

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

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, MAY 2022**

CIVIL PROCEDURE AND PRACTICE II

MONDAY, MAY 9, 2022

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 a 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 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.**
- (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 2022 EXAMINATIONS, CIVIL DROP BOX on TWEN** by **Tuesday May 10, 2022 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 - 2181** must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box A Year II – 2100 - 2181”**.

- Year II students with Examination ID numbers between **2182 - 2263** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box B Year II - 2182 - 2263**”.
- Year II students with Examination ID numbers between **2264 - 2345** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box C Year II - 2264 - 2345**”.

PART A

Instructions:

All figures referred to 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:

- Belize: BZD\$2.00 - US\$1.00
- Jamaica: J\$155.00 - US\$1.00
- OECS: XCD\$2.70 - US\$1.00

You are an associate attorney-at-law in the firm of Trees, Breeze & Pleas, which acts for and on behalf of Paradigms Changer Farming Limited, a limited liability company incorporated under the laws of your jurisdiction, with registered office located at 2041 Fruity Valley Avenue (“Farming Limited”).

Farming Limited is the claimant in a claim against Potably Parched Solutions Limited, a limited liability company incorporated in your jurisdiction, with registered office located at 2050 Pollution Park Avenue (“Solutions Limited”).

Farming Limited owns and operates a number of large and prosperous farms in your jurisdiction. It is also a venture capitalist type of entity, which is always looking to invest in the next 'big thing' in the farming industry.

Farming Limited, having observed global environmental trends, determined that the provision of potable water will be key to the survival of mankind. Research revealed that a couple billion people have (will soon have) no access to potable water. With the availability of potable water continuing to decline, and multinational corporations securing ownership of some of the few remaining natural sources of water, Farming Limited was desperate to find its own answer to the sourcing of potable water for its farms. It was also on a mission to identify a solution to the global water crisis.

Farming Limited was therefore primed for engagement when it was approached by the chief executive officer of Solutions Limited, Scamean Gigs. Gigs's reputation preceded her meetings with the Mergers & Acquisitions Manager of Farming Limited, Clare Voynot. Gigs had recently entered the scientific community as a radical entrepreneur, touting the creation of an inexpensive new treatment method which would convert contaminated salt water to potable water. This life-changing technology would undoubtedly make the owners rich beyond measure.

Gigs advised Voynot that Solutions Limited had, in fact, created a water treatment method that would successfully convert contaminated salt water into potable water. The treatment method, known as *boolcheesing*, could also be utilized to convert many other types of contaminated water into potable water.

Gigs further advised Voynot that numerous tests had been successfully conducted on the treatment method, which was in its final stage of testing. Solutions Limited invited Farming Limited to enter into an agreement in which contaminated salt water, which had been subjected to *boolcheesing*, would be utilized at two of the farms operated by Farming Limited.

Farming Limited conducted its due diligence, noting that a number of the members of the Board of Directors of Solutions Limited were respected persons in various fields.

Solutions Limited also had an impressive list of investors. Farming Limited was assured by Solutions Limited that the water was safe and would be the water of choice in the future.

Solutions Limited and Farming Limited entered into a relationship by way of contract dated August 2, 2021. Under the terms of the contract, Farming Limited would receive \$1,000,000 worth of shares in Solutions Limited. The contract stated that Farming Limited would, in the future, be provided with *boolcheesing* treated water at a discounted price. The contract guaranteed that Farming Limited would experience increased output on its farms, as the water was potable and loaded with electrolytes and other nutrients.

Farming Limited started using the *boolcheesing*-treated water on its farms on August 10, 2021. By August 31, 2021, all the crops and livestock on the farms perished. Farming Limited suffered losses in excess of \$2,000,000. Farming Limited investigated the matter and concluded that the water provided by Solutions Limited, utilized at their farms, was, in fact, contaminated. Initial tests suggest that the soil at the affected farms cannot be utilized for farming for at least two years.

Voynot engaged your firm and, on September 30, 2021, Farming Limited commenced the claim against Solutions Limited for damages, interest and costs resulting from breach of contract. Solutions Limited responded by way of a Defence and Counterclaim in which they denied liability and claimed against Farming Limited for defamation. Having heard what happened at the Farming Limited farms, other farms were now afraid to utilize the water. Solutions Limited defended the claim on various grounds including that (i) the contract released them from liability as the product was still being tested; and (ii) the water had been contaminated by chemicals present in the storage containers at the farms. Farming Limited has defended the counterclaim.

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

A. Voynot attends a meeting with you and the senior attorney-at-law assigned to the matter at your firm, Mr. Big Wigs. Voynot indicates that Farming Limited would like to have Dr. Frankin Sense serve as an expert in the matter. Dr. Sense is employed by

Farming Limited as its Regional Quality Management Supervisor. He is responsible for ensuring suitable safety protocols are implemented at all the farms operated by Farming Limited in your jurisdiction.

Dr. Sense is a well-respected scientist with 30 years' experience in the field. He was trained in the United Kingdom, holds numerous relevant qualifications and teaches at The Nation's University.

Dr. Sense will be able to give evidence on the content of the *boolcheesing*-treated water as well as the state of the storage containers at the farms.

Wigs assures Voynot that the firm will write and advise Farming Limited on the appointment of Dr. Sense.

After Voynot leaves, Wigs asks you to prepare a memorandum to him setting out whether Dr. Sense is likely to be appointed as an expert. You are to give details of the matters to be considered by the court in deciding whether to appoint Dr. Sense, the likely outcome of the application and the impact Dr. Sense would have on the decision of the trial judge, if so appointed.

The memorandum should also attach a draft of the Notice of Application/Application to have Dr. Sense appointed as an expert.

Required:

Draft the:

- (i) memorandum; and
- (ii) Notice of Application/Application. Do not draft the relevant supporting documents. (The memorandum must not exceed **800 words**.)

B. An order for standard disclosure was made at the case management conference held on February 2, 2022. You advised your client of their obligations under the order. Voynot conducted a thorough search on behalf of your client and informed you of the following documents:

- (i) An original copy of the contract dated August 2, 2021 between the parties.

- (ii) The manual created by Solutions Limited regarding the content, care and storage of the water.
- (iii) A memorandum from James Spooler (former Chief Foreman of Farming Limited) to Voynot, dated August 11, 2021, stating that the water tasted and smelled 'weird' and expressing his hesitation to continue to use it.
- (iv) Copy letter dated August 13, 2021 from Farming Limited to Solutions Limited, setting out Spooler's concern in (iii) about the water and asking whether it was safe to use. This letter cannot be located.
- (v) Letter dated August 16, 2021 from Solutions Limited to Farming Limited assuring Farming Limited that the water was safe for use and that the smell was likely caused by the healthy nutrients with which the water was infused. This letter cannot be located.
- (vi) Letter dated October 5, 2021 to Farming Limited from Trees, Breeze & Pleas enclosing a copy of a letter dated October 4, 2021 from Bees & Knees. The October 4, 2021 letter indicated to Trees, Breeze & Pleas that they (Bees & Knees) were the attorneys-at-law acting for and on behalf of Solutions Limited.
- (vii) Letters dated October 7, 2021 and October 19, 2021 between the attorneys-at-law acting on behalf of the parties, with a view to settling the matter.
- (viii) Letter dated November 2, 2021 from your firm to Farming Limited, advising on the strength of the claim and the counterclaim.
- (ix) Various court documents including statements of case, applications and affidavits filed in the claim.

Required:

(a) Draft the list of documents to be filed on behalf of your client.

(b) Write a note on the client's file setting out:

1. the reasoning for your treatment of the documents listed at (iv), (v), (vi) and (vii); and

2. the step(s) that may be taken to obtain copies of the documents listed at (iv) and (v) from Solutions Limited, if the documents are not disclosed (and/or made available for inspection) by that company.

(The file note must not exceed **600 words**.)

C. Farming Limited succeeds on both the claim and the counterclaim at the trial of the matter. It is awarded damages, interest and costs on the claim and costs on the counterclaim. The judgment debt due and owing from Solutions Limited totals \$3,000,000. Solutions Limited pays the sum of \$1,000,000 within a month of being given a deadline of two months to pay. Three months following that payment, Solutions has failed to pay the balance of the judgment debt.

Voynot attends your office to meet with you and Wigs. She asks you both the following questions:

- (i) *Shouldn't Solutions Limited have paid the entire sum owed by now? We agreed to allow them two months to pay the total and here we are \$2,000,000 short. Are we to sit and twiddle our thumbs and hold our palms out asking for more? What can we do?*
- (ii) *It's not as if they don't own anything. In fact, I hear they have a new product on the market that is doing really well. They've leased Pollutions Park for an additional two years and purchased luxury cars for their CEO, CFO and COO. That land is worth \$4,000,000 and the cars at least \$500,000...can't you get the court to sell the land and the cars and pay us out?*
- (iii) *I hear their bank accounts are fat ...especially the one at The Nationals Bank Limited...like fat... with as much as \$1,800,000. Come on man! There must be something that can be done!*

Required:

Advise your client. (The advice must not exceed **1,000 words**.)

PART B

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

Triplets, John, Maria and Ava Pettigreve, are general partners in a small agro-processing firm, Blue Vale Agro-Processing (BVA), in Jurisdiction. The partnership is not governed by a written partnership agreement. The partnership processes sweet potatoes into sweet potato flour and packages that flour for the domestic market. The sweet potatoes are sourced from famers in the district of Blue Vale in Jurisdiction. BVA has been in business since 2016. The firm enjoyed initial success and made significant profits from 2016 to 2019. However, BVA, like many other businesses in Jurisdiction, experienced a downturn during the global COVID-19 pandemic. The firm operated at a loss in 2020 and 2021.

The triplets are hopeful that BVA's business will rebound with an injection of funds. They plan to expand the business by introducing three new sweet potato products to the market over the next five years. They estimate that BVA will need a total of \$25,000,000 to facilitate the regeneration and expansion of the business.

The Ministry of Agriculture of Jurisdiction (the Ministry) introduced a loan scheme in January 2022 to promote the growth of farming and agribusiness. The loan scheme permits applicants to borrow sums ranging from \$150,000 to \$5,000,000. The triplets intend to apply to the Ministry for the maximum loan amount of \$5,000,000. Their parents, Winnifred and Lindale Pettigreve, are willing to provide the balance of \$20,000,000 in exchange for an ownership stake in BVA and the ability to actively participate in its decision making with little exposure to liability for the losses of the business.

The triplets are willing to accede to their parents' requests but are unsure of how best to do so. John wants to admit them to the partnership as new partners. Maria and Ava think that it would be best to incorporate a company of the same name instead. They believe that incorporation will put them in a better position to access the Ministry loan and further funding in the future. They are not sure of the type of company that will be best suited for their needs. John, however, is concerned that incorporation is costly.

Winnifred and Lindale are horticulturalists. Together with their children, they are the only directors and shareholders of Pettigreve Horticultural Limited (PHL). PHL has operated a lucrative flower farm and shop in Blue Vale for many years. Winnifred and Lindale are planning to retire. They were hoping that their children would continue to run the business after they retire but the triplets show very little interest in the farm and the flower shop. PHL is solvent and has several assets and liabilities. The Pettigreves wish to have the company dissolved as soon as possible.

You are an associate at the law firm, Feinberg and Minton, with offices at 10 Lime Grove Street, Jurisdiction. The Pettigreves are long-standing clients of the firm. Your supervising partner, Keenan Feinberg, has handed you two separate client files for BVA (File #3478-Comm) and PHL (File #2456-Comm). He has asked that you draft the following for his review and signature:

(a) a letter of advice to the triplets:

- (i) indicating, giving reasons, whether in light of your instructions the company or the general partnership is more suitable for carrying on business with their parents; and
- (ii) recommending the type of company that would be suitable for their needs if they decide to incorporate, and detailing the steps and documentation involved in forming that company.

(The body of your letter must not exceed **1,200 words**.)

(b) a letter of advice to Winnifred and Lindale Pettigreve outlining the procedural steps for dissolving PHL.

(The body of your letter must not exceed **1,000 words**.)

Required:

Prepare the letters as instructed.

END OF PAPER