

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR SPECIAL SUPPLEMENTARY EXAMINATIONS, OCTOBER 2014

CIVIL PROCEDURE AND PRACTICE II

(WEDNESDAY, OCTOBER 1, 2014)

Instructions to Students

- (a) Time: **3½ 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.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

## **PART A**

### **QUESTION 1**

Save the Trees Organization (STO) is concerned about the rate of deforestation in sections of the country.

Pursuant to legislation, the Minister with responsibility for the environment must give a building licence before it is permissible to embark on any construction involving the removal of trees from more than 1,000 square metres of land.

The Minister granted a licence to Luxury Homes Limited for the construction of houses in an upscale gated community. Over 3,000 square metres of land will need to be cleared of trees. STO was not aware of the licence being granted or applied for until they saw Luxury Homes Limited's heavy equipment heading to the area of the proposed development.

STO wishes to prevent the clearing of the land, by challenging the Minister's grant of the licence and seeking such remedies as may be appropriate when making such a challenge.

As STO's Attorney-at-law, prepare a draft of the initial application for the court orders that STO should file and advise them on the likelihood of success of the application.

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### **QUESTION 2**

Local Appraisers Limited claim against Joan Encroacher damages for trespass to Local Appraisers Limited's property.

In support of their claim to recover as damages the total annual rental value of the property, Local Appraisers Limited (who are auctioneers and valuers, and consider themselves to be the best in the country) wish to use a valuation report to be prepared by their most experienced valuator, as an expert report.

As Local Appraisers Limited's Attorney-at-law –

- (a) prepare an application for court orders seeking permission to rely on the valuation report (you need not prepare the affidavit in support); and
  
- (b) advise your client on –
  - (i) when the application should be made;
  - (ii) whether you expect permission to be granted, giving reasons; and
  - (iii) if permission is granted the weight you expect to be given to the report at trial.

**(The relevant form is provided)**

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### **QUESTION 3**

In a civil case in the Supreme/High Court, the claimant did not attend the case management conference. No explanation for his absence was given, but the judge nevertheless proceeded with the conference and a trial date was set. The claimant attended the pre-trial review.

On the day the matter was set for trial, the claimant did not attend court, nor did his Attorney-at-law, who was stuck in Peru, having missed the flight that was to bring him home in time for the trial.

The defendant's Attorney-at-law was present, but did not know why the claimant's Attorney-at-law was not there. The trial judge, without hearing any evidence, gave judgment for the defendant.

The claimant, upset at what has happened, retains you as his Attorney-at-law.

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

**(The relevant form is provided)**

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#### **QUESTION 4**

A judgment for \$20,000,000 plus costs has been entered in favour of your client, the Claimant, in a claim in the Supreme/High Court in your jurisdiction.

It is known that the Defendant owns an apartment worth about \$12,000,000 and a motor vehicle worth about \$4,000,000. However, the Claimant has no information about any other assets the Defendant may hold. The Defendant having ignored a demand for payment subsequent to the entry of judgment, the Claimant now seeks your advice as to how he may proceed to recover the amounts adjudged to be due to him.

Advise the Claimant.

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### **QUESTION 5**

Newpen Inc., a company incorporated in Michigan USA, has been doing business in your jurisdiction for many years. Newpen Inc. is a distributor operating out of premises leased from your client, Office Owners Limited. It also leases (from other persons) the trucks used to distribute the retail goods for which it is the distributor in your jurisdiction.

Over the past year, there have been delays by Newpen Inc. in paying Office Owners Limited rent and it has now stopped paying altogether. It contends that Office Owners Limited has failed to properly maintain the leased premises. The lease does not say who is responsible for repairs.

Office Owners Limited contends that the premises are properly maintained and that the problem is that Newpen Inc. does not take reasonable care of the premises, and does not even conduct minor repairs as any lessee would be expected to do.

Office Owners Limited has brought a claim against Newpen Inc., which has recently filed a counterclaim.

The management of Office Owners Limited is concerned about whether, if it succeeds on its claim and its defence to the counterclaim, it will be able to recover its costs from Newpen Inc., and has consulted you for advice on the making of an application that might alleviate its concern.

You are required to:

- (i) Advise Office Owners Limited on:
  - (a) what application may be made that might alleviate its concern;
  - (b) whether the application is likely to succeed, giving reasons; and
  - (c) when the application should be made.
  
- (ii) Prepare a draft of the Order the Court should make if the application succeeds.

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**PART B**

**LAW OF ASSOCIATION**

**QUESTION 6**

John Finson, Andrew Hollingsworth, Matthew Henry and Jerry Benjamin have all been qualified engineers for some time with considerable experience gained from employment at various places. Two of them are mechanical engineers; one is a civil engineer and one, an electrical engineer.

Due to harsh financial times, all of them have been made redundant from their places of employment. John has been trying to persuade the others that they need to strike out on their own and that together they could offer a full service to anybody in need of engineering

services. He wants them to form a general partnership. Andrew is a cautious person and, although he is attracted to the idea of owning his own business, has some concerns about entering into partnership with the others and what it all means. Andrew has agreed to think about it and has raised certain issues with you. Arising out of his enquiries and your preliminary verbal discussions he has asked you to send him a letter setting out:

- (a) the general nature of a partnership arrangement; and
- (b) why the partnership agreement between them should address the following areas, indicating the specific issues which should be addressed in respect of each area:
  - (i) commencement and duration of the partnership;
  - (ii) decision-making and management of the partnership;
  - (iii) voluntary retirement of partners; and
  - (iv) the expulsion of partners.

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## **QUESTION 7**

You are the newly appointed company secretary and legal counsel of Johnson Bakery Company Limited. The company operates four bakeries which supply these goods to the entire country as well as to other countries in the Caribbean. Their bread and other baked goods carry the label “Red Ribbon” which is a registered trade mark of the company and is well-known by consumers. On the other hand the name of the company is not well known and this is a situation they wish to remedy for marketing purposes.

As a consequence, the Board of Directors wishes to change the name of the company to Red Ribbon International Bakers Limited and has sought your advice on the matter. Prepare a memorandum to the Managing Director, Mr. Alvin Johnson setting out:

- (i) any legal issues which may arise in respect of the chosen name;
- (ii) the procedure which will have to be followed in order to effect the change of name;  
and
- (iii) any alternative approach to achieving their marketing objective which the company might adopt in the circumstances, pointing out any difference(s) between the consequences of such approach as opposed to the change of name contemplated.

Prepare the memorandum to Mr. Johnson

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### **QUESTION 8**

Justin Durham is the chairman of the board of Pentronics Company Limited, a private company limited by shares. One of the company's directors, Horace Thompson, is causing the rest of the board some concern. He was appointed a director for a term of three years and also holds an executive position with the company as finance director for which he is separately compensated and which is conditional on his remaining on the board. His term as a director still has two years to run but the other directors believe it to be in the interest of the company that he be removed as soon as possible.

Neither the articles of the company nor the contract provides a clear solution and the remaining directors are quite certain that Mr. Thompson will not demit office voluntarily. They



have mandated Mr Durham to seek legal advice on the matter. Mr Durham has asked you to advise him as to the following:

- (i) whether there is any procedure for the removal of a director available under the law and, if so, the procedure involved;
- (ii) the procedure for appointing another director in Mr. Thompson's place.

Advise Mr. Durham.

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### **QUESTION 9**

Angel Piñero is a Colombian entrepreneur who owns a large furniture company in the Dominican Republic. The company was incorporated in the Dominican Republic and produces and sells furniture for the home and office.

Angel believes there is a market for his company's furniture in your jurisdiction as well as the skilled craftsmen to make it and wants to establish a place of business there as an overseas/external company.

Angel has emailed an inquiry to your firm as to:

- (i) the procedure involved in establishing a place of business in your jurisdiction as an overseas/external company; and
- (ii) any ongoing obligations which the company would have after it is established.

He has asked that your response be sent to his company's general counsel, Manuel Forza.

Draft the response to Manuel Forza.

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**END OF PAPER**