

NORMAN MANLEY LAW SCHOOL
Council of Legal EducationLEGAL EDUCATION CERTIFICATE
SUPPLEMENTARY EXAMINATIONS, 1975REVENUE LAWInstructions to Students

- (a) Time: 3½ hours.
 - (b) Answer any FIVE questions.
 - (c) It is unnecessary to transcribe the questions you attempt.
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QUESTION 1.

(a) H and his wife together own all the shares in a construction company, H Ltd. J Ltd. is a wholly owned subsidiary of H Ltd., and carries on a hotel business. H is already a high income earner and at present is in the 60% tax bracket. It is intended to form an investment company, K Ltd., which will hold all H's shares in H Ltd. and also the shares of H Ltd. in J Ltd.

- (i) Explain the future tax liability of K Ltd.
- (ii) State how H Ltd. and J Ltd. should treat for tax purposes dividends paid to K Ltd.

(b) With regard to the 1973 tax liability of J Ltd. consider whether a loan of \$20,000 by the company to H Ltd. falls to be treated as a distribution. What are the tax consequences to a company making a payment that is deemed to be a distribution?

QUESTION 2.

Mary was born in Jamaica and is a Jamaican citizen living in Chicago, U.S.A. She left Jamaica in 1972 ostensibly on leave from her employment with the Government of Jamaica, but remained in the U.S.A. to work. Mary now has a highly lucrative job,

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and remits fairly large sums to this country to support her parents and to educate two young daughters now attending an expensive boarding school.

Mary owns a furnished luxury flat in a residential area in Kingston, and she has let it on a two-year lease with a proviso for earlier termination of the lease by six months' notice on either side.

Mary has come to Jamaica every year since 1972 on three weeks' annual leave, and on her visits stays with relatives at different places in Jamaica.

The U.S. Internal Revenue regard Mary as resident in the U.S.A. for U.S. tax purposes. It appears that the Jamaican Revenue considers her as still resident in Jamaica in view of a sweeping assessment served on her for \$50,000. If Mary is not treated as having ceased to reside here in 1972 it would seem, as the Commissioner of Income Tax contends, that she is liable to Jamaican income tax on her income wherever arising.

Advise Mary (a) as to her liability to Jamaican income tax, if any (b) as to her potential liability to the transfer tax on death since she has recently willed her property in Kingston to her mother.

NOTE: Candidates are requested to ignore the USA-Jamaica Double Taxation Treaty for present purposes.

QUESTION 3.

(a) A acquired from B a small town property, Blackacre, at a bargain price of \$20,000. A directed that Blackacre be conveyed to himself or C, his nominee. Blackacre was conveyed to C.

Immediately afterwards A granted C an option to purchase Blackacre. C exercised the option.

Consider the liability to transfer tax of B and C.

(b) The Banana Growers' Association recently negotiated a loan of \$1 million with a finance company, First National Securities Ltd. First National, however, insisted on obtaining a government guarantee of the loan, and the government agreed to

/do so ...

do so pursuant to the relevant legislation. A deed of guarantee was executed by the government, First National and the Association.

The document merely recites that the government will guarantee repayment of the loan, but no charge was taken over any property of the Association or of the government.

Advise whether the document should be stamped with fixed deed stamp duty or ad valorem as a collateral security.

QUESTION 4.

X Ltd. is a fast expanding company in the plastics business. At present the board is considering the salaries of its senior employees.

The board wishes to know whether they should replace the existing travelling allowance by the grant of free use of a company car at the company's expense. At the moment an entertainment allowance is given to senior employees, but the board is contemplating operating an expense account for the benefit of senior employees and granting a slightly reduced entertainment allowance to cover private entertainment of business clients.

The company is also considering granting loans at a commercial rate to senior employees for house purchase, with a provision that the interest would be forgiven if the employee remains with the company for a further five years.

It is also proposed that X Ltd. would grant free passages to the Caribbean or North America to senior employees on leave.

X Ltd. is particularly concerned about the tax consequences of these proposals for its employees in senior positions. Advise X Ltd.

QUESTION 5.

Jamaica Spinning Mills Ltd. ("the company") manufactures carpets. The company purchased new machines about three years ago as part of a modernisation programme. Experience has shown that these machines do not perform efficiently in the extremely dry and hot conditions of the factory. It has been discovered that the fibres used in manufacturing also become very brittle

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under such conditions. Expert opinion advised that the factory should be air-conditioned but because of the very high ceiling and the nature of the roof the cost would have been prohibitive.

In 1974 the company decided to instal a suspended ceiling over the whole factory including the office section. Simultaneously the company installed air-conditioning in the entire building including the offices. As a result of these alterations the machines have operated at peak efficiency.

Advise the company whether the total cost of the ceiling and air-conditioning is a revenue expense. If it is not, explain how else it can be deducted.

The company further wishes to be advised as to whether it can claim a deduction of \$5,000 as the manufacturing cost of carpets donated to the University of the West Indies, and simultaneously bring in the same figure as a notional revenue receipt.

QUESTION 6.

(1) Your clients are partners in a firm of architects. The partnership has grown considerably, and in the last two years the burden of taxation has increased. It is proposed to transfer some of the assets of the partnership such as realty, office equipment, motor vehicles etc. to a company which will lease those assets back to the partnership as well as provide managerial services to the partners. Advise your clients whether these proposals would reduce the level of taxation of the partners.

(2) Paul is a salaried accountant with a firm whose offices are situated in downtown Kingston. Paul lives at Red Hills, and has established a small office at his home where he occasionally sees clients of the firm.

Advise Paul whether he can deduct from his statutory income the cost of travelling between his home and his office in downtown Kingston.

QUESTION 7.

Advise with reasons whether the following receipts are taxable in the recipient's hands:

- (1) A Christmas hamper given by an employer to 35 members of his staff of 100 employees.
 - (2) The sum of \$6,000 donated by spectators at a benefit match to a professional cricketer on his retirement from professional cricket.
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QUESTION 8.

In 1968 the AB Group of companies established a Trust Fund for the benefit of employees of the group. AB Ltd. one of the companies of the group made a loan of \$50,000 to the trustees of the Trust Fund and the Trust purchased shares in AB Ltd.

Pursuant to the provisions of the Trust Fund the trustees were to use the income from the shares to repay the loan, to re-invest and to divide the remaining income among employees qualifying under the Trust.

In 1973 AB Ltd. merged with CD Ltd. Because of the administrative difficulties of extending the scheme to the new members of the group it was decided to put an end to the Trust Fund, and after sale of the shares and repayment of the loan from AB Ltd. to distribute the capital of the Trust Fund among qualifying employees as provided in the Trust Deed. Accordingly the trustees were forced to distribute the surplus of the Trust Fund among those eligible, because of the merger.

Mr. Mark, an employee of AB Ltd., received \$500 in the distribution without deduction of tax. The distribution bore no relation to Mr. Mark's remuneration, and was in fact based on his length of service. Employees of differing salary levels but with the same length of service received an identical sum. And the trustees did not consider the distribution as arising from employment with AB Ltd.

The Commissioner of Income Tax wrote Mr. Mark on June 3, 1975 informing him that the sum of \$500 paid to him in 1973 was assessable to income tax as an emolument "arising or accruing from an office or employment of profit". Subsequently the Commissioner sent Mr. Mark a Notice of Assessment dated July 9, 1975 further assessing him to income tax for 1973 on the sum of \$500.

Mr. Mark served formal Notice of Objection in a letter dated July 11, 1975 and his objections have been heard. The Commissioner confirmed his assessment in a Notice of Decision dated August 5, 1975 in which he held:-

- (1) That it mattered not that the payment to Mr. Mark was made by a third party and not by his employer.
- (2) That the motive of the trustees in putting an end to the Trust Fund and distributing the surplus was irrelevant.
- (3) That it was of no consequence that the payment was capital in the hands of the trustees.
- (4) That the payment was reward for past services rendered to Mr. Mark's employer.
- (5) That Mr. Mark's employment was the causa causaus and not merely the causa sine qua non of the payment.
- (6) That the payment was therefore liable to income tax under section 5 (1) (c) of the Income Tax Law, 1954 as amended.

Study the facts outlined above and draft in your answer book a Notice of Appeal to the Revenue Court based on Form B of the Revenue Court Rules, 1972.
