

L.A. 4

FOR REFERENCE ONLY

NORMAN MANLEY LAW SCHOOL  
Council of Legal Education

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATION 1978

LAW OF ASSOCIATIONS

Wednesday, June 14, 1978

Instructions to Students

- a) Time: 3½ hours.
- b) Answer FIVE questions only.
- c) It is unnecessary to transcribe the questions you attempt.
- d) Except where otherwise instructed on the paper, in answering any question a candidate may reply by reference to the law of Jamaica, the Bahamas, or Belize, but must state at the beginning of the answer the name of the relevant territory.
- e) Unless otherwise stated, all references to Articles of Association being in the 'usual form' mean that they are in the form set out in Table A of the Jamaican Companies Act, 1965, or of the U.K. Companies Act, 1948.

QUESTION 1

The Bank of Budapest had lent A-Tax Holding & Investment Ltd., a Jamaican company, the sum of \$1,000,000 ( to finance -

- (a) the purchase of properties of Jamaican emigres at bargain prices to hold as a long-term investment, and
- (b) low-income housing development schemes to modernise various slum areas of Jamaica.

The loan agreement was negotiated over a period of 6 months by J. Mark, the Managing Director of A-Tax, and was signed by him on behalf of A-Tax.

The Bank has just got a copy of the Memorandum and Articles of A-Tax, and has observed that -

- (a) ✓ the authorized Capital is \$1,000,000;
- (b) the objects clause is the standard form for Holding and Investment Companies;

- (c) the Articles provide, inter alia:
- (i) The Managing Director may borrow on behalf of the Company up to a limit of \$100,000.00 in any one year without a resolution of the Board of Directors.
  - (ii) All documents bearing the Seal of the Company should be signed by the Secretary of the Company and counter-signed by any two Directors.

The following securities under the Seal of A-Tax and signed by 3 Directors had been given by A-Tax:

- (i) as to \$100,000.00 mortgages on lands already purchased from the emigres;
- (ii) as to a further sum of \$100,000.00 Bills of Sale on heavy equipment acquired for the housing development;
- (iii) as to the remainder, a floating charge on all A-Tax properties.

A notice of appointment of a receiver by the Jamaica Development Bank under powers contained in a Debenture appears in today's newspapers. The Bank of Budapest now seeks your advice.

---

QUESTION 2

K. Arbor, the President of the Federated Chess Societies of Jamaica, seeks your advice on the following:

- (a) The association wishes to buy land on which to construct the Jamaica Academy of Chess.
- (b) The association also wants to sue Bright Jewelry Ltd. for damages for breach of contract to import 1,000 chess clocks into the island.
- (c) B.O. Rassky, the Tournament Director, to whom was delegated the powers of expulsion of members by the Disciplinary Committee of the Executive Committee, summarily expelled from membership of the Association Bill Fisher, an old irascible master, as in the last tournament held at the Association's premises Fisher, who was then leading, in a fit of temper at being check-mated in 3 moves, punched his opponent, G. Yates, a new member, on the nose, and overturned several tables on which other games were being

played. This was the third occasion on which Fisher had reacted in this manner to a loss.

- (d) An attorney-at-law has written on behalf of Yates and one Dick Brown, a visiting non-member who was injured when a chair on which he was sitting collapsed in the ensuing commotion. He is inviting settlement of a proposed action against Mr. Arbor and the Association.
- (e) Pursuant to a rule of the Association which gave him absolute discretion in the disposal of the funds of the Association, Mr. Arbor proposes to donate \$10 out of the funds for the scientific study of the game of Dominoes at the U.W.I.

---

QUESTION 3

You have just been engaged as an Associate by a firm with a busy litigious practice in corporate matters. Prepare a resume of the main procedural Rules of Practice relating to companies registered under the Companies Act, for the guidance of the firm.

---

QUESTION 4

Altruism Ltd. wishes to raise the sum of \$500,000 to expand its factories with concomitant boost to its productivity.

The nominal capital of the company is 1,000,000 \$1 shares, of which 900,000 shares are already issued, though only \$800,000 have been paid up. The company owns 5,000 acres of land in Manchester, St. Ann and Clarendon. On account of the grave hostility of the shareholders at the last Annual General Meeting, the shares having fallen on the Stock Exchange from \$5 to \$1.50, it is not expected that they will show much interest in any further investment in the company. Lombard Bank has a Debenture to secure a loan of \$200,000 made a year ago; a clause of that debenture prohibits any further borrowing if the quotation of the shares on the Stock Exchange is below \$3.50.

Advise the Board of Directors.

---

QUESTION 5

On 1st November, 1977, Pat Brown, Bill Mars and Al Jones took over the business of Cole, Stokes, Conway & Company. Of the original partners, Bill Cole retired on 30th May, 1977, Con Stokes on 31st October, 1977, and Ed Conway died on 25th December, 1977.

- (a) On 1st December, 1977 Ed Conway had, without the knowledge of any of the other partners, committed the firm in a business venture with Procope & Sons, Builders, on a 40:60 profit sharing, each party to bear its own loss and expenses basis, to design all houses as and when required by Procope & Sons for all their housing developments, and Procope & Sons is demanding that the firm honour the agreement.
- (b) The surviving partners had paid Bill Cole, the executor of Conway's estate, \$20,000 for goodwill, but he has set up a rival business and is soliciting the firm's customers.
- (c) Con Stokes has been served with a writ in an action for breach of contract and negligence in respect of a contract entered into by the firm and one Ben Carter, a new customer who had picked the name of the firm from the Yellow Pages. The contract was signed on 2nd November, 1977.
- (d) Al Jones is insisting that his son Tom joins the firm as a junior partner.
- (e) A judgment for the sum of \$1,000 entered on 1st December, 1977 against Con Stokes in respect of money owed on drawing instruments ordered by him for the firm in January 1977, and delivered on 1st November, 1977 is still unsatisfied, as Stokes is broke.

Advise Pat Brown and Con Stokes.

---

QUESTION 6

An instructing attorney who has vast experience in other branches of the law has sent you the following draft Statement of Claim for your vetting and advice before he takes any further step in the matter:

BETWEEN MARK ANTHONY PLAINTIFF  
AND CHARLES BOX )  
and ) DEFENDANTS  
MARY JANE )

1. The Plaintiff is one of 10 shareholders in a company known as Safex Ltd., the holder of 51% of the shares, Director, and one of the Promoters of the said Company.
2. The Defendants are shareholders, and the other Directors and proprietors of the said Company.
3. On the 10th day of March 1978 at the first Directors' meeting of the said Company, the Plaintiff was appointed Managing Director, the 1st Defendant Chairman of the said Board of Directors, and the 2nd Defendant Secretary of the said Company.
4. On the 1st day of April, 1978 at a Directors' meeting of the said Company, because the Plaintiff had discovered that the 1st Defendant had sold property through a nominee to the said Company shortly after its incorporation, the Plaintiff and the 1st Defendant had a quarrel and the Plaintiff left the meeting; after the Plaintiff left, resolutions were passed removing the Plaintiff as Managing Director and a signatory on the Bank account of the said Company, and appointing the 1st Defendant in his place.
5. Since that date the Defendants have embarked on a course of conduct which is oppressive to the Plaintiff.

PARTICULARS

- (a) At Directors' meetings the Defendants completely ignore the Plaintiff.
- (b) They have ceased giving the Plaintiff any money whatsoever out of the said Company, while they pay themselves salaries of \$20,000 per year.
- (c) They have formed a new company to which they have diverted several of the most lucrative contracts of the said Company.

6.

- The Plaintiff claims -
- (i) That account be taken of all sums of money received by the Defendants or ought to have been received by them on behalf of the said Company, and an order for payment of any amount found on the said account;

- (ii) An injunction restraining the Defendants from continuing the said course of oppressive conduct;
- (iii) Damages for wrongful dismissal.

Instructing attorney proposes to use paragraph 6 as the endorsement on a Writ of Summons.

---

QUESTION 7

John Charles who was appointed liquidator of Datar Ltd. on 1st June, 1978 seeks your advice on the following matters:

- (a) On 1st June, 1978 he signed a contract to sell part of the Company's land, the consideration to be paid in the form of shares in Midtown Ltd.
- (b) Arising out of an accident between the Company's motor vehicle and a minibus in January 1977 in circumstances in which the Company's driver was clearly to blame -
  - (i) 2 actions were settled and consent judgments entered in favour of the Plaintiffs on 1st May, 1978; however, only one of them has been paid so far;
  - (ii) he has received letters from an attorney-at-law threatening legal action on behalf of other occupants of the minibus;
- (c) A creditor of the Company is expressing great dissatisfaction with the process of liquidation and states that he shall be making an application to the court to have matters rectified.

---

QUESTION 8

Advise the Board of Directors of Merod Ltd., a Real Estate Company. Up to 1972 the company had made fantastic profits; however, since then it has made serious losses every year. The last Annual General Meeting had to be adjourned three times on account of the reactions of angry shareholders. This year's Annual General Meeting is fast approaching, and the Board proposes the following scheme to alleviate matters:

- (a) to borrow \$500,000 to pay dividends on the security of lands owned by the Company.
  
  - (b) to pay off the Preference shareholders out of the Share Premium Account which now stands at \$1,000,000 as they were the most vociferous group complaining that they received no dividends since 1973, and that with the depression in the real estate market there appears to be no surplus assets in which they can participate.
  
  - (c) to reorganise the Share Capital of the Company into Classes A, B, and C shares, giving the existing shareholders options to exchange their shares for the new shares.
-