

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2018

CIVIL PROCEDURE AND PRACTICE II
(AUGUST 00, 2018)

Instructions to Students

- (a) Time: **3 ½ hours**
- (b) Answer **THREE** questions from Part A and **TWO** from Part B.
- (c) **Answer Part A and Part B on separate answer booklets.**
- (d) In answering any question, a candidate may reply by reference to the law of any Commonwealth Caribbean territory, **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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

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\$128.00 -US\$1.00
- OECS: XCD\$2.70 – US\$1.00
- Belize: BZD\$2.00 - US\$1.00

The claims are not for United States currency.

QUESTION 1

Your client, Nethersime Group Limited (“NGL”), entered into an agreement to sell a newly developed apartment complex to John Fro Limited. Nethersime Properties Limited (“NPL”), a wholly owned subsidiary of NGL, was facilitating the transaction. NPL manages the properties owned by NGL.

Jon Fro Limited’s attorneys-at-law, having provided you with an undertaking for payment of the balance required to close the transaction, expected title to the property to be conveyed/transferred to their client. You have not been able to do this as the mortgagee has failed to discharge its mortgage over the property and hand over the necessary documents to you. The sale was to have been completed on November 30, 2017.

Frustrated with the delays, Jon Fro Limited filed a claim in the Supreme/High Court of your jurisdiction, seeking damages for breach of contract and specific performance. Their annoyance has also resulted in them refusing to entertain any settlement negotiations. A mediation was held but was fruitless in the circumstances. The case management conference, which was attended by the chief financial officer of NGL, was recently held, and a number of orders were made, including one for standard disclosure.

Write a letter to your client advising them of the standard disclosure order and their obligations arising from it.

QUESTION 2

Your firm acts for and on behalf of Jen’s Realty Limited. The company carries on business as auctioneers and valuers, and is likely the most well-known such organisation in your jurisdiction.

Jen’s Realty Limited had a lease agreement with Pundits Sound Limited (“Pundits”) whereby Pundits rented a commercial space from them in a very desirable area. This lease agreement was for a period of 10 years and expired on December 31, 2016. At the time the lease expired,

Pundits was paying rent at a monthly rate equivalent to the sum of US\$10,000 in the currency of your jurisdiction.

Your client did not agree to enter into a new lease agreement with Pundits as they wanted the property for their own use. Pundits has refused to vacate the property.

Your client has brought a claim against Pundits for damages for trespass. In support of its claim to recover, as damages, the total annual rental value of the property, your client would like to utilise a valuation report to be prepared by their most experienced valuer.

As Jen's Realty Limited's attorney-at-law:

- (a) prepare a notice of application for court orders, seeking permission to rely on the valuation report; and
- (b) draft a letter advising your client on –
 - (i) when the application should be made;
 - (ii) whether you expect permission to be granted; and
 - (iii) if permission is granted, how much impact you expect the report to have at the trial of the claim.

(The relevant form is provided.)

QUESTION 3

In a claim in the Supreme/High Court in your jurisdiction, a judgment for a sum the equivalent of US\$30,000 in the currency of your jurisdiction, has, one month ago, been entered in favour of your client, Eliza Saylitttle.

Eliza had claimed, against Straw Factories Limited, damages resulting from a nuisance. Eliza's property had been damaged, and her health compromised, by a noxious red substance which flowed from the company's property. The substance resulted from production activities carried on in a factory operated by Straw Factories Limited.

The factory is located on a ten-acre property owned by the company. The value of this property is believed to be a sum the equivalent of US\$50,000 in the currency of your jurisdiction. There is, however, a mortgage on the property, with a sum the equivalent of US\$46,000 in the currency of your jurisdiction still due and owing.

It is also believed that Straw Factories Limited owns vehicles seen on the property as well as the equipment used in its production activities. The value of these assets is not known.

Your client has no information about any other assets Straw Factories Limited may hold. The Defendant having ignored a demand for payment subsequent to the entry of judgment, the Claimant requests your advice as to how she may proceed to recover the sum adjudged to be due to her.

Advise Eliza.

QUESTION 4

Dudley Doright is a lecturer at the University of Environmental Science in your jurisdiction. He is concerned about the large number of apartment buildings being constructed in residential areas, on plots previously used to house single-family homes. He fears that this will lead to a number of issues because the existing infrastructure may not be sufficient to facilitate such structures.

To Dudley's dismay, there was a report on the local television station that construction was scheduled to commence shortly, on a 40-unit apartment complex in the upscale community of Grape Gardens, in which he resides. The units will be constructed on a property that recently housed a single-family home.

Pursuant to legislation, the Minister with responsibility for the environment must grant a building licence before it is permissible for anyone to embark on any construction. The relevant section requires the Minister to convene a meeting of the residents who might be affected by the construction, before granting such a licence.

Upon investigation, Dudley discovers that two weeks ago, the Minister granted a licence to Apartment Builders Limited for the construction of the apartments in Grape Gardens. The Minister had not convened the meeting of the residents as required.

Dudley and the other residents of Grape Gardens are extremely upset and distressed at the thought of the increased hardships the proposed construction will cause. They had already been complaining bitterly that their water supply and other amenities were severely impacted by two townhouse complexes recently constructed in the area. The addition of the 40 units will only make matters worse.

The residents are desirous of preventing the construction of the apartments by challenging the Minister's grant of the licence and seeking such remedies as may be appropriate when making such a challenge.

You are an attorney-at-law and Dudley has consulted you in respect of the matter.

Draft a letter of advice to him, setting out the procedure to be undertaken to pursue a matter such as this and advising on the likelihood of success.

QUESTION 5

Your client, Jonathon Small, is one of two defendants in a claim for damages for personal injury. The Claimant, Sophia Turnstill, has also sued Amber Violet. Sophia was a passenger in a motor vehicle owned and driven by Jonathon when it collided with a motor vehicle owned and driven by Amber at the time of the accident. The claim alleges that the accident was caused wholly, and or contributed to, by the negligence of both or one of the Defendants.

Jonathon, who was engaged to be married to Sophia at the time of the accident, has decided that he would like to settle the matter, and indicates to you that he would like to “make an offer she (Sophia) can’t refuse”. They are no longer engaged and he really wants to have nothing further to do with her.

You have assessed the injuries suffered by Sophia, which include various broken bones, and are of the opinion that damages should amount to no more than a sum the equivalent of US\$26,000 in your currency.

Advise Jonathon as to:

- (i) whether he can make an offer to settle the claim under Part 35 of the civil procedure rules of the Supreme/High Court of your jurisdiction, and whether and how it would be beneficial to him;
- (ii) the features which must be present in the offer to settle; and
- (iii) the impact, if any, of there being another Defendant, Amber.

PART B
LAW OF ASSOCIATION

QUESTION 6

In 2012, Harriet Bennett and Jane Higgins went into a photography and video recording business together, as partners in a general partnership.

The business has been very successful and has grown quite substantially. They have now made enough money to contemplate purchasing premises to be used as a studio, but will still require a loan. Their bank manager, Mr Jones, is willing to consider recommending them for a loan, but has suggested that the chances of it being granted would be improved if they were to incorporate the business by registering a company.

Harriet and Jane need the loan, but want to know more about the implications of incorporating, and also what it would involve. They are comfortable as a partnership and do not want to stray too far away from operating the way they have been doing over the last six years.

Harriet and Jane have approached you for advice on:

- (i) the advantages and disadvantages of incorporating their business;
- (ii) the type of company which would best suit their purposes, giving reasons; and
- (iii) the procedural steps and documents required to establish the type of company identified by you at (ii) above.

Advise them.

QUESTION 7

Avery and Pendleton is a medium-sized engineering firm in your jurisdiction, with five partners. The firm is quite an old one and its current managing partner is Keith Slater.

Mr Slater has been reviewing the firm's partnership agreement, which has not been amended in any substantial manner since the formation of the firm. This exercise has caused him to consider issues concerning the partnership arrangement generally. Accordingly, he has from time to time been consulting with the law firm where you are employed as an associate, and specifically with your supervising partner, Henry King.

His most recent enquiry has been in connection with the matter of the dissolution of partnerships, and you have been asked by Mr King to prepare a draft letter of advice to Mr Slater which addresses the following:

- (i) the ways in which a partnership can be dissolved;
- (ii) any steps which should be taken in the drafting of the partnership agreement to prevent undesired dissolution of the partnership, giving reasons; and
- (iii) the minimum recommended content of a dissolution clause in a partnership agreement.

Prepare the draft letter to Mr Slater.

QUESTION 8

You are employed in the corporate secretarial department of a large financial institution as a legal officer. The institution is the parent of several subsidiaries, to which the department also provides corporate secretarial support.

From time to time, in-house training sessions are held for members of the department to ensure that they have a sound understanding of the work for which the department is responsible.

The General Counsel and Corporate Secretary of the institution, to whom you report, has asked you to conduct one such training session on the matter of general meetings. She has requested that you prepare an outline of the presentation's content for her prior approval, and has indicated that it should include:

- (i) an explanation of why annual general meetings and extraordinary general/special meetings are held and the nature of the business generally done at them;
- (ii) the types of resolutions which may be passed at these meetings, with an explanation of how they are passed;
- (iii) a brief explanation of the voting procedure which may be employed, including the role played by proxies and corporate representatives; and
- (iv) a list of the matters to be addressed to ensure that the meetings are validly called and held.

Prepare the outline of the presentation.

QUESTION 9

Abeng Foods Limited (“Abeng Foods”) is a private company limited by shares, incorporated in your jurisdiction. Its majority shareholder is John Abengadi, the other shareholders being his wife and their six children.

From humble origins, Abeng Foods has grown to be a major packager and distributor of specialty food products in the domestic market. It is also becoming a player in the overseas ethnic food market, particularly in areas with significant Caribbean populations.

The company is in need of additional capital in order to exploit opportunities to further diversify its markets and increase its earnings, including much needed foreign exchange.

Mr Abengadi has been trying to interest a few wealthy acquaintances in taking shares in Abeng Foods but without success. Moreover, the last time he approached one of them he was warned that what he was doing might not be proper, that there were legal requirements in relation to share offers and that he had better get some legal advice.

He has therefore approached you for advice on the following:

- (i) having regard to the rules applicable to the raising of capital by the issue of shares, whether there was anything wrong with the overtures he had already made to persons in respect of subscribing for shares in the company, giving reasons; and
- (ii) whatever your answer to (i) might be, how an invitation to subscribe for shares in Abeng Foods could legitimately be issued to a wider cross-section of persons, the factors he should take into account in deciding whether to do so, and a description of the procedural steps and documents which would be involved.

Advise Mr Abengadi.

END OF PAPER