

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SPECIAL SUPPLEMENTARY EXAMINATIONS, OCTOBER 2014

CIVIL PROCEDURE AND PRACTICE I

(WEDNESDAY, OCTOBER 1, 2014)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

John Brown attends on your office. He instructs you that he has been served with a Claim Form and Particulars/Statement of Claim wherein his company has been sued. An excerpt of the Particulars/Statement of Claim is set out below.

PARTICULARS/STATEMENT OF CLAIM

IN THE SUPREME COURT OF YOUR JURISDICTION

CLAIM NO HCV 2012 HCV 1234

BETWEEN PATSY CAMPBELL CLAIMANT

A N D JOHN BROWN & COMPANY LTD DEFENDANT

1. At all material times the Claimant was a lawful visitor to the Defendant's premises at 7 Beston Street, Jurisdiction.
2. The Defendant was at all material times the occupier of shop premises at 7 Beston Street, Jurisdiction to which it invited members of the public to enter for the purpose of purchasing groceries and other goods.
3. On June 6, 2010, the Claimant entered the Defendant's shop as a customer for the purpose of purchasing bread. While the Claimant walked along an aisle in the premises, she slipped on milk, water or some other wet, moist or slippery substance on the floor, lost her footing and fell.
4. The Claimant's accident was caused by the Defendant's breach of the common duty of care under the Occupier's Liability Act or by reason of negligence on the part of the Defendant, its employees or agents or both.

PARTICULARS OF NEGLIGENCE /BREACH OF STATUTORY DUTY

- (a) Failing to take any or any reasonable care to see that the Claimant would be reasonably safe in using the premises as a customer.
 - (b) Causing or permitting the floor to be or to become or to remain a danger and a trap to persons lawfully using the same.
 - (c) Causing or permitting the milk, water or other wet, moist or slippery substance to be present on the floor.
 - (d) Failing to cause the milk, water or some other wet, moist or slippery substance to be cleaned up and the floor dried.
 - (e) Failing to institute or enforce any or any adequate system for the inspection and cleaning of the floor.
 - (f) Permitting the Claimant to walk along the aisle when they knew or ought to have known that it was unsafe and dangerous for her to do so.
 - (g) Failing to place any barrier around the wet/moist area of the floor.
 - (h) Failing to discharge the common duty of care to the Claimant in breach of the Act.
5. By reason of the negligence/breach of statutory duty the Claimant has suffered personal injury, loss and damage and has incurred expenses.

Particulars of Injuries

The Claimant was born on August 17, 1984. Brief details of the pain and injuries sustained are set out below as contained in the medical report of Dr Jonas Williams, MBBS dated September 5, 2011. A copy of the medical report is attached hereto.

- (i) Whiplash injury to the neck with muscle spasms;
- (ii) Muscle spasms in the lower back;
- (iii) Fractured right ankle;
- (iv) Permanent Partial Disability 10%.

Special Damages

(i)	Medical Expenses including medical report	\$40,000.00
(ii)	Transportation Costs	10,000.00
(iii)	Loss of Income; 2 weeks @ \$35,000 per week	<u>70,000.00</u>
	Total	\$120,000.00

6. The Claimant further claims interest on such damages as may be awarded to her at such rate and for such period as the court may deem fit pursuant to the [relevant discretionary statute for your jurisdiction].

AND THE CLAIMANT CLAIMS

1. Damages
2. Interest
3. Costs
4. Further and other relief as the court shall see fit

Filed by

Your instructions are that the Claimant did in fact fall in the supermarket on June 6, 2010 as alleged in the Particulars of Claim. However, John Brown states that Patsy fell because she failed to comply with the directives of the floor manager who informed her not to walk in the aisle as there was a spill and he had asked one of the janitors to clean up the spill in the aisle. He further instructs you that signs were put up in the vicinity of the spill to inform the shoppers that there was a spill on the aisle. Although the signs were put up and the specific directives given, the Claimant still insisted on walking in the aisle as she said she did not see the reason for going around and the bread she wanted was in that aisle and she had to get back to work so she had no time to wait for the spill to be cleaned up. John said that Patsy was very stubborn and 'hard ears' and that is why she fell.

Draft a Defence to the Particulars/Statement of Claim.

QUESTION 2

Carlene Einer filed a claim against Peter Marson for breach of contract. The breach occurred on September 10, 2010. The Claim Form and Particulars/Statement of Claim are both dated June 16, 2014. You have instructed your process server to serve the Claim Form and Particulars/Statement of Claim (with the accompanying documents) on Peter. You have not been able to serve him. Peter resides at 14 Whiteley Avenue, Jurisdiction. He lives there with his mother Agnes Marson. Mrs Marson is a retired teacher who spends her days at home working in her flower garden or babysitting Peter's three (3) children.

- (i) What options are available to effect service on Peter?
- (ii) Set out the procedure that is to be followed with respect to each option that is considered.

QUESTION 3

You act for Philbert Watson in a claim against Natasha James, a minor, by her father and next friend, Andrew James. Claim Form and Particulars/Statement of Claim (along with the accompanying documents) were served on the Defendant on May 15, 2014. The Defendant has neither filed an Acknowledgment of Service nor a Defence.

- (i) Prepare the application, which will enable you to obtain an early judgment on behalf of Philbert.
- (ii) Draft the Orders, which you believe the Court is likely to make.

(The relevant form is provided.)

QUESTION 4

Neston Carter of 7 Weepforme Drive in the jurisdiction instructs you that on 1 June 2013, he agreed to lend Michael Bishop of 8 Lovelane in the jurisdiction, the sum of \$1.5M. It was agreed between the two men that the sum should be repaid in full on or before May 31, 2014. Interest rate of 10% per annum was agreed.

Neston further instructs you that Michael has failed to repay the money as promised. He has made several inquiries of Michael as to when the money will be repaid but Michael keeps evading him.

Neston wishes to initiate proceedings against Michael. Draft the necessary document(s) on his behalf.

(The relevant form, as well as calculators, is provided.)

QUESTION 5

You are employed to the law offices of Davis, Fletcher, Anderson & Associates, Attorneys-at-Law for Robert Ewing. Robert is the claimant in a claim which he has brought against The Carlyle Hotel Limited.

Robert was injured in a slip-and-fall accident while he was taking a shower in his room at the hotel. The tub did not have a non-slip mat. You filed a Claim Form and Particulars/Statement of Claim on his behalf in the Supreme/High Court. The documents were filed within the limitation period but for several unnamed reasons, the case stagnated through the court's process.

The limitation period has now passed and you now wish to amend the Particulars/Statement of Claim to include additional particulars of injuries, namely:

- (a) Chronic mechanical lower back pains;
- (b) Sudden sharp pain across the lower back;

- (c) Concussion; and
- (d) Interest on damages.

The original Particulars/Statement of Claim noted Robert's injuries as:

- (a) Muscle spasm to the back; and
- (b) Narrowing of disc space in vertebral column.

Your managing partner has asked you to prepare an opinion as to whether or not the Claimant's application to amend the Particulars/Statement of Claim to include the additional injuries and the claim for interest will succeed.

Prepare the opinion.

PART B

FAMILY

QUESTION 6

Describe the steps to be taken in dissolution of marriage/divorce proceedings up to the Grant of the Decree Absolute/Divorce Order.

QUESTION 7

Darlene Wolfe instructs you that Ian Rush is the father of her unborn child. She wants him to maintain the child and assist her with exorbitant costs associated with her pregnancy and delivery.

She alleges that Ian was the first and only man in her life for over a year prior to her being pregnant. Ian denies paternity and refuses to give her any money for the child.

Darlene tells you that her cousin Andre introduced Ian to her and was frequently with them during their 14-month relationship. She tells you that Andre would be prepared to give evidence on her behalf.

Advise her.

QUESTION 8

Matthew is a bar operator who has physically abused his wife Shantay during their marriage. She has been injured on several occasions and consequently is in great fear of him.

Matthew and Shantay are separated and Shantay has commenced dissolution of marriage/divorce proceedings. The couple has a child, Maria, who is eight years old and lives with Shantay. Shantay has not applied for custody of Maria in the petition. Matthew has access to Maria on alternate weekends.

Maria is a well adjusted child who is doing well at the prestigious preparatory school that she attends. Matthew is devoted to his daughter and organizes trips and activities to fill their time together. He also communicates with her on Whatsapp and Facebook during the week.

Matthew is proud of the fact that he has never beaten Shantay in Maria's presence.

One day Shantay announces that she is going to Canada to further her studies and will take Maria with her. Matthew discovers through Shantay's best friend that Shantay has met an 'old flame' who is unemployed and living in a one bedroom apartment in Toronto with his two (2) sons from a previous marriage. Shantay intends to join him.

One Sunday evening as Matthew is dropping off Maria, Shantay informs him that there will be no need for him to collect Maria from dance class on Friday as they are leaving for Canada on Thursday.

Matthew objects to Maria being removed from the jurisdiction and wishes to apply for custody.

Advise Matthew as to the procedural steps in relation to this application and the likelihood of success.

END OF PAPER