

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2019

CIVIL PROCEDURE AND PRACTICE II

(WEDNESDAY, MAY 08, 2019)

Instructions to Students

- (a) Time: **3 ½ hours**
- (b) Answer **THREE** questions from Part A and **ALL** questions from Part B.
- (c) **Answer Part A and Part B on separate answer booklets.**
- (a) In answering any question, a candidate may reply, in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **but must state at the beginning of the answer the name of the relevant territory.**
- (d) It is unnecessary to transcribe the questions you attempt.
- (e) Answers should be written in black or dark blue ink. Erasable pens are not allowed.
- (f) 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.

PART A

QUESTION 1

Answer both (1) and (2)

- (1) You act for and on behalf of Rindell Limited (Rindell), an investment brokerage company, in your jurisdiction. Rindell is a defendant in a claim brought against it by Diane Clockpart for damages for breach of contract. Clockpart alleges that she has suffered losses of a sum the equivalent of US\$80,000 in your currency.

Clockpart claims that she was advised by Rindell not to purchase shares in Florrick Limited (Florrick), which had an Initial Public Offer (IPO) in January 2018. Clockpart further alleges that, notwithstanding this advice, she instructed Rindell to purchase 20,000 shares. Each share was being sold for a sum the equivalent of US\$0.50 in your currency for the IPO. Each share is now valued at a sum the equivalent of US\$4.50 in your currency.

Rindell, in its defence, has relied on the exclusion clause in the Brokerage Agreement, which had been struck out by Clockpart before execution. Rindell further states that it received no such instructions from Clockpart.

At a case management conference, held on February 14, 2019, an order was made for standard disclosure to be completed on or before May 31, 2019. Today, you receive a package from your client with the following documents discovered from its search:

- (a) a standard form brokerage agreement utilised by Rindell. Your client advises that the Brokerage Agreement with Clockpart was identical to the form document. According to Rindell's electronic records the agreement with Clockpart was dated January 3, 2017 and was destroyed when there was a fire at its Kroll City branch last New Year's Eve;
- (b) an email from Adrian Bosewoman to Clockpart dated January 2, 2018 in which he advised her of the pros and cons of investing in the IPO and asked her to indicate her decision by January 4, 2018;

- (c) an email from Clockpart to Bosewoman dated January 3, 2018 in which Clockpart asked that 20,000 shares be purchased in Florricks, which Bosewoman did not see until last week as it was in his junk folder;
 - (d) a letter from your firm dated May 6, 2019 advising Rindell to settle the claim as the defence is weak; and
 - (e) a letter from your firm to Rindell, dated February 1, 2019, advising it to arrange for someone to attend the case management conference on its behalf.
- (i) Draft the List of Documents to be filed for and on behalf of your client.
 - (ii) Explain your treatment of the items listed at (a) and (e) above.
- (2) On the instructions set out in (i) above, the List of Documents was drafted and the item at (d) was mistakenly sent by your offices to the claimant's attorneys-at-law's office. The document had not been included on the List of Documents at all.

Advise your client on what, if any steps, should be taken by it.

QUESTION 2

You act for and on behalf of Samuel Lannister a successful defendant in a claim against him for negligence.

The claimant, Arya Winterfell, had sued him, and Bran Tyrell, for damages arising out of a motor vehicle accident, which occurred four years ago. The court held that the accident was wholly caused by the negligence of Tyrell and ordered that Winterfell's costs be paid by Tyrell. The court further held that Lannister's costs be paid by Winterfell and that Winterfell recover those costs from Tyrell.

Winterfell has to date failed to pay Lannister's costs which have been assessed by the court as amounting to a sum the equivalent US\$100,000 in your currency. The sum remains outstanding, despite many demands for payment sent by you to Winterfell's attorney-at-law.

Your client today attends your office to report on his inquiries made regarding the assets owned by Winterfell. He reports that his checks reveal that Winterfell has the following assets:

- A lien-free 2018 Range Rover Sport motor vehicle valued at a sum the equivalent of US\$70,000 in your currency; and
- A sum the equivalent of US\$50,000 in your currency in a bank account held at King's Landing Bank.

He has no further information on the assets of Winterfell and asks the following:

- i. "Well, now that I have brought you the information can I get my money from Arya?"
- ii. "How do we do that? Do we have to request it from her again?"
- iii. "And why did the court order that she get the costs paid back from Tyrell?"

Answer your client's questions, giving reasons.

QUESTION 3

You act for and on behalf of Oiljam Limited (Oiljam), an oil refinery in your jurisdiction. Oiljam is a defendant in a claim brought by Eunice Bertram for damages for nuisance.

Bertram is a farmer and owns 50 hectares of land. Her land is located down the hill from Oiljam's Harring Estate oil refinery factory. On or about October 30, 2018, there was an explosion at the Harring Estate factory and thousands of litres of crude oil escaped the factory and flowed down the hill to Bertram's farm, wreaking havoc.

Bertram suffered loss of livestock and crops and has sued your client for a sum the equivalent of US\$800,000 in your currency. Earlier this year, in response to instructions received, you advised your client that it should make a Part 35 offer to settle the claim as its defence is weak.

Your investigator's assessment as to losses experienced by Bertram suggests that the court should award a sum the equivalent of US\$500,000 in your currency. Your calculations indicate

that the sum likely to be awarded (i) for costs is the equivalent of US\$50,000 in your currency and (ii) as interest is the equivalent of US\$23,000 in your currency.

Your client today instructs you to draft the offer to settle the claim.

Draft the offer to settle.

QUESTION 4

You are an associate attorney-at-law in the litigation department of the firm Chitlins & Salt. One of the senior partners, Rolph Andres, asks you to sit in on a meeting he is having with Bordan Reelee, the Chief Executive Officer of one of his commercial clients, Bitemites Limited (Bitemites).

Bitemites, a restaurant, is interested in bringing a claim against Champion Deliveries Limited (Champion Deliveries) for sums due and owing for breach of contract. Champion Deliveries operates an 'app' which allows users to order food from various restaurants and pay for it using the 'app'. The food is then collected and delivered to the user's address as provided. Bitemites is the most popular restaurant of those accessible via the 'app'.

The contract provides that the portion of the sums collected by Champion Deliveries relating to the price of the food is to be paid over to Bitemites on a monthly basis. Despite several promises to pay, Champion Deliveries has failed to pay over the sum due and owing to Bitemites for the last six months. The sum is the equivalent of US\$200,000 in your currency.

Reelee advises that he has heard rumours that Champion Deliveries has been closing certain locations, sending home staff and selling off assets such as its delivery trucks and motorcycles. Reelee is therefore concerned that if Bitemites is successful in its claim against Champion Deliveries, which is likely, it will not be able to enforce any award for damages received.

After the meeting, Andres asks you to prepare a brief memorandum for his attention setting out the next steps to be taken by Bitemites, including the best way to address the concerns expressed by Reelee and the likelihood of success. You are asked to include in your advice any particular matters that Bitemites should consider in deciding whether to take the steps necessary to address their expressed concern.

Draft the memorandum to Andres.

QUESTION 5

You act for and on behalf of Tan Spray Limited (Tan Spray), a company in the business of manufacturing spray tan. Your client is the defendant in a claim brought against it by multiple claimants who allege that they have contracted skin cancer as a result of using the products manufactured by your client.

Your client has denied the allegations stating that its products undergo rigorous testing and are assessed as safe for use before being placed for sale on the market.

The case management conference for the claim is scheduled for May 30, 2019. Your client would like to apply for permission to rely on the expert evidence of Dr. Nigel Redenbacher, a chemical engineer and Chief Scientist of Mammoth Production Corporation Inc, the parent company of Tan Spray.

Your client has asked you to advise on how to make the application, the matters that will be considered by the court in granting the order and the likelihood of success.

Draft the letter to your client.

(The relevant form is available.)

PART B
LAW OF ASSOCIATION

ANSWER BOTH QUESTIONS 6 and 7

QUESTION 6

Elijah and Noah are inseparable twin brothers. They did music growing up and were mavericks at the piano and guitar. As a hobby, they created leather goods for their parents, including handbags, sandals, belts and wallets, in which they took immense pride.

They were strongly encouraged by their parents to launch a business focused on manufacturing and distributing handmade sandals, so they registered a company called Big Toe Limited, which offered a wide range of designs and which were sought after across the region. The great demand facilitated high pricing and the business did exceptionally well. Before long, Elijah and Noah became famous millionaires.

Notwithstanding their financial wealth, the brothers did not have a sense of fulfilment as their passion was to pursue careers in music. Therefore, when Clutchings UK Limited, a limited liability company, incorporated in England, offered to buy Big Toe Limited for US\$1.5 million, they seriously considered the offer because they figured that it would allow them the opportunity to pursue music.

Two weeks ago, the brothers accepted the offer to sell all the assets of Big Toe Limited to Clutchings UK Limited. They undertook to wind up the company without delay. To sweeten the deal, they made a promise to assist Clutchings UK Limited to establish a place of business within the jurisdiction, which would be operated exclusively as a distribution outlet. This was to ensure that Clutchings UK Limited would retain the local customer base. The brothers even promised to find them an agent.

The brothers have come to your law firm for legal services to wind up and dissolve Big Toe Limited. They advise you that the company has a total debt of about US\$250,000 to its suppliers of leather and other materials. They also advise you that they made a promise to assist Clutchings

UK Limited to establish a place of business and would therefore require your guidance on how to establish a distribution outlet in the jurisdiction so that they can fulfil their promise.

You are given carriage of the matter and are required to now:

- (i) prepare a letter of advice to Big Toe Limited on the step-by step requirements to complete the dissolution of Big Toe Limited and ensure its removal from the Register of Companies; and
- (ii) prepare a brief memorandum to the brothers itemising the requirements for registering a branch of an overseas company in your jurisdiction.

Prepare the letter and memorandum.

QUESTION 7

Conchana Pinn is a brilliant civil engineer who loves to help people in need and engages in many philanthropic projects. Recently, she was approached by her friend Binn Solo, who is an electrical engineer, with his own consultancy firm.

Binn believes that as a team they would be prosperous because they balance each other perfectly, which would result in the delivery of a more comprehensive service package to clients. Therefore, Binn invites Conchana to join him as a business partner and establish an engineering firm. He is of the view that she is wasting her talent working for the Building Ministry in the jurisdiction when she could earn significantly more money and acquire wider exposure and experience by joining with him. He therefore encourages her to consider resigning and forming a general partnership with him.

Conchana and Binn share an excellent relationship but she knows he is very frugal, while she lives to give. In fact, she has been planning to create a foundation to which she intends to donate five percent of her salary monthly and also seek donations in order to sustain her philanthropic activities in her community. To encourage her decision to partner with him, Binn suggests that

two percent of the firm's profits would be donated to her foundation yearly and that the name "Binn & Pinn" be used for their business.

Conchana Pinn seeks your firm's advice on:

- (i) the issues to be considered in using the proposed name; and
- (ii) the crucial terms that should be included in a written partnership agreement and other relevant considerations based on the above facts, giving reasons.

Advise her.

END OF PAPER