

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2011

CIVIL PROCEDURE AND PRACTICE II

(WEDNESDAY, MAY 18, 2011)

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 ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

Following a motor vehicle accident earlier this year, Jack Jackson brought a claim in the Supreme/High Court against your client, Donald Donaldson, for negligence. Mr Jackson seeks damages for personal injuries sustained from the accident. At the time of the accident, he was driving a motor vehicle owned by his aunt, who resides in your jurisdiction. Statements of case having been exchanged, you have advised Mr Donaldson that the outcome of the case will depend on which eyewitness' evidence is believed at trial.

Mr Donaldson has discovered that Mr Jackson spends most of his time in Florida, USA, where he operates a small business. Most members of his family live in your jurisdiction and he comes to your jurisdiction at least every 3 months. When he comes to your jurisdiction, he stays with his aunt, and her address is given as his in the Claim Form.

Mr Donaldson has also learned that Mr Jackson's business in Florida has recently not been doing well. The case management conference is scheduled to be held in a month. Mr Donaldson is concerned that if he were to succeed in defending the claim at trial, and be awarded costs, he may not be able to enforce an order for costs against Mr Jackson in the circumstances. Your calculations show the amount likely to be due to Mr Donaldson on such an order for costs, at the conclusion of trial, would be the equivalent in the currency of your jurisdiction of US\$10,000.

You are required to prepare –

- (i) a draft [notice of] application for court orders, in the light of your client's concerns; and

- (ii) a brief letter to Mr Donaldson advising on the amount the Court should, in your view, order as security and how that determination is to be made by the Court, assuming the application would succeed.

(The relevant form is available.)

QUESTION 2

The Claimant in a claim in the Supreme/High Court of your jurisdiction obtained judgment in default of acknowledgment of service. The Defendant (John Brown) has applied to set it aside on the basis that he was not personally served with the Claim Form, and when the affidavit of service filed by the Claimant says he was served, it must be referring to another John Brown. Alternatively, he contends that he has a real prospect of successfully defending the claim.

You are required to advise the Claimant as to what order(s) regarding costs would be appropriate in each of the following situations and why –

- (i) an order is made setting aside the default judgment on the basis that the Claim Form was not served on the Defendant;
- (ii) subsequent to an unsuccessful oral application for permission to appeal by the Claimant when the order at (i) was made, an order is made by the Court of Appeal giving the Claimant permission to appeal;
- (iii) following (ii), and as a result of a two-hour hearing of the Defendant's/Respondent's application at the case management conference in

- the appeal, an order is made by the Court of Appeal requiring the Claimant/Appellant to provide security for costs of the appeal; AND
- (iv) the appeal is dismissed, with the Court of Appeal finding that the Defendant/Respondent was personally served with the Claim Form but that he had a real prospect of successfully defending the claim.
-

QUESTION 3

The two parties to a claim in the Supreme/High Court in your jurisdiction are desirous of settling issues in dispute between them, some of which were the subject of the claim. The dispute relates substantially to a property in which they both have a legal interest, but where the beneficial interests are disputed. Your client, the Claimant, advises you that the parties wish to agree that the Claimant is to pay the sum of \$150,000 to the Defendant; the Claimant is to acquire the Defendant's legal interest in the property and costs are to be agreed or taxed. Both parties want to ensure that they can easily enforce any obligations not met by the other. They would like a Court Order but would rather that only those terms that actually need to be set out in the Order be included in it.

You are required to prepare:

- (i) the document(s) needed to carry out the parties' objectives, particularly the objectives of your client; and
- (ii) a letter to your client briefly explaining what terms ought to be in the Order to be signed by the Judge/Registrar and why.
-

QUESTION 4

Following an order for standard disclosure, you prepared a List of Documents which was executed by the Claimant, Mary Maryland. Included in Part 2 of Schedule 1 to the List of Documents were (a) a letter from Ms Maryland to your firm, dated January 2, 2010, requesting your advice and (b) the advice you provided. The attorneys representing the Defendant, Daniel Daniels, requested copies of the documents on the List of Documents on their undertaking to pay the reasonable cost of copying them. You assigned this task to a student in your firm who had just completed her Bachelor of Laws Degree and was soon to start Law School. The student recognized that the letter of advice should not be provided. However, among the documents sent to the Defendant's attorneys, under cover of a letter that did not list the documents sent, was the letter dated January 2, 2010. You therefore did not realize, at the time, what had occurred.

In seeking to agree a bundle of documents for trial, the Defendant's attorneys requested that the letter be included, which is when you discovered what had occurred. You wrote, in response, asking that the copy of the letter be returned to you as it ought not to have been sent to them. They, in turn, said that they intend to rely on the letter as it assists their case and you must have known what you were enclosing when you signed the letter sending the copy documents to them.

It is important to your client that the letter of advice not be received in evidence (as it may be thought to contain certain admissions based on the information she had at the time). She has instructed you to take the necessary steps to protect her interests in that regard. On those instructions, you are required to prepare –

- (i) a draft [notice of] application for court orders applying for such order(s) as would be appropriate in the circumstances; and

- (ii) a letter to your client advising on whether she can prevent the letter of January 2, 2010 from being admitted into evidence at trial without filing an application.

(The relevant form is available.)

QUESTION 5

You are judicial clerk to a judge of the Supreme/High Court before whom a claim is set for trial for two days at the start of next week. The Claimant is not represented by a lawyer, and you have just received a letter she sent to the Registrar of the Court. The letter was received by the Court Registry one week before the trial date, and reads as follows:

“Dear Registrar, I am so sorry to do this at this stage, but I need to travel now to deal with a personal matter. I will therefore not be able to attend the trial next week. I hope it can be set for another date.”

It was copied to the Defendant’s lawyer. Both parties have been in compliance with the Court’s orders and rules so far, though the Court’s file reveals that a similar occurrence had taken place when the pre-trial review was first scheduled. The pre-trial review judge had adjourned the hearing and ordered costs against the Claimant. The Court’s file indicated that the reason on that occasion was that her son in Atlanta had to have emergency surgery and she needed to be with him.

At the judge's request, you are required to prepare a memorandum advising the judge on what options are open to her when the matter comes up for trial next week, and as to the orders you would advise that she make.

PART B
LAW OF ASSOCIATION

QUESTION 6

DO EITHER (a) OR (b).

(a) Maggie, Joan, Stephanie and Faith are middle-aged ladies and fitness enthusiasts. In an interview which you have with them, they advise that they have been looking for indoor facilities which provide resistance training suitable for ladies of their age and fitness level. This has not proved to be very successful. In fact, in their search for a suitable provider, they have encountered many women who are looking for just the same facility.

Having exhausted all possibilities, they are seriously considering establishing their own gym. However while they know exactly what kind of training, equipment etc. they wish to provide and obtain, they are in a quandary as to what legal structure they should adopt. All they have indicated is that they wish to retain ultimate control of the entire venture.

(i) What options do they have as to the legal structure which they may adopt?

- (ii) What are the factors which you consider relevant to their choice of legal structure? Why are these factors relevant?

OR

(b) John and Tom wish to form a general partnership.

- (i) What advice would you give them on the steps and documents required to form the partnership?
 - (ii) What instructions would you require from them in order to draft those documents?
-

QUESTION 7

You have been invited, along with your boss, Linnette Hanson, the general counsel and corporate secretary of a private company limited by shares, to a meeting with the Managing Director and other senior executives of the company. The meeting is being held to discuss matters relative to the company's upcoming Annual General/Ordinary Meeting and a proposal to change the company's name. In relation to the latter proposal, the company's management has asked for a briefing on –

- (i) what is involved in the process, including a description of the steps and documents which would need to be taken and prepared;
- (ii) any legal and/or practical implications of such a change; and
- (iii) how the change may be achieved in the shortest possible time.

Prepare the outline for a detailed presentation on the matter to the meeting.

QUESTION 8

Private Security Company Limited is owned by shareholders, Lee Hodges and Mark Mason. They had formed the company at a time when crime in the jurisdiction had forced persons of high net worth to seek security services to deter would-be kidnappers and other criminals from seeking to separate them or their families from their wealth. Unfortunately, due to a general downturn in the economy, together with the loss by many persons of significant sums through unwise investments with spurious purveyors of investment products, the company is in financial difficulty and the shareholders are minded to terminate its life and seek their fortunes in other ventures.

Messrs. Hodges and Mason have come to you for advice as to how the termination of the company's life might be achieved in the circumstances and to be informed as to the process from start to finish.

Advise Messrs. Hodges and Mason.

QUESTION 9

Precious Prentice is passionate about tea. Her passion extends not only to drinking it for refreshment, but also to seeking out and sampling different types of tea from all over the world, learning and spreading the word on proper brewing methods and also on the many health benefits and proper usage of teas. Precious is also a big fan of tea parties and relishes the refinement and elegance of "Afternoon Tea". She has, as a consequence, been hosting fortnightly tea parties at her home to which, at first, she invited just very close friends and family members (especially as she is determined only

to use real china and silver plated cutlery of which she has only a limited supply). Lately, however, she has been receiving requests from persons outside that circle for invitations to tea.

Precious is now seriously considering forming some kind of association with other existing or would-be tea enthusiasts (to be carefully selected, of course) to pursue all of the activities related to tea about which she is so passionate. She is not concerned with making a profit and would like it to remain as private as possible but with members taking part in the activities of the group and the administration of it on a very democratic basis and contributing in some way to the cost of its activities.

Advise Precious as to –

- (i) the form of association which would best suit her purpose;
 - (ii) the steps and document(s) required to form it; and
 - (iii) the content of any such document(s) and accordingly the additional instructions you will require from her to prepare same.
-