

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

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

**CIVIL PROCEDURE AND PRACTICE II  
(MONDAY, JULY 31, 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.
- (d) 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.**
- (e) It is unnecessary to transcribe the questions you attempt.
- (f) Answers should be written in black or dark blue ink. Erasable pens are not allowed.
- (g) Calculators may be used and are provided.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

## PART A

### QUESTION 1

(a) You are a Judicial Clerk assigned to Mr. Justice Tallorder at the Supreme/High Court in your jurisdiction. Mr. Justice Tallorder has asked that you prepare an opinion outlining the appropriate costs order which should be made, or the party to whom costs should be paid, in each of the following matters, giving reasons for your opinion:

- (i) A successful application by the Claimant for permission to adduce expert evidence made after the pre-trial review and one month before trial.
- (ii) A matter in which the Claimant files a notice of discontinuance against the Defendant.
- (iii) Upon the determination of a without notice application for an interim injunction made by the Claimant at the commencement of the claim.
- (iv) Upon the determination of a preliminary issue in the Defendant's favour, on the Claimant's application to determine the issue at the case management conference.
- (v) Upon a successful application for security for costs by the Defendant in a matter at pre-trial review.

**Required:**

Draft a memorandum to Justice Tallorder setting out your opinion.

(b) You act for the Claimant, Higgens Construction Limited, an overseas conglomerate with a branch in your jurisdiction at 15 Tumeric Lane, in a matter in the Supreme/High Court of your jurisdiction.

At the case management conference on April 27, 2023, one of the three Defendants, John Love, was successful on his application for security for costs and to strike out aspects of the claim.

The order on case management conference prepared and filed by the attorneys-at-law for Mr. Love provides for the grant of the order for security for costs and that the entire claim is struck out against all three Defendants. The order has been signed and perfected.

The Claimant wishes to appeal the decision of the judge to grant security for costs and strike out aspects of the claim.

Write a letter to the client outlining in detail, the steps which must be taken to protect their interests in the circumstances.

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## **QUESTION 2**

You are an associate attorney-at-law at Vigilant and Associates.

- (a) Your firm acts for the Claimant, Kilian Graves, in a claim for damages for personal injury against the Defendant, Nirvana Resort Limited, a company that operates a resort at which the Claimant slipped and fell, suffering significant injuries.

At the case management conference held on January 9, 2023, the parties were ordered to provide standard disclosure by March 28, 2023 and inspection by April 7, 2023. The Defendant filed and served their List of Documents on March 27, 2023.

Upon the Defendant's attorneys-at-law undertaking to settle the costs of copying the documents for inspection, the Claimant's attorneys-at-law delivered the documents to the Defendant's attorneys-at-law on April 6, 2023. The parcel of documents included (i) an investigation report dated June 14, 2022 from the Defendant's Safety Manager to the Defendant's Chief Executive Officer in which the Safety Manager concludes that the Defendant was at fault because the area where the fall occurred requires repair. The report was prepared subsequent to the commencement of the claim and copied to the Defendant's attorneys-at-law and (ii) a letter from the Defendant's attorneys-at-law advising them to settle the claim dated June 16, 2022. The Safety Manager's report was

included at Part 1, Schedule 1 of the Defendant's List of Documents. The letter dated June 16, 2022 was listed at Part 2, Schedule 1.

Your Supervising Partner, Penn Teller, has asked you to prepare a memorandum advising him on the Claimant's ability to rely on the documents at (i) and (ii) above at trial. With reference to relevant authorities, your response should include the details of any steps which must be taken on the Claimant's behalf to achieve this result.

**Required:**

Prepare the memorandum as directed.

- (b) Your firm acts for the Defendant, Lukas Auto Trading Limited, in a claim brought against them by a supplier, Premier Auto Parts Limited, for the equivalent in your currency of US\$40,000 for goods delivered to the Defendant.

The Claimant was granted a freezing order on a without notice application on April 28, 2023.

The matter was fixed for further consideration on May 19, 2023. The Claimant, in their application and supporting affidavit, claim that the Defendant is selling their business and pulling out of the jurisdiction.

Your client denies that they are indebted to the Claimant as their records show that they have settled all their outstanding invoices. They instruct you that they have twice written to the Claimant disputing the claim and requesting proof of the debt. The Claimant's affidavit does not disclose that there is a real dispute regarding the sum claimed, neither does it exhibit the Defendant's letters denying the claim. The Defendant further instructs you that they have substantial assets in the jurisdiction and are selling only one part of their business in the jurisdiction to a competitor.

**Required:**

- (i) Advise the Defendant on the steps that they may take to discharge the freezing order and opine on the likelihood of success of such an application.

- (ii) Draft the relevant application. You are not required to draft the supporting affidavit and the draft order.

(The relevant form is available)

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**PART B**

**LAW OF ASSOCIATION**

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

**QUESTION 3**

Sylvie Bates is the recently appointed company secretary of Blackman Industries Limited (BIL), a private company limited by shares, registered in your jurisdiction. The company has 15 shareholders, all members of the Blackman family.

Sylvie has no legal or other relevant training but is the daughter of the majority shareholder and chairman of the company, Joel Blackman, who is anxious to have her involved in the company's administration.

You are an associate at the law firm of Nettle and Blythe. The firm has been BIL's legal adviser for many years and Sylvie has turned to it for assistance with two matters.

- (a) In the first matter, BIL is desirous of appointing two additional directors, but the articles of incorporation/association of the company limit the number of directors to a maximum of five and the company already has five board members. Sylvie has been told that the articles need to be amended to provide for a maximum of seven directors, and that it really ought to have been an item on the agenda of the annual general/annual meeting of BIL, which had been held just two months previously.

In light of this missed opportunity, Sylvie wants the firm's advice on how the articles may now be amended, including details of the steps that need to be taken in order to ensure that it is done expeditiously but properly.

(b) The second matter concerns Marbella Chemicals Limited (MCL), another private limited liability company registered in your jurisdiction. BIL made a significant investment in MCL some ten years ago and currently holds 10% of its issued shares. The remaining shares are owned by members of the Marbella family, with the majority shares being held by Jacob Marbella, one of the original founders.

Jacob Marbella has indicated that he intends to wind up MCL, despite it being financially successful and having good prospects for even more success. He is ready to retire and wishes to realise his investment in the company. Moreover, he does not want the company to continue to exist without his personal involvement in its operation.

On the instructions of her father, Sylvie has also asked the firm to advise on the likely means by which Jacob Marbella might seek to wind up MCL and the procedure that would be involved.

The managing partner of your firm, Tony Blythe, has directed you to write a letter to Sylvie, giving the advice requested in respect of the matters outlined at (a) and (b) above.

Write the letter as directed.

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**END OF PAPER**