

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

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2023**

CIVIL PROCEDURE AND PRACTICE II

(WEDNESDAY, MAY 03, 2023)

Instructions to Students

- (a) Time: **3 ½ hours**
- (b) Answer **ALL** questions from Part A and Part B.
- (c) **Answer Part A and Part B on separate answer booklets.**
- (a) In answering any 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.**
- (d) It is unnecessary to transcribe the questions you attempt.
- (e) Answers should be written in black or dark blue ink. Erasable pens are not allowed.
- (f) Calculators may be used and are provided.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

INSTRUCTIONS FOR PART A

All figures referred to in Part A of the paper are stated in United States currency.

You may either:

- (i) use the figure as is, assuming that it is sufficient for the matter to be before the Supreme/High court of your jurisdiction; or
- (ii) update the given figure to an equivalent sum in the currency of your jurisdiction, using the following exchange rates.

- **Jamaica:** **J\$150.00 - US\$1.00**
- **OECS:** **XCD\$2.70 - US\$1.00**
- **Belize:** **BZD\$2.00 - US\$1.00**

QUESTION 1

You are an associate attorney-at-law in the firm, Wilberforce, Clarkson & Knibb. Intelligent Foods Limited (IFL) is a company incorporated under the laws of your jurisdiction. IFL is a food production and distribution company that manufactures and distributes processed meat products to local retail grocery stores.

IFL is the defendant in a claim brought by Chan-HoK Supermarkets Limited (Chan-HoK) in the Supreme/High Court in your jurisdiction in April 2022. Your firm was recently retained by IFL in the matter and your Supervising Partner, Jared Noelle, has conduct.

In their claim against IFL, Chan-HoK is claiming damages for breach of contract and negligence arising from the delivery of a shipment of processed meat products (the goods) in January 2022. Chan-Hok claims that IFL delivered spoiled meat products, unfit for human consumption, to one of its supermarkets, five days after the contracted delivery date. By its defence, IFL denies that

the goods were unfit as claimed. They say that if the goods were spoiled, such spoilage was caused by Chan-HoK's poor refrigeration practices.

A review of IFL's client file reveals that the case management conference was held on April 19, 2023. The Pre-Trial Review is fixed for September 8, 2023.

Orders for standard disclosure on or before May 19, 2023, and inspection on or before May 29, 2023 were made at the case management conference. IFL has provided you with the following documents in the matter:

- (a) A photocopy of the contract for the supply of goods between IFL and Chan-HoK dated January 4, 2021. The original cannot be located.
- (b) An internal memorandum from IFL's in-house counsel, Latham Lea, dated March 4, 2022 to IFL's Chief Executive Officer, Ralph Gentles, concerning IFL's liability for the goods in which he advises "This is bad. We should make every effort to settle to avoid bad publicity for the company."
- (c) A letter dated March 12, 2022 from IFL to Chan-HoK, written without prejudice by Latham Lea offering to settle the dispute without admission of liability and enclosing a release and discharge.
- (d) A letter dated March 19, 2023 to IFL from Stephenson Shepherd, the Attorneys-at-Law who were previously on record for IFL, reminding them of the case management conference and requiring that an authorised representative attend court on IFL's behalf.
- (e) Various court documents including statements of case, applications and affidavits filed in the claim.

Following discussions with Mr. Noelle and the client, a decision was taken to apply for permission to rely on the expert evidence of Dr. Niamh Thomas, a Food Scientist employed to IFL for 10 years. Dr. Thomas has a PhD in Microbiology, a Master's degree in Food Science and Technology, and 25 years' experience in the industry. IFL is of the view that her evidence is necessary to outline their procedures for processing, refrigerating and delivering the goods.

You are required to prepare:

- (i) the List of Documents to be filed on behalf of IFL in compliance with the order for standard disclosure; and
- (ii) an inter-office memorandum to Mr. Noelle:
 - (a) explaining your treatment of the documents at (b), (c) and (d) above; and
 - (b) outlining the steps which IFL must take to obtain the court's permission to rely on the expert evidence of Dr. Thomas and your opinion on the likelihood of success of the relevant application. Include in your response the matters the court will take into consideration in deciding whether to grant permission and the costs order the court is likely to make.

(The relevant form is available)

QUESTION 2

The facts in Question 1 apply to part (a) of this question.

- (a) Four weeks before the trial, IFL instructs you to make an offer in full and final settlement of the claim for a sum equivalent in your currency of US\$25,000 inclusive of costs and interest. IFL also says that they want to have the matter resolved within two weeks. Both parties agree that the claim for damages is worth the equivalent in your currency of US\$25,000.

Write a letter to the client advising on the nature of a Part 35 offer to settle, commenting on the suitability of the offer they propose to make, the procedure which should be followed to make such an offer, the contents of the offer and the benefits of making it pursuant to the civil procedure rules in your jurisdiction.

- (b) Your client, Stuggs General, the Claimant in a personal injury claim filed in the Supreme/High Court of your jurisdiction, obtained a judgment in his favour for the equivalent in your currency of US\$160,000 on April 12, 2023 against Paris Lane. Your client is aware that the Defendant owns an apartment valued at the equivalent of US\$250,000 in your currency which is subject to a mortgage in favour of Gold Bank Limited (the sum

of US\$150,000 remains outstanding on the mortgage), and a lien-free motor vehicle valued at the equivalent of US\$100,000 in your currency. The Defendant has failed to respond, to your demand, on Mr. General's behalf for payment of the judgment debt.

Advise Mr. General on how he may proceed in the circumstances to recover what is due to him in respect of the judgment.

PART B

LAW OF ASSOCIATION

(This Part must be answered on a new answer booklet and titled Part B)

QUESTION 3

Avery Dean is a successful entrepreneur in your jurisdiction. Her businesses include a variety of enterprises and, consequently, she and her employees are often in need of legal services, sometimes at short notice. In order to have access to these services at any time, Avery has a general retainer with the law firm of Gottlieb and Stiles, where you are an associate attorney-at-law.

Within the last week, Avery has consulted with the firm on the following issues:

- (a) Avery's two youngest brothers, Adam and Anthony, want to form a general partnership to operate a landscaping business. They want her to be a member of the partnership, as they think that her involvement will enhance the credibility of the business with potential customers and financiers. Avery wants to support her brothers but is not familiar with the general partnership model. She has, therefore, sought advice on:
 - (i) the procedural steps involved in the formation of the partnership, as well as whether any documentation is required or recommended for formation and, if so, why; and
 - (ii) whether she would be entitled to one-third of the profits, given that there would be three of them in the partnership.

(b) Avery recently acquired a small sanitation company, with the intention of developing it further, but, instead, decided to sell it. One of the potential purchasers ultimately decided that they did not want to buy the company itself, choosing instead to make an offer for all of the company's assets. The price offered was so good that Avery agreed to the sale. Out of the proceeds of sale of the assets, she has paid the few debts that the company had. Avery wants advice on the most efficient and cost-effective means by which she may have the company dissolved and the procedure involved.

(c) Avery has hired a new employee who is to act as corporate secretary of all her registered companies. She wants the firm to assist her with his training, beginning with annual general/annual meetings, and specifically wants you to set out for her in writing:

- (i) the legal obligations of private companies concerning the holding of annual general/annual meetings; and
- (ii) the requirements to be satisfied with respect to notices of annual general/annual meetings to ensure their validity.

The partner with conduct of Avery's matters, Stan Gottlieb, has asked you to prepare a letter, for his signature, providing the advice requested by her at (a), (b) and (c) above.

Prepare the letter as requested.

END OF PAPER