

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND-YEAR EXAMINATIONS, 2005

CIVIL PROCEDURE AND PRACTICE II

(WEDNESDAY, MAY 18, 2005)

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

Techoplex Ltd. wish to commence proceedings against Decracel Inc. (a company incorporated in Texas) for an amount of \$900,000 which they claim as being due in respect of goods supplied under a contract of sale. The contract provided for disputes to be referred to the courts of your jurisdiction. Decracel Inc. own equipment to the value of \$2.87M which is housed in a warehouse in the capital city of your jurisdiction awaiting shipment to Texas within 14 days. They own no other assets in the jurisdiction.

- (a) Advise Techoplex Ltd. as to the procedure necessary to obtain an injunction to prevent Decracel Inc. from removing their assets from your jurisdiction or from selling or otherwise disposing of those assets.
 - (b) Discuss the principles which would be applied if Techoplex Ltd. were to obtain an injunction and Decracel Inc. apply to have it discharged.
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QUESTION 2

Discuss with reference to decided cases:

- (a) What is Disclosure/Discovery?
- (b) Can a third party be required to provide information as to the identity of a person who is a tortfeasor against a Claimant?

QUESTION 3

- (a) State the guidelines for the granting of a Search/Anton Piller Order.
- (b) Tom, Dick and Harry were employees of Express Builders Limited. They suddenly resigned their positions with the company and took with them certain trade secrets and the names of the customers of Express Builders Limited.

Tom, Dick and Harry have set up a rival business to Express Builders Limited. They solicited and obtained contracts from Express Builders Limited, former customers, whose names were contained in the lists taken from that company. They also compiled lists of their own customers. Express Builders sought and obtained an injunction against Tom, Dick and Harry. There were irregularities in the execution of the injunctive order.

Later in the proceedings, an interlocutory injunction, in wide terms, was obtained with the consent of Tom, Dick and Harry. This injunction contained the usual undertaking as to damages and was in restraint of the business activities of Tom, Dick and Harry. As a consequence, their business collapsed.

The matter is now before the Court for hearing.

Discuss the chances of the parties' success with reference to decided cases.

QUESTION 4

- (a) State the usual conditions for granting security for costs in your territory.
 - (b) Briefly discuss any three of those conditions making reference to decided cases.
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QUESTION 5

- (a) State the various methods by which an action may be determined without a trial. Briefly describe the characteristic of each such method.
- (b) On the date when the claimant's/plaintiff's case is called up for trial in the High/Supreme Court the claimant/plaintiff did not appear. The trial judge dismissed the action and awarded costs to the defendant.

The claimant/plaintiff seeks your advice.

Advise the claimant/plaintiff.

PART B

QUESTION 6

Bambie and Lambie are self designated community leaders of Neverland Village. They seek your advice on the available options to form an association of the

youths in the community for the promotion of self empowerment, equal rights and justice. They have big dreams of the movement growing beyond the community and perhaps even regionally.

Advise Bambie and Lambie.

QUESTION 7

Mr. Zealous has just been appointed acting general manager of Hoses and Accessories Ltd and is anxious to show his mettle with a view to securing his confirmation to the position.

At a recent meeting of the Board of Directors, it was unanimously agreed that the company's name did not adequately reflect the company's core business of selling products required for fire prevention and firefighting, as a result of which the company's sales did not show any significant benefit from the recent spate of fires in the island. Mr. Zealous was therefore mandated to make the required arrangements to facilitate the legal process of changing the name of the company to "FIRES R' US LTD.", a name which board members felt would improve the company's profile.

Acting on this mandate, Mr. Zealous issued the following instructions to his personal assistant:

Miss Bline,

(a) Please prepare the following resolution for my signature, ASAP!

"WHEREAS on the 10th day of May, 2005 the Board of Directors at a meeting held at the Head Office of the company it was agreed by all

that the name of the company be changed to "FIRES R' US LTD." with the hope that the public is more aware of the company's core business especially at this time when the Fire Service is in dire need of assistance;

BE IT RESOLVED to change the company's name as aforesaid with immediate effect.

*Sgd. Peter P. Zealous
Managing Director (Ag.)*

(b) Send a notice immediately to TV K and Radio CCC advising the public of the name change. Request that the notice be read during today's news broadcast.

(c) Order new stationery with the new name. Request express delivery on this order."

Mr. Curose, a shareholder who heard the notice on Radio CCC made further investigations and now seeks your advice on the matter. He is concerned that the required legal procedure was not followed and in any event that the strategy is nothing more than a vulgar attempt to exploit a very serious national problem.

Mr. Curose has asked that you advise on the legality of the above outlined instructions issued by Mr. Zealous.

Advise Mr. Curose.

QUESTION 8

Louis Ling and his wife Mae, promising young designers, are in discussions with philanthropist, Jimmy Weltodo, to enter into a partnership to produce a line of formal wear. It is contemplated that Mr. Weltodo will provide the financial support and Mr. and Mrs. Ling their expertise in the design and construction of the garments.

Advise Mr. and Mrs. Ling on the procedural steps required to form the partnership and the terms to be taken into account in the arrangement.

QUESTION 9

Mary, Sue and Ellen have been operating a clothing store under the name "Clothes Line Ltd.", a private company limited by shares. The young women have not been getting on well and in any event business has not been as good as anticipated.

Sue, who is responsible for administration, seeks your advice on terminating the business.

Advise Sue on the several approaches to the winding up of the company, indicating a possible approach that may be appropriate in the circumstances.
