

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

**LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, MAY 2021**

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

**MONDAY, MAY 10, 2021**

**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 to be used.
- (g) Where word limits have been given, the actual word counts must be included at the end of your answer. Students who have exceeded the word limits will be penalised.
- (h) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (i) In answering the question, 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.**
- (j) 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.

- (k) 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 MAY 2021 EXAMINATIONS, CIVIL PROCEDURE AND PRACTICE II DROP BOX on TWEN** by **Tuesday, May 11, 2021 NOT LATER THAN** 9:00 a.m. (Jamaica) 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).
- (l) 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 2100-2177 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box A Year II - 2100-2177”**.
    - Year II students with Examination ID numbers between 2179-2252 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box B Year II - 2179-2252”**.
    - Year II students with Examination ID numbers between 2253-2326 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box C Year II - 2253-2326”**.

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### **PART A**

Mrs. Denise Pebble is a widow and is the mother of three children. She is employed to a pharmaceutical company in Jurisdiction as Marketing Manager. However, because of the COVID-19 pandemic, from the middle of last year she has been working from home. Mrs. Pebble was pleased to be working from home since she was able to also supervise her children’s online activities and schoolwork at the same time.

Mint Stone Limited (Mint Stone), a limited liability company incorporated in Jurisdiction, is a developer, and carries out blasting and construction operations. The blasting operation involves, amongst other things, the use of explosives and fuses. Notwithstanding the pandemic, the construction industry remained active.

In June 2020, Mint Stone purchased property (the site) adjoining the premises where the Pebbles live. There was a large six-bedroom house on the site. Mint Stone acquired the site with a view to building townhouses for sale. Mint Stone received all relevant building and other approvals.

On Monday November 2, 2020, Mint Stone was in the early stages of demolishing the house and preparing the ground and foundation for construction at the site. It started its blasting operations at 12 noon.

Mrs. Pebble and her children were at their home. At about 12:15 p.m., Mrs. Pebble suddenly heard a loud explosion. She felt the whole house vibrate, and the ground shake. Terrified, she watched in horror as her furniture and appliances crashed to the ground. She heard her children scream whilst the desktop computer and laptops they had been using tumbled to the ground, broken and useless.

Fortunately, Mrs. Pebble and her children were not hurt. However, when the noise, and screams had died down, Mrs. Pebble looked around at the walls of her home and saw cracks and damage in various places. Mrs. Pebble was certain that the damage was due to Mint Stone's blasting operations.

Mrs. Pebble has a House and Contents Insurance policy, but it does not cover damage due to blasting.

You are an associate in the law firm of Darby, Kramer & Ellington working under the supervision of Senior Partner Elliott Darby. On November 3, 2020, Mrs. Pebble contacted your firm for consultation. You and Mr. Darby met with her and took a statement about the incident. Mr. Darby advised Mrs. Pebble to retain well-known civil engineer Mr. Earnest Rubble to examine the cracks in the walls, and other damage and to assist in determining the cause.

After receiving Mr. Rubble's preliminary views, and on your client's instructions, by letter dated November 7, 2020, you wrote to Mint Stone demanding compensation on behalf of Mrs. Pebble and requiring Mint Stone to immediately desist from its blasting activities.

Mr. Mortimer Tough of the law firm Reid Gould and Green (RG&G) acts for Mint Stone. An exchange of correspondence ensued between your firm and RG&G, including attempts at settlement.

However, efforts at reaching an amicable solution proved fruitless. On December 8, 2020, you filed a claim and particulars/statement of claim in your Supreme/High Court on Mrs. Pebble's behalf, seeking damages and injunctive relief against Mint Stone under the rule in ***Rylands v Fletcher*** [1868] U.K. H.L.1, and/or nuisance and/or negligence and/or breach of statutory duty.

On January 2, 2021, RG&G filed a defence on behalf of Mint Stone denying that any actions on its client's part caused damage to Mrs. Pebble's premises or its contents. The defence further asserts, amongst other matters, that Mint Stone's blasting operations

occurred within a controlled environment and that it occurred at a safe distance from your client's home and its environs. Mint Stone denied that there was any escape of any material from its site and denied that its blasting activities caused vibrations to come onto or affect Mrs. Pebble's property, thereby causing damage, or at all. Mint Stone stated that it has complied with all relevant statutory requirements and is not in breach of any duty of care.

After your firm's initial letter of November 7, 2020, Mint Stone temporarily halted its blasting operations. However, shortly before the Case Management Conference (CMC), its blasting activities started up again. This caused you to apply for interim relief.

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

**A.** At the CMC held on May 5, 2021, a number of applications were heard and orders were made by Maloney J.

- (i) The judge refused the application made by you and Mr. Darby, on behalf of Mrs. Pebble, seeking an interim injunction restraining Mint Stone from carrying out blasting operations on the site until trial.
- (ii) The judge also refused your application to appoint civil engineer, Mr. Rubble, as an expert witness in the matter.
- (iii) One of the orders made by the judge was that there be an exchange of witness statements. The formal order was filed and has been perfected. However, on its return from the Court registry, you peruse it, and realize that the order that the judge had made regarding filing and service of witness statements is missing from the formal order. You also notice that the date fixed for the pre-trial review has, in error, fallen on a Saturday, which is not a day when the Court sits. None of the Counsel present had noticed this during the CMC.

The applications at (i) and (ii) above had been vigorously opposed by Mr. Tough on behalf of Mint Stone. The judge ordered the costs on each of the two applications, as well as the costs of the CMC generally, to be costs in the claim.

You and Mr. Darby have spoken to Mrs. Pebble and she wishes to be advised whether she can appeal against the orders refusing the interim injunction and refusing to appoint the expert.

Mr. Darby has asked you to prepare a Memorandum providing details of the steps involved in appealing the orders referred to at (i) and (ii) above, giving the bases for your views, and advising how to deal with the issues at (iii).

**Required:**

With reference to authorities, prepare the Memorandum to your Senior Partner.

**Note:**

The body of the Memorandum should not exceed **1000 WORDS**.

- B.** One of the orders made at the CMC was for the filing and service of a List of Documents by June 18, 2021, and inspection to take place by June 25, 2021. You advise your client of her obligations under the order. You have the following documents for consideration:
- (i) Letter dated November 6, 2020 from your firm to Mrs. Pebble advising as to the strength of her case.
  - (ii) Copy letter from your firm to Mint Stone dated November 7, 2020, sent prior to filing the claim, making demand for compensation and cessation of Mint Stone's blasting activities.
  - (iii) RG&G's letter dated November 11, 2020, to your firm denying liability on behalf of Mint Stone.
  - (iv) Correspondence between your firm and Mrs. Pebble's neighbours, Mr. Dino Vivid and Mrs. Wilma Memory, when litigation was pending, for the purpose of obtaining information or evidence for use in the claim.
  - (v) Copy letter from your firm to RG&G dated November 14, 2020, letter dated November 18, 2020 from RG&G to your firm, and copy letter dated November 25, 2020 from your firm to RG&G, being correspondence passing between the two firms, attempting to negotiate a settlement of the matter.
  - (vi) Copy of Report dated December 21, 2020 commissioned by Mint Stone from its Chief Blaster, Solomon Hinds, primarily for the purposes of obtaining information or evidence for use in the litigation, but also partially for the purpose of advising on safety measures to be taken by Mint Stone in its blasting operations. (Mrs. Pebble and your firm have a copy of this Report because Mint Stone had exhibited it to the affidavit of Mr. Fred Barney, Managing Director of Mint Stone in opposing your client's application for an interim injunction).
  - (vii) Receipts from Champion Dealer appliance store for purchase of a television, four laptops and other items, replacing some of the damaged items.
  - (viii) Letter from Mrs. Pebble to your firm, dated May 3, 2021 indicating that she would be unable to attend the CMC on May 5, 2021 because one of her children was ill and would have to be taken to the doctor.
  - (ix) Various court documents including statements of case, applications and affidavits filed in the claim.

**Required:**

- (a) Draft the List of Documents.
- (b) Advise your Senior Partner in a short memorandum on your treatment of items (vi) and (viii).

**Note:** The body of the Memorandum should not exceed **300 WORDS**.

**C.** Assume the following:

- (i) A few months after the CMC, Mint Stone ceased their blasting operations on the site and sold it, and thus injunctive relief to restrain blasting was no longer necessary.
- (ii) Mrs. Pebble appealed the order of Maloney J refusing to appoint Mr Rubble as an expert. She succeeded. On allowing the appeal, and setting aside the judge's order, the Court of Appeal ordered that Mr. Rubble be appointed as an expert and ordered that he prepare a written Report, to be served on RG&G. The Court of Appeal also made the following order: "costs of the appeal and costs in the court below are awarded to the Appellant".
- (iii) The trial took place on October 19, 2021 before Riggs J. Mr. Rubble prepared his Expert Report and gave evidence at trial.
- (iv) Mrs. Pebble was successful, and judgment was handed down in her favour, with damages in the sum of the equivalent of US\$300,000 together with interest and costs.

Keen to recover the proceeds of the judgment, Mrs. Pebble hired a private investigator, Mr. Arnold Detector, who indicates the following in a report:

*Mint Stone owns 5 drills, 1 crane, and land that houses a warehouse. The 5 drills are valued in the region of US\$20,000 each and the crane is valued at approximately US\$175,000. The warehouse property is valued at US\$250,000 and Major Finance Bank Limited holds a mortgage for US\$230,000 on it.*

*In addition to the drills and crane, Mint Stone uses other equipment in its operations. This includes 2 tractors that are rented to Flint Stone by Heavy Vehicles Limited. The tractors, which were used during the blasting operation on November 2, 2020 at the site, are valued at US\$50,000 each.*

*Mint Stone is owed US\$40,000 by Fantasy Oasis Hotel Limited, a limited liability company registered in Jurisdiction, for work done on construction of the hotel in Jurisdiction.*

*Super Drill Inc. is a company incorporated in the United States. Super Drill Inc. owes Mint Stone US\$200,000. It has no offices, employees or assets in Jurisdiction.*

Your client asks your firm to advise on the following:

- (a) What is the meaning of the costs orders made by (i) Maloney J at the CMC, (ii) the Court of Appeal and (iii) Riggs J, and what is the effect of these orders?
- (b) Against which of the assets and property referred to in the investigator's report can she seek enforcement, the process involved, and in respect of which is she likely to stand the best prospects of making recovery of the sums due to her?

**Required:**

With reference to the Civil Procedure Rules and any applicable legislation in your jurisdiction, write a letter to Mrs. Pebble advising her.

**Note:**

The body of the letter must not exceed **1,200 WORDS**.

**PART B**

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

You are an Associate at Spago, Rifkin and Lea, a law firm in your jurisdiction with a specialist practice in commercial law. You report to the firm's Senior Partner, Aaron Spago.

Spago, Rifkin and Lea have a number of overseas clients. One of these clients, Royale Foods Limited ("Royale Foods"), is a private corporation incorporated in Ontario, Canada that mass-produces vegan meat substitute products. Royale Foods wishes to expand its business to the Caribbean but does not want to incorporate a subsidiary for that purpose. Instead, they wish to start by establishing a branch of their business in your jurisdiction.

Freshly Vegan Snackables Limited ("Freshly Vegan") is a private company limited by shares that was incorporated in your jurisdiction in 2010. Freshly Vegan currently manufactures vegan snacks which are very popular with millennial mothers who prefer them as nutritious, healthy alternatives to the sugary processed snacks currently on the market for children.

Freshly Vegan wants to enter the market for pre-packaged microwavable vegan meals. Their market research shows that local supermarkets and mini-marts would purchase those meals if they were made available. However, Freshly Vegan lacks the physical plant and financial resources necessary for producing the microwavable meals on a large scale. Seeing this as an opportunity to further their own business, Royale Foods has agreed to provide financing to Freshly Vegan in return for shares in the company. This would result in Royale Foods becoming a minority shareholder in Freshly Vegan. The two companies have discussed expanding Freshly Vegan's initial plan to include the export of the meals to the wider Caribbean Region.

The General Counsel of Royale Foods, Charmaine Pride, has provided your firm with a

copy of the share subscription agreement between the two companies which contains the following clause:

....

### 3.1 CONDITIONS PRECEDENT

*The obligation of Royale Foods to subscribe for the Shares in Freshly Vegan under this Agreement is subject to Freshly Vegan fulfilling the following conditions precedent:*

(a) **Share Subscription Agreement.** *This Agreement shall have been duly executed and delivered by Freshly Vegan.*

(b) **Name Change.** *Freshly Vegan shall have effected a change in its name from 'Freshly Vegan Snackables Limited' to 'Freshly Vegan Royale Foods Caribbean Limited'.*

...

By letter dated May 7, 2021, Charmaine Pride has requested your firm's advice on the procedure for registering a branch of Royale Foods in the jurisdiction and for Freshly Vegan effecting the name change as required by the share subscription agreement. Ms. Pride says that the Managing Director of Freshly Vegan has assured her that the change of name process is simple but she (Ms. Pride) is unfamiliar with the law in your jurisdiction and would like to be separately advised on the matter.

The Royale Foods portfolio has been assigned to Mr. Spago. He has handed you the files and asked that you prepare, for his review and signature, a draft letter to the client, for the attention of Charmaine Pride:

- (a) outlining the procedural steps for registering a branch of Royale Foods in your jurisdiction and any ongoing obligations to which it will be subject following registration; and
- (b) explaining in detail the procedural steps and documents required for effecting the change of name of the local company to 'Freshly Vegan Royale Foods Caribbean Limited', and advising on any legal issues that may arise in respect of the proposed change of name.

Prepare the draft letter.

#### **Note:**

The body of the letter should be no longer than **1600 words** in total. Your advice in respect of items (a) and (b), should be no longer than 850 words and 750 words respectively.

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**END OF PAPER**