

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1981

LAW OF ASSOCIATIONS
Wednesday, May 27, 1981

Instructions to Students

- a) Time: 3½ hours.
- b) Answer FIVE questions only.
- c) Except where otherwise instructed on the paper, in answering any question a candidate may reply by reference to the Law of Jamaica, the Bahamas, Belize and British Virgin Islands, but must state at the beginning of the answer the name of the relevant territory.
- d) Unless otherwise stated, answers should be given on the basis that the forms of Articles of Association set out in Table "A" of the Companies Act of the relevant territory selected at "C" above are applicable where necessary.
- e) It is unnecessary to transcribe the questions you attempt.

QUESTION 1

Comment and advise on the following document:

" SUIT NO. M003 OF 1981

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN MISCELLANEOUS

IN THE MATTER of MEROE LIMITED
AND IN THE MATTER of the COMPANIES ACT.

TAKE NOTICE THAT this Honourable Court will be moved on Monday, May 15, 1981, at 10 o'clock in the forenoon or so soon thereafter as counsel can be heard on the hearing of an application by Charles Drew, director/ shareholder, that it is just and equitable that orders be made under the Companies Act to bring to an end the oppressive manner in which the affairs of the abovenamed company are being conducted, namely:

- 1) that the register of members be rectified to include the name of the said Charles Drew;
- 2) that alternatively, the capital of the said company be reduced by the sum of \$10,000 and the said sum be repaid to the said Charles Drew for shares which have been allotted to him but for which he has not been given a share certificate;
- 3) that the time within which a debenture dated 1/5/80 is to be registered be extended to June 1, 1981;
- 4) that the directors account for and pay over to the said company all moneys and/or property which the said company ought to have received but for the wilful default and/or neglect of the said directors;
- 5) that further and in the alternative, the said company be wound up.

AND FURTHER TAKE NOTICE that the grounds of this application are as follows:

- (a) that the Petitioner's name has been omitted from the register of members;
- (b) that if your Petitioner cannot get his share certificate, he wants his money back immediately;
- (c) that the failure to register the said debenture was due to ignorance of the legal requirement on the part of your Petitioner;
- (d) that the directors have been diverting most of the lucrative business away from the said company to another company;
- (e) that in the premises it is just and equitable to wind up the said company.

Dated 10th May, 1981.

To the Registrar
Supreme Court.

Filed by Shore and Bright, Attorneys at law etc. "

QUESTION 2

Mary Stokes wants to organise the tenants of an apartment building to form an association.

Advise her.

QUESTION 3

Mae Steptoe, a professional dancer and President of Fleet Creative Dance Troupe seeks your advice on the following matters:

- (a) The Troupe wishes to lease premises for use as its headquarters.
- (b) Ruby Jane, a lead dancer, wishes to commence a legal action to recover damages for personal injuries sustained when a prop fell on her at the Lucea Theatre while the Troupe was performing there.
- (c) Mae Steptoe wishes to recover from the Troupe \$100 she paid the local doctor who attended to Ruby Jane.
- (d) Bill Sykes who was summarily expelled by her a week after he was admitted to membership when it was discovered that his cheque was dishonoured by the bank is threatening legal action.
- (e) She wishes to incorporate the Troupe.

Advise her.

QUESTION 4

Outline the procedural steps for any THREE of the following:

- (a) Issuance of bonus debentures.
 - (b) Members Voluntary winding-up.
 - (c) Change of Name of a company.
 - (d) Removal of a Director before his term of office has expired.
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QUESTION 5

Mr. Dick has this very morning become the new partner in the firm of Merry, Berry & Associates, Engineers, and seeks your advice on the following matters:

- (a) Last month a Writ had been filed against Mr. Mair, one of the other three partners by Ace Suppliers for faulty engineering work done by him. Mr. Dick is reliably informed that Ace Suppliers may seek to join the other partners as defendants.
- (b) Another Writ was filed this very morning naming the firm as Defendant. The Writ is specifically indorsed for \$10,000 for work done and materials supplied to the firm and was served on Mr. Dick.
- (c) Mr. Merry who had retired a week ago has started a rival business in Spanish Town.
- (d) Marcus Brown, the mortgagee of Mr. Mair's share, is demanding explanation of items in the 1980 Financial Statements.
- (e) Mr. Berry who had emigrated three years ago has now returned to the island and has given the firm an ultimatum either to take him back as a partner or to cease using the name Berry.

Advise him.

QUESTION 6

Notification of the Liquidation of Domar Ltd., appeared in yesterday's newspaper. The following persons now seek your advice:

- (a) Joe Doe, a contributor of Domar Ltd., states that the Liquidator has offered him 1000 shares in JAC Ltd., instead of the return of \$10,000 capital which he had invested in Domar Ltd.
- (b) Five past employees of Domar Ltd., who had been injured when the workshop of the company collapsed on them last year:
 - (i) Four of them had their legal actions settled two months ago but only two so far have received payment.
 - (ii) The fifth who was most seriously injured has not yet commenced legal proceedings as he has been in a coma since the accident.
- (c) John James, who is owed \$10,000 by the company for work done states that he has reliable information that the Liquidator is defrauding the company.

Advise them.

QUESTION 7

Advise the Jamaica Development Bank which had lent Star Enterprises Ltd. the following sums of money:

- (i) on January 1, 1980, \$100,000 to buy heavy equipment for a sub-division;
- (ii) on February 1, 1981, \$500,000 to buy washing machines for a chain of Laundromats.

Both loans are secured by standard form debentures conferring a floating charge on the assets of Star Enterprises Ltd.

The following facts have now come to light:

- (a) Mr. Henry, the managing director, who had negotiated the loans and had signed the loan agreements, had not fulfilled his undertaking to the J.D.B. to ensure that clause 3 of the Memorandum of Association of the company be altered to include the running of laundromats.
- (b) Since it commenced operations, Star Enterprises Ltd., had issued the following debentures (apart from the two to the J.D.B.):
 - (i) one dated December 31, 1979, to Mr. Henry conferring a floating charge for advances of \$1,000,000;
 - (ii) another dated May 1, 1980, conferring the fixed charge on the land to be subdivided to secure a loan of \$500,000 by the Bank of Kingston;
 - (iii) another dated April 1, 1981, conferring a fixed charge on the washing machines to secure a loan of \$500,000 by the Bank of St. Andrew.

All the debentures except the one dated May 1, 1980 had been duly registered.

- (c) The total gross assets of Star Enterprises Ltd., amount to \$1,500,000.
 - (d) A resolution was passed yesterday putting Star Enterprises Ltd., into liquidation and appointing Bob Dixon, Liquidator.
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QUESTION 8

Advise Conrad Paul who wishes you to take immediate legal action.

- (a) He holds 30% of the shares in U-Drive Ltd., a car rental company. The company has made profits in one or two years since 1976. His co-director, Don James now proposes to borrow \$50,000 on the security of 100 new cars recently acquired to distribute as dividend.
- (b) The other two shareholders are Anthony Dawkins and Don James who each own 30% of the shares. Anthony Dawkins who lives abroad has given Don James a general proxy to vote at general meetings. Conrad Paul is at odds with Don James and wishes either to force Don James to purchase his shares or to sell his shares to someone else.
- (c) He holds 800 of the 1000 ordinary shares of another company, AI Brokers Ltd.; his mother-in-law holds non-voting preference shares valuing \$10,000; he wishes to get rid of these shares by paying her off and reorganise the share capital of the company by creating:

2000 class A shares of \$1 each
2000 class B shares of \$10 each
2000 class C shares of \$100 each.

He now proposes to retain his share-holding and to allot the class B shares to his mother-in-law and the class C shares to his father to replace a debenture which the company had given him to secure a loan of \$200,000.
