, interest and costs against each Defendant for a sum the equivalent of US\$20,000 in the currency of your jurisdiction.
- (iii) The firm represented the Defendant who lost a summary judgment application for rent due and owing from him under a lease agreement. The application sought an order for a sum the equivalent of US\$30,000 in the currency of your jurisdiction. This was also the sum claimed in the claim form. Affidavit evidence was presented at the hearing showing further sums accruing and paid. The judge, after doing his calculations, ordered the Defendant to pay a sum the equivalent of US\$45,000 in the currency of your jurisdiction, and signed an order to that effect. The court has sealed this order. The minute of order simply stated "order in terms of paragraphs 1 and 2 of the Application".

Draft a memorandum to Mr Brown with the information requested.

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## **PART B**

### **LAW OF ASSOCIATION**

#### **QUESTION 6**

You are an associate at the law firm of Hodges and Lyle. The firm has a general retainer from Gaston Finance Company Limited (GFCL), pursuant to which it renders advice on various matters as they arise.

GFCL is a private company limited by shares. One of its directors, Horace Benjamin, also performs the role of company secretary. Mr Benjamin is neither an attorney-at-law nor a professionally trained corporate secretary, and so tends to lean heavily on the firm for advice on secretarial matters.

The partner at Hodges and Lyle with primary responsibility for GFCL is Gloria Lyle. She tells you that Mr Benjamin has contacted the firm for guidance with respect to a change of its corporate name, which GFCL is proposing to effect in the very near future. The proposed name is “Premier Financial Associates”, and the Board would like the change to be made within the next ten days.

Ms Lyle has asked you to prepare a letter to GFCL, for Mr Benjamin’s attention, in which you give him advice on:

- (i) any legal issues concerning the proposed name; and
- (ii) the procedural steps that would need to be taken to effect the change of name and whether they can be accomplished within the Board’s proposed timeline.

Prepare the letter as requested.

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#### **QUESTION 7**

You are a legal officer assigned to the government agency or department with responsibility for the registration of companies in your jurisdiction.

New members of staff are being oriented. They have already been introduced to the process of company incorporation in your jurisdiction, ending with the entry of the company’s name in the Register of Companies.



You have been asked to explain to them the process by which companies that were not incorporated in the jurisdiction are nevertheless registered there as overseas/external companies. You have also been requested to address the rules which apply to those companies while they remain registered in the jurisdiction.

Prepare detailed notes for a talk which you will give to the new recruits on the matter including:

- (i) the circumstances that would give rise to a legal requirement for these companies to be registered as overseas/external companies in your jurisdiction;
- (ii) the procedural steps to effect such registration; and
- (iii) any ongoing statutory obligations imposed on them by companies legislation.

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### **QUESTION 8**

Lenworth Wright, Carlton Simpson and Genevieve Chambers are chartered accountants. They have been acquaintances since their university days and have each been working at various companies in your jurisdiction since they qualified.

A few months ago, they had a reunion of sorts at a continuing professional development seminar. Since then, they have been meeting regularly and have been discussing their plans for the future.

These discussions have led to the recent suggestion, by Carlton, that instead of working for other people they should form a general partnership and work for themselves. Even a potential name has been discussed, namely “SCW and Associates”.

While Lenworth has no reservations and is eager to follow through on the suggestion, Genevieve, being more cautious, has decided that she needs to know more about the partnership arrangement in order to come to a final decision.

She has come to you for advice on the following:

- (a) whether all that is needed to establish the partnership is a partnership agreement;
- (b) the legal issues, if any, raised by the name proposed; and

(c) the content of the provisions you would recommend be included in the partnership agreement to ensure the following:

- (i) that her share of the profit is commensurate with her work in the partnership business;
- (ii) that the partnership's banking arrangements are always to her satisfaction;
- (iii) that if any of the partners breaches the terms of the arrangement, that the others can secure his removal from the partnership;
- (iv) that the easy and private resolution of any disagreements between the partners is facilitated; and
- (v) if she allows the partnership to use some equipment that she owns, that it is clear Lenworth and Carlton have no proprietary rights in it.

Advise Genevieve.

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### **QUESTION 9**

Harrington's Hardware Limited is a private limited liability company incorporated in your jurisdiction. The company has been in the Harrington family for many years and has enjoyed great success. As at the present day it is still a thriving business but, over the years, the members of the family who were involved in its day to day operations have either died or migrated. Those remaining have no interest in managing it.

Having looked at all the options for terminating the company, both the board of directors and the shareholders are in agreement that the company should be wound up. As its assets are well in excess of its liabilities, the shareholders expect that they will each receive a tidy sum with which to pursue other endeavours.

The chairman of the board, Cicely Harrington-Gayle, has sought advice from you on the procedure which needs to be followed to effect the winding up and liquidation of the company, and an explanation of the process from beginning to end.

Prepare a letter to Mrs Harrington-Gayle containing the requested advice.

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**END OF PAPER**