

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

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2024**

CIVIL PROCEDURE AND PRACTICE II

(WEDNESDAY, MAY 8, 2024)

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.

INSTRUCTIONS

All figures referred to in 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**

PART A

QUESTION 1

You are an associate attorney-at-law in the firm Causes, Charities and Associates.

This morning, you were invited by the firm's managing partner, Seymour Charities, to attend a meeting with Alize Vermouth, director of the Environment Protectors Association (Protectors). The Protectors is a well-known and respected organization that is interested in environmental issues in the jurisdiction. It is governed by a Board of Directors elected by the members. It has, for over ten years, been tirelessly and particularly interested in Breadfruit Patch Top. Breadfruit Patch Top is located in the western part of the jurisdiction and is known as a sanctuary for rare species of plant and animal life. Experts have opined on the importance and high value of the ecological resources of the area.

Hoteles Internacional Limited, hotel developers, (Hoteles), is interested in building a 500-room hotel in Breadfruit Patch Top. There are several permits that must be obtained by the company to build on the property.

The Natural Resources Authority is a body established by the National Resources Authority Act of the jurisdiction (the Authority). It is the body authorised by the statute to grant permission to Hoteles to engage in the development of Breadfruit Patch Top. The obtaining of an environmental permit from the Authority is the first of a number of permits that are required for Hoteles to engage in the development of Breadfruit Patch Top. If this permit is not obtained Hoteles would not be able to apply for any of the other required permits.

Vermouth instructs that the Protectors was surprised to learn that Hoteles obtained the environmental permit necessary to develop Breadfruit Top Patch. The procedure to be followed by the Authority, in deciding whether to grant such a permit, is set out in the National Conservation Act of Jurisdiction (NCA). Vermouth states that, in her experience, the proper procedure had not been engaged by the Authority, prior to granting the permit.

Vermouth further instructs that in matters such as these the Protectors would receive invitations to attend at least two public consultative meetings. The meetings were held to comply with the NCA's requirement that the Authority consult the public including, in particular, interested groups, prior to deciding whether to grant environmental permits. This has been the approach in more than ten such matters that the Protectors has been involved in.

The Protectors did not receive any invitations and checks suggest that no public meetings were held to discuss Hoteles's application for the permit. The Protectors was not therefore given reasonable opportunity to make any representations.

The Authority is required by statute to request and consider impact reports in deciding whether to grant an environmental permit. The Protectors had obtained copies of such reports which indicated the undesirability of Breadfruit Patch Top being developed. One such report was from the Water Conservation Body (WCB). The Authority did not accept delivery of the reports.

The WCB had previously published, in the daily newspaper, an article expressing concern regarding the existing level of development in the western part of the jurisdiction and was known

to be in opposition to any further development. Issues such as the damage that would be caused to the environment and citizens because of sewage disposal and other infrastructure issues were outlined in the report.

The National Resources Authority Act provides that an environmental permit shall not be granted if the development to which the application relates is or is likely to be injurious to public health or to any natural resource.

Vermouth indicates that the Protectors would like to take action against the Authority and have the permit revoked.

Charities directs you to conduct research on the matter and to draft a letter advising on the procedure to be undertaken to pursue a matter such as this (outlining the content of the document(s) required to commence the appropriate process), the relief that would be sought and the likelihood of success.

Your research reveals that Vermouth's understanding of the required procedure is accurate.

Draft the letter to the Protectors.

QUESTION 2

- (i) You are an associate attorney-at-law at the firm Palms, Trees and Leaves.

Your firm acts for and on behalf of the defendant, Webuild Yourdesigns Limited, a duly incorporated and registered construction company, with offices located at 1881 Gerberfield Avenue, Jurisdiction (Webuild). Webuild has been sued, for breach of contract, by Kardian Dash Limited, a duly incorporated and registered property development company, with offices located at 4250 Trench Dig Place, Jurisdiction (Kardian Dash). Kardian Dash has engaged Stapler, Sticker and Tape, as its attorneys-at-law in the claim.

By way of contract dated January 3, 2020, Webuild was engaged by Kardian Dash to construct a small boutique complex with six spacious 3-bedroom apartments. The complex

is in the middle of the bustling capital city in your jurisdiction. Kardian Dash is well-known, and has a strong reputation for building structurally sound, modern and appealing housing.

The contract provided that high-quality material would be used by Webuild in the construction of the apartments.

The claim alleges that, in breach of the contract, Kardian Dash utilised low-quality material in the construction of the complex.

Webuild has denied breach of contract and relied on a provision in the contract that permitted the construction company to substitute material of its choice in the construction of the apartments. The substitutions were made with a view to meeting the budget, which Webuild did successfully.

Today, John Forks, the President of Webuild, attends your office and instructs that, because of the existence of the claim, rumours are spreading through the construction industry that Webuild is unreliable and lacks integrity. Forks states that the company is willing to do *whatever it takes* to put an end to the protracted claim. Webuild has decided to settle the matter and wants to make Kardian Dash an *offer it can't refuse*.

You assess the likely award of the Supreme/High court of Jurisdiction relying, *inter alia*, on reports submitted by Kardian Dash during pre-litigation negotiation. Your calculations suggest that the court is likely to award a sum the equivalent of US\$1,000,000 in the currency of your jurisdiction as damages. A reasonable sum that would be awarded as interest is the equivalent of US\$200,000. Reasonable costs are likely to be a sum the equivalent of US\$50,000.

You advise your client of the nature and benefits of offers made by defendants pursuant to part 35 of the civil procedure rules in your jurisdiction.

Draft:

- (a) a file note setting out the advice given to Forks; and
- (b) an effective offer to settle under part 35 of the civil procedure rules of your jurisdiction.

- (ii) Assume that, on the facts above, your client's offer was not accepted. The matter proceeded to trial and the court found in favour of your client and awarded costs. Costs were assessed and amounted to a sum the equivalent of US\$200,000 in the currency of your jurisdiction.

Investigations reveal that the claimant owns two lien-free motor vehicles, each valued at a sum the equivalent of US\$250,000 in the currency of your jurisdiction. It is also known that the claimant has a bank account with a balance of a sum the equivalent of US\$300,000 in the currency of your jurisdiction.

Your client tells you that it has contacted Kardian Dash directly regarding its paying the sum that is outstanding. Kardian Dash responded to say that it intends to appeal the decision of the court and therefore is not required to pay the sum assessed. Your client asks whether this is accurate, and if not, how it may proceed to recover the sum due and owing to it.

Advise your client.

PART B

LAW OF ASSOCIATION

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

QUESTION 3

Answer both (A) and (B)

- A. Tom Jenkins, Luke Perez and Carole Giles are partners in the robotics engineering firm of Jenkins, Perez and Giles in Jurisdiction. The firm engineers and designs robots for the medical sector. The firm is not governed by a written partnership agreement. The partners have plans to expand the firm's operations and have been in discussions with the Capital Bank for loan financing. Capital Bank has asked to see their partnership agreement. With the permission of his partners, Tom seeks your advice regarding the preparation of such

an agreement and in particular how they can structure the agreement having regard to the following:

- (i) Carole is 65 years old and is contemplating leaving the business by the end of the year to travel the world.
- (ii) Carole wants her daughter Angelique, a qualified engineer, to join the firm in her place when she leaves.
- (iii) The firm plans to relocate its principal place of business to premises at 15 Periwinkle Street, Capital City, Jurisdiction. The premises are owned by Tom who does not intend to transfer an interest in the premises to the other partners.
- (iv) Luke has a domineering personality and often takes unilateral decisions regarding the firm's routine office operations. Generally, this has been advantageous as decisions are taken in a timely manner. However, the other partners are concerned that this may not always be favourable as Luke gets annoyed when challenged about a decision he has taken on behalf of the firm. They do not wish to completely inhibit his ability to take certain routine decisions but they do not want him to dominate the decision-making in the partnership.

Draft an appropriate letter of advice to Tom, given the client's concerns, outlining the provisions you would recommend be included in the partnership agreement, any applicable legal principles, and any further instructions which you would require from him in order to draft those provisions.

Note:

You are not required to draft clauses for the partnership agreement.

B. Sincova Housing Development Limited (Sincova) is a private limited company incorporated in Jurisdiction. Sincova was incorporated in 2014 and has enjoyed a thriving

business in the development of high-end properties in Jurisdiction. In 2021, Sincova launched a project for the development of luxury beach-front villas on the east coast of Jurisdiction with completion fixed for 2024. The project was to be completed in two phases. The construction of phase two was to be partially funded from the proceeds of sale of the phase one villas. Sales of the phase one villas stalled as potential purchasers rejected the villas on the basis that the fixtures and fittings were inferior and unsuitable for luxury villas. Sincova began to experience significant cash-flow problems and difficulty settling its debt obligations as they fall due.

Sincova is indebted to a number of unsecured trade creditors and one secured creditor, Blue Chip Bank. The aggregate indebtedness to its trade creditors is US\$40,000 and its indebtedness to Blue Chip Bank is US\$50,000.

One of Sincova's trade creditors, Brigadier's Hardware (BH), is owned and operated by Jack Reed. Reed visits your office today and advises you that as at March 1, 2024, Sincova is indebted to BH in the sum of US\$5,000 on unpaid invoices. Despite repeated requests for payment, Sincova has failed to settle its indebtedness to BH. Reed seeks your advice concerning the steps that can be taken to wind up Sincova.

Draft a letter to Reed detailing the process for effecting the liquidation of Sincova.

END OF PAPER