

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, JULY 2020**

**CIVIL PROCEDURE AND PRACTICE II
PARTS A and B**

TUESDAY, JULY 7, 2020

Instructions to Students

- (a) Duration: **24 hours**
- (b) Students shall enter their Examination ID Number **only**, not their names, on the cover page, the Academic Integrity Statement and on every separate page of the examination script.
- (c) The examination should be answered on letter-sized (8.5 x 11) paper only.
- (d) The examination should be submitted in Arial font 12 line spacing 1.5.
- (e) Students should clearly indicate the names of any cases with the citation and legislative provision/s (section number and Act) on which they rely to support their arguments. Consider using italics and/or bold text to make references prominent. (For example, *Rylands v Fletcher* [1868] UK HL1; **s.69 Real Property Act**). Sufficient detail is required to allow the examiners to understand the source of law that is being cited.
- (f) Footnotes, endnotes and bibliography are not required.
- (g) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (h) In answering any Part, 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.**
- (i) Each Student **must** ensure that their Anonymous ID in TWEN is changed to their four digit Examination ID Number, prior to submitting their examination script.
- (j) The examination script, with the cover page and Academic Integrity Statement saved in **ONE PDF DOCUMENT**, must be submitted in **ELECTRONIC** format via the **Year II JULY 2020 EXAMINATIONS, CIVIL PROCEDURE AND PRACTICE II DROP BOX** on TWEN by **Wednesday**,

July 8, 2020, NOT LATER THAN 9:00 a.m. (Jamaica) 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).

- (k) To upload the examination script which has been saved as one pdf document which includes the cover page and Academic Integrity Statement, you must follow these steps:
- Go to ***www.lawschool.westlaw.com***.
 - Log in using your username and password credentials and select the **TWEN** button.
 - Click on the link for “**Assignments and Quizzes**” located on the left-hand side of the navigation screen.
 - Select the relevant examination and the examination drop box as follows:
 - Year II students with Examination ID numbers between 2100-2162 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box A Year II - 2100-2162***”.
 - Year II students with Examination ID numbers between 2163-2232 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box B Year II - 2163-2232***”.
 - Year II students with Examination ID numbers between 2235 -1326 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box C Year II - 2235-2311***”.
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Instructions:

All figures referred to in this assignment are stated in United States Currency.

The claim is not, however, one for United States currency.

You must update each given figure to an equivalent sum in the currency of your jurisdiction, using the following exchange rates:

- Jamaica: J\$130.00 - US\$1.00
 - OECS: XCD\$2.70 - US\$1.00
 - Belize: BZD\$2.00 - US\$1.00
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PART A

You are an associate attorney-at-law at the firm of Lysol, Bleach & Associates, which acts for and on behalf of Best Private Hospital Limited (“BPH”) in Kinspiral, Jurisdiction. BPH wholly owns and operates a private hospital that provides specialised services in treating viruses. It is advertised as equipped to handle as many as 100 patients.

By way of contract dated January 6, 2020, BPH arranged with ZM4 Supplies Jurisdiction Limited (“ZM4J”), a company incorporated under the laws of Jurisdiction, for the provision of certain medical equipment such as ventilators, N95 respirators, isolation gowns and eye protection gear (“the Equipment”).

ZM4J is wholly owned by ZM4 Supplies America LLC (“ZM4A”), a company incorporated pursuant to the laws of California, United States of America (collectively “the ZM Companies”). BPH, ZM4J and ZM4A are all parties to the said contract.

The Equipment was ordered in anticipation of Jurisdiction eventually having persons suffering from the new Borali Virus (“the Virus”) by mid-February 2020. In December 2019, the Virus was being experienced in a country with strong business ties to Jurisdiction.

The total cost of the Equipment was a sum the equivalent of USD1,200,000 in the currency of your jurisdiction. The contract required the payment of a deposit of a sum the equivalent of USD200,000, in the currency of your jurisdiction, on the placement of an order (“the Deposit”). The balance was then to be paid within three weeks of delivery. Delivery was scheduled for January 20, 2020.

In keeping with the terms of the contract, BPH paid the Deposit on placing the order. On January 19, 2020, ZM4J delivered ventilators, respirators, isolation gowns and eye protection gear to BPH. Personnel at BPH immediately unpacked and started to use the supplies as they had about five patients suffering from the Virus.

A number of the ventilators malfunctioned and several members of staff at BPH came down with the Virus within a week of using them.

After checking the quality of the items delivered, the Procurement Manager of BPH, on January 27, 2020, wrote an angry letter to ZM4J, copying ZM4A. The letter indicated that (i) the ventilators were defective; (ii) the wrong respirators had been received; and (iii) the ZM Companies should consider the Deposit to be all that would be paid to them by BPH in the circumstances.

On January 30, 2020, BPH received a letter and was served with a number of documents including a Claim Form and Particulars/Statement of Claim. The ZM Companies have sued BPH for the balance due and owing on the order placed and delivered.

In the letter received on January 30, 2020, the ZM Companies reminded BPH that under the terms of the agreement they were permitted to substitute other types of products where those ordered were unavailable. The letter further indicated that BPH's staff must have improperly assembled and/or utilised the ventilators.

On February 10, 2020, a Defence is filed on behalf of BPH. The company defends the claim on the bases set out in its letter of January 27, 2020. BPH also counterclaims against the ZM Companies for losses suffered, including in meeting the costs of treating staff for the Virus and purchasing replacement ventilators.

A, B and C are separate and follow on the facts above but are independent of each other.

A. An order for standard disclosure was made at the case management conference (CMC) held on March 18, 2020. You advised your client of their obligations under the order. Your client conducted a thorough search and discovered the following documents:

- (i) An original copy of the contract dated January 6, 2020, signed by BPH, ZM4J and ZM4A.
 - (ii) The manual on the ventilators delivered to BPH by ZM4J and ZM4A. This manual was printed from the claimants' online website. BPH had disposed of the manuals that had accompanied the ventilators.
 - (iii) The specifications sheets on the masks delivered to BPH by ZM4J and ZM4A.
 - (iv) Letters dated February 18, 2020, February 21, 2020 and February 25, 2020 between the attorneys-at-law acting on behalf of the parties. These letters include details of negotiations between the parties regarding settling the matter.
 - (v) Letter dated February 3, 2020, from your firm to BPH advising on the strength of the case.
 - (vi) Letter dated March 17, 2020 from BPH to your firm advising that the Procurement Manager would not be able to attend the CMC scheduled for the next day.
 - (vii) Memorandum dated January 26, 2020, from an investigator engaged by BPH setting out his findings as to how the staff contracted the Virus. The memorandum indicated that the equipment was faulty and not functioning effectively and suggested BPH consider suing ZM4J and ZM4A.
 - (viii) Various court documents including statements of case, applications and affidavits filed in the claim.
- (a) Draft the list of documents to be filed on behalf of your client; and

(b) Advise on your treatment of the documents listed at (ii), (vi) and (vii).

Note:

The advice should not exceed **300 WORDS**.

B. The trial of the matter is scheduled for February 15, 2021. It is now February 1, 2021 and you are faced with the challenges set out below:

(i) The Procurement Manager no longer works at BPH and is unwilling to attend the trial. His evidence is essential to the conduct of the trial on behalf of the Defendant.

(ii) BPH discovers a copy of a draft of the angry letter dated January 27, 2020 from their Procurement Manager to ZM4J, copying ZM4A. This copy of the letter had a notation on its front page. The notation had been made by the Chief Executive Officer of BPH and stated as follows –

I approve. We will not pay these people any more. They have cost us too much and they promised a lot.

(iii) BPH had obtained an order at the CMC, permitting them to call Dr Athelrod Beocca, as an expert, at the trial. BPH discovers that Dr Beocca used to be employed to a company wholly owned by the majority shareholder of BPH.

Write a letter to your client:

- (a) setting out how best to proceed, in light of the challenges at (i) and (ii); and
- (b) indicating the concern you have in relation to the challenge at (iii).

Note:

The letter should not exceed **1500 WORDS**.

C. BPH succeeds at the trial of the claim and is awarded damages on the counterclaim. They have also been awarded costs in relation to the claim and the counterclaim. The total judgment debt amounts to a sum the equivalent of USD800,000, in the currency of your jurisdiction, together with interest.

The ZM Companies, who were found jointly and severally liable, have filed a Notice of Appeal in respect of the judgment.

Your client indicates that it would like to immediately pursue enforcement proceedings against the judgment debtors. It provides you with a report prepared by its investigators listing the assets, within the jurisdiction, that are owned by ZM4J. The report indicates that ZM4A owns no assets in the jurisdiction.

The list of assets owned by ZM4J is as follows:

- (i) Three delivery vans valued at sums the equivalent of USD50,000, USD35,000 and USD30,000, respectively, in the currency of your jurisdiction; and
- (ii) Land, valued at a sum the equivalent of USD500,000 in the currency of your jurisdiction, subject to a mortgage. A sum the equivalent of USD100,000, in the currency of your jurisdiction, remains outstanding on the mortgage. The land houses a strip mall, which is rented to various tenants for a total income of a sum the equivalent of USD100,000 per month in the currency of your jurisdiction.

Write a memorandum to your senior partner advising on whether or not the client may proceed to enforce the judgment and, if so, how best to do so.

Note:

The memorandum is not to exceed **1300 WORDS**.

PART B

(This Part should be commenced on a new page and titled Part B)

The law firm of Cadbury, Roland and Associates is a law firm in your jurisdiction, with offices at 12A Lollipop Street in the capital. The partners in the firm are Alfred Cadbury, Ruby Roland and Ruby's son, Richard Roland. You are employed to the firm as one of four associates.

Earlier today, you received a client file from Richard Roland labelled Sadie Edwards – File # 102/2020ED-COM, with the memorandum that follows affixed to the cover.

INTER-OFFICE MEMORANDUM

To: *Eager Associate*
From: *Richard Roland*
Date: *July 7, 2020*
Subject: *Sadie Edwards*

Mrs. Sadie Edwards is a longstanding client of the firm. Mrs. Edwards sent me the attached email on July 6, 2020 about a proposed commercial venture with her son, Jameel Edwards, and another unrelated matter concerning her aunt.

I need you to read the email and prepare a letter in response for my signature. In the letter I want you to address her queries in respect of her proposed new business.

Insofar as her aunt's matter is concerned, please indicate in the letter to Mrs. Edwards that we would prefer to talk to her aunt directly, particularly as we are likely to need additional instructions. We are therefore asking that she call and make an appointment for the aunt to see me on Monday or Tuesday of next week.

In the meantime, however, I would like to take steps to prepare for that meeting. For the time being, I am assuming that the company is either defunct and just a shell, or that it is legally operational, but solvent. Let me have a memorandum setting out the procedural steps for dissolving the company in either case. I would appreciate your referencing the applicable statutory provisions in your memorandum so that I may read them for myself, if necessary.

Kindly ensure that the letter to Mrs. Edwards and the memorandum to me are on my desk no later than 9:00 a.m. tomorrow.

The email from Mrs Edwards reads as follows:

“From: edwardssadie23@gmail.com

Date: Monday, July 6, 2020 at 3:08 p.m.

Subject: Re Advice needed

To: richard.roland@cadrolaw.com

Cc: jameel.edwards@gmail.com

Dear Richard,

How are you? I hope that you and your family are well and staying safe. At times like this, I really miss my late husband, Kingsley. You know that I worked alongside Kingsley in his business for many years but didn't want to take it over when he died. Now that some time has passed, I have been thinking about what I want to do with my life.

Recently, my son, Jameel, and I have been looking at a medical and dental supplies business. There seems to be a need for a reliable and cost-effective supply of these items amongst our doctors and dentists. Jameel has made some contacts with suppliers in China, and the prospects for such a business are looking good. I am not jumping in without thinking everything through though, and I need your assistance with one aspect of it.

I want to go into the business with Jameel. A niece of mine, who is in banking but did one or two law courses in her studies, told me that we have two options in terms of how we

structure the business arrangement, a general partnership or a registered company. In fact, I discussed the matter with my own bank manager and he told me the same thing but seemed to have a preference for a company. I'm not sure why, and neither of them have been able to really explain it to me.

As a result, I still do not know how I will structure the arrangement with Jameel, and I need some information and advice from you on the two alternatives I mentioned. Could you answer the following questions for me? Why might the company option be preferred to the general partnership option? If we went the route of a company, is there is any particular type of company you would recommend and, if so, why would you recommend that one? Finally, what are the steps involved in forming it?

I would also be grateful to get your advice, from a legal perspective of course, on the name we are thinking of using for the business which is "DENMED Global Suppliers".

As an entirely separate matter, an aunt of mine who depends on me for all sorts of advice, despite having two adult children, called me in some distress last night. Ironically, it was about a company that her son, my cousin, formed in 2018.

My cousin has migrated and my aunt, Mrs Edna Charles, says that she, her husband and my cousin are the shareholders and directors. It was really my cousin's company. She and my uncle had nothing to do with it and she doesn't want any trouble. He says that they must see what can be done to get it dissolved as he has no interest in keeping it. He claims that it never really did anything, but she is not so sure. My aunt is very worried about what it will take to have the company dissolved. I told her that I was going to consult you on my matter anyway and I would ask.

I hate to put pressure on you, but I really would appreciate it if you could get back to me in a couple of days, particularly in relation to my matter, but also in relation to my aunt's, if you can.

Looking forward to hearing from you.

Kind regards

Sadie

Prepare the letter and memorandum as instructed.

Note:

The body of the letter should be no more than **1300 WORDS** and the body of the memorandum no more than **1200** words.

END OF PAPER