

**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**

MONDAY, OCTOBER 5, 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 OCTOBER 2020 EXAMINATIONS, CIVIL PROCEDURE AND PRACTICE II DROP BOX** on TWEN by

Tuesday, October 6, 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 2235-2311 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box C Year II - 2235-2311***”.

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

PART A

- A.** You are an associate attorney-at-law in the firm, Wash, Sani, Ties & Company, which acts for and on behalf of the claimant, Profits Commercial Bank Limited (PCB), in their claim against Kylie Kolchar. PCB has claimed against Kylie, as guarantor, for a sum due and owing, being the equivalent of US\$500,000, in the currency of your jurisdiction, together with interest and costs.

The claim states that Kylie's husband, Karl Kolchar, had signed a loan agreement with PCB and Kylie had guaranteed that loan. Karl was listed as a defendant in the claim form but had died penniless six months ago, having been fatally shot.

The claim form, particulars of claim and other originating documentation were served on Kylie last Monday.

Last Tuesday, Kylie contacted PCB and met with Recover Itall, PCB's loans officer with responsibility for the recovery of the loan. She told him that her husband had died, without a penny to his name, and that she had not known about the loan prior to being served with the documents the day before.

Kylie also pointed out that she was not in the island at the time the relevant loan documents were allegedly signed. She further indicated that when she went online and checked her husband's bank accounts, she realised that he had been paying the bank regularly up until six months ago. The sum claimed was, therefore, in any event, incorrect.

She then indicated that it really doesn't even matter that she has been sued, as she is sick of the jurisdiction. In fact, she is selling off all her assets and returning to her real home in Sweden.

Itall today attends your office to discuss the matter with you. He tells you about the meeting with Kylie last week, and states that he is concerned that, if successful, the bank would not be able to recover the sums outstanding, in light of Kylie's plans to leave the jurisdiction. He instructs you that he has tracked down the bank's video footage from the date the loan agreement was signed, and it shows that Kylie and Karl had both attended the bank that day.

Write a letter to your client advising on the most appropriate step(s) available to it to address the stated concern. This advice is to include important matters that must be adhered to when pursuing the step(s) and the likelihood of success.

Note:

The letter should not exceed **1000 WORDS**.

- B.** On June 24, 2020, at the case management conference held in the same matter set out in **A**, your client applied for permission to rely on the expert evidence of Dr

Pen Manship, a Forensic Document Examiner and Handwriting Expert with over 20 years' experience. PCB has engaged Dr Manship on a number of occasions.

The application was met with much opposition from the defendant.

The Judge's decision was expressed as follows:

The Defendant opposed the application for permission to rely on the expert evidence of Dr Manship on the ground that he is too connected to the outcome of the case, and I consider there to be much merit in the Defendant's position. The Court therefore orders as follows:

- (a) *The Defendant's application to rely on Dr Manship as an expert witness and for a report to be prepared by him is dismissed.*
- (b) *Costs of this application are to be paid by the Claimant to the Defendant.*
- (c) *The Claimant is to prepare, file and serve this order.*

Assume it is now June 26, 2020. Following communication with your client, you are instructed to take the steps necessary to appeal the decision.

- (i) Give details of the process that must be followed to commence the appeal of this decision.
- (ii) Prepare the requisite document to start the process.

Note:

Your answer to (i) above should not exceed **500 WORDS**.

C. The background facts are as previously provided in **A**.

Your firm has been exchanging without prejudice communications with Basher, Bass and Brace, the Attorneys-at-Law acting for and on behalf of Kylie, with the aim of settling issues between PCB and Kylie.

The parties have agreed that Kylie will pay PCB a sum the equivalent of US\$300,000 in the currency of your jurisdiction, in full and final settlement of the sum outstanding on the loan that is the subject of the claim. Kylie will be responsible for her own legal costs. PCB will be responsible for meeting its own legal costs.

As an additional term of the settlement, PCB will grant a loan to Kylie for a sum the equivalent of US\$40,000 in the currency of your jurisdiction. The loan will be for a term of two years at a preferred rate of interest of 10% per annum. The loan will be utilised by Kylie to purchase a motor vehicle that will be used by her daughter, Brittanæ, who will remain in the jurisdiction after her mother relocates to Sweden. The loan will be secured by the motor vehicle purchased.

PCB will write off, as a bad debt, a loan to Kylie which has a sum the equivalent of US\$2,000 in the currency of your jurisdiction remaining outstanding. This loan is

currently with a debt-recovery firm, GetItBack Limited. GetItBack had sent numerous demand letters to Kylie and had recently commenced proceedings against her in the lower court.

The parties would each like a court order setting out only the terms necessary, and to be at liberty to easily enforce any obligations not met by the other.

You are required to prepare a memorandum to your senior partner setting out:

- (i) how best to achieve the objectives set out above;
- (ii) details of the content of any document(s) needed to carry out the parties' objectives; and
- (iii) the terms that ought to be in the order to be signed by the Judge/Registrar and why.

Note:

The memorandum should not exceed **1000 WORDS**.

PART B

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

You are an associate attorney-at-law at Basken and Robyns, a law firm in your jurisdiction. Amanda Thomas is a long-time client of the firm.

Amanda is one of four partners in a firm of engineers that was established six years ago. The firm, LogiTech Engineering, a general partnership, has no written partnership agreement. The firm currently operates business from property owned by one of the partners, Ricardo Baker. Recently, the partners have been discussing the possibility of adding two new partners. Amanda thinks, and her partners agree, that it would be prudent to put a written partnership agreement in place before they do so.

Amanda, with the full consent of her partners, is also involved in another business. She and her three siblings are directors and shareholders of a thriving, well-established construction technology company, Building Ingenuity Solutions Limited ("BISL"). BISL is a private company limited by shares incorporated in your jurisdiction and, apart from Amanda and her siblings, it has 15 other shareholders, who are also related to Amanda.

BISL is developing a new product which, it believes, could be the next "big thing" in construction technology. The directors want BISL to issue redeemable preference shares to a select group of wealthy persons to help fund the product development. Currently, the articles of incorporation/association of BISL give authority over the issue of shares to the directors but they, Amanda included, wish to make the decision to issue shares subject to shareholder approval. It is proposed that the articles of incorporation/association be amended to require that any new issue of shares be approved by special resolution of the shareholders in general meeting and that this amendment be done within the next three

months. The annual general meeting of the company is not due to be held for another eight months.

In respect of LogiTech Engineering, Amanda is seeking advice on the content of the clauses you recommend be included in the partnership agreement that will ensure:

- (i) that the partners share in the profits of the partnership on a merit basis, and that each partner receives a steady stream of income throughout the year, before profits are ascertained at year-end;
- (ii) that a partner can be removed from the partnership for breaches of the partnership agreement;
- (iii) that suitable partners can be seamlessly added to the partnership; and
- (iv) that the partnership's right to use the property from which it is currently operating is secure.

In respect of BISL, Amanda is seeking advice on the process for amending the articles of incorporation/association of the company.

In addition, following a referral by Amanda, the firm recently received a letter from Tom Rosseau, General Counsel at Sud Marseille Construction SARL ("Sud Marseille"), a private limited liability company incorporated in France. BISL's new product is being developed as part of a joint venture with Sud Marseille. In order to facilitate its participation in the joint venture and the marketing of the new product in the Caribbean, Sud Marseille wishes to establish a physical presence or branch in your jurisdiction but is uncertain about how to do so, without incorporating a subsidiary. Sud Marseille has already secured a lease for premises in the jurisdiction for the purpose of establishing an office for its operations.

Your supervising partner, Lillia Basken, has asked that you prepare:

- (a) a letter from her to Amanda, for her review, outlining the recommended content of the clauses of the proposed partnership agreement for LogiTech Engineering (but not drafting the actual clauses) which would cover the issues at (i)-(iv) above and setting out the steps and documents required to amend the articles of BISL as proposed; and
- (b) a memorandum to her (Lillia Basken) setting out the requirements under companies legislation (referencing specific provisions) with which Sud Marseille must comply in order to establish the branch and any ongoing obligations which Sud Marseille will have under that legislation once it has established a branch in your jurisdiction.

Note:

The body of the letter in (a) should not exceed **1200 WORDS**.

The body of the memorandum in (b) should not exceed **1050 WORDS**.

END OF PAPER