

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2010

CIVIL PROCEDURE AND PRACTICE I

(TUESDAY, AUGUST 17, 2010)

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 ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTIONS 1 AND 2 ARISE ON THE FOLLOWING FACTS-

Your Supervising Partner has passed you the following document –

“ATTENDANCE NOTE/STATEMENT OF PETER JOHN BERNARD

My date of birth is August 7, 1982. My address is 15 Doncaster Way, Lilliput, in the jurisdiction. My occupation is a recording engineer with Dance Studios Limited, a small recording studio located at 16 Leicester Green Ave, Lilliput. I live with my wife, Joy Christine Bernard and our 5 year old twin sons, Dave and Damian.

In February 2009, I inherited some money from my grand aunt. I invested most of it. I also bought a Suzuki Swift motor car, registration number 1234 FN. I insured the car with third party cover as the cost of the comprehensive cover seemed to be exorbitant and I am a careful driver in any event.

On March 24, 2010, at about 10.00 a.m., I was travelling in my car southerly along Doncaster Way, headed for work. The weather was good, although there had been a short downpour of rain about 8.00 a.m. that morning.

I was driving on the left hand side of the road in a 40kmh zone. I was travelling within the speed limit. As I entered the intersection of Doncaster way and Vale Hill, I saw a Toyota Picnic van registration number 4442 DF coming down Vale Hill on the opposite side of the road. I noticed that the vehicle appeared to be drifting towards me. I glanced at the driver and noticed that his head was lowered and he held a device in his hand and he appeared to be concentrating on it and not on his driving. It seemed to me that he was either receiving or sending a text. He was also coming down the hill too fast, perhaps in the region of 55 kmh.

When I realized the van was virtually upon me and the driver completely oblivious, I wrenched my steering wheel to the left and tried to brake but there was no time to avoid him completely and we collided. I must have lost consciousness with the impact because the next thing that I remember is that my car was stationary and I was sitting behind the steering wheel with my seat belt still on.

The front off side of my car was very badly damaged and the impact had also resulted in the car hitting on other obstacles including a metal gate. My legs hurt very much. I was removed by ambulance personnel from the wreckage and taken to Ekhart Hospital. I have paid the hospital costs of \$385,000.

While I was being removed from my car, I could hear a policeman attending at the scene conversing to the ambulance personnel that these builders' vehicles are always driving too fast down Vale Hill.

At hospital I was treated and admitted as an inpatient for 3 weeks. My leg was fractured. I had minor head injuries and a fractured pelvis.

I have not been able to pursue my main hobby which is playing cricket, which I used to do twice weekly. I think it is unlikely that I will ever be able to play again. I have played to County level.

I am still off work. I had only started working with Dance Studios in January 2010 and I am not entitled to pay while I am off sick. I earn \$80,000 per month.

Dr Tolle has said that I can go back to work on the June 1 of this year. I am not greatly disadvantaged in my present job because it involves a lot of sitting around the recording equipment.

My car was a write off. I bought it for \$1.5m in February 2009. The remains of the car are at a friend's garage in the event it needs to be inspected. I pay him \$250 per day for storing it. My wife and I have had to rent a car since April 1, 2010. We have obtained the weekly rate of \$10,000.00 per week for this from Carvanor Auto Rentals Ltd.

I was interviewed by the police while in hospital. PC Turnbull told me that the van belongs to Dyer Builders' Ltd and that Mike Gibson an employee was driving it. PC Turnbull says that he is still awaiting insurance details which I found somewhat alarming. Mr Gibson was not injured.

I wish to claim damages."

QUESTION 1

Draft a letter to Mr Bernard advising him in relation to any pre-litigation issues and how you will proceed in order to achieve his objective.

QUESTION 2

Draft the Particulars/Statement of Claim in the matter. You have been told that a medical report from Dr Tolle has been requested and will confirm the details of injury given in the statement by Mr Bernard.

QUESTION 3

Your client Mr Leslie Johns is the Defendant to proceedings and has brought you the following Particulars/Statement of Claim which was served upon him-

“IN THE SUPREME/ HIGH COURT OF YOUR JURISDICTION

BETWEEN	JEFF ROLLS	CLAIMANT
AND	LESLIE JOHNS	DEFENDANT

- 1) The Defendant agreed to supply the Claimant with a quantity of cement at a price of \$1,500 per bag.
- 2) Despite numerous requests by the Claimant the Defendant has refused to supply any of the cement.
- 3) The Claimant therefore had to buy the cement elsewhere at a greater cost.
- 4) The Claimant claims interest pursuant to the [discretionary rate of interest in the jurisdiction].

The Claimant claims

- (a) Damages
- (b) Interest
- (c) Costs

Filed by etc”

- (i) What strategy would you adopt to attack the above statement of case on behalf of the defendant? Give reasons.
- (ii) Draft the document(s) which would be necessary to achieve that objective.

QUESTION 4

Your client David Barnett was involved in a three vehicle collision on the Bogle Highway in your jurisdiction. He was not originally a party to the proceedings brought by the claimant (Oscar Wild) against the defendant (Paul Sang). However he has recently been served with an ancillary claim by the defendant. He wishes your advice on the following-

- (i) his relationship in the proceedings to Mr Wild;
- (ii) the effect on the ancillary claim, should Mr Wild and Mr Sang agree to settle the original claim;
- (iii) the effect on the ancillary claim, if the original claim between Mr Wild and Mr Sang is struck out as a result of Mr Wild's failure to comply with an order of the court given at the case management conference.

QUESTION 5

Your firm is acting for Martin Dawes who issued proceedings for breach of contract against Kevin Kong on June 15, 2009. However despite many attempts by the process server employed by your firm they have been unable to serve Mr Kong. Mr Dawes' claim is that Mr Kong is in breach as to the implied term as to title, as Mr Kong sold him a motor car which he was not entitled to sell. As a result Mr Dawes has had proceedings brought against him for the tort of conversion. It appears that Mr Kong is evading service.

- (i) Advise Mr Dawes how you will proceed at this stage in order to enable the proceedings to continue; and
- (ii) assume that although your report is that Mr Kong is eventually served, he complains that he was not able to ascertain the contents of the documents and is challenging service. What steps would you expect him to take?

PART B

FAMILY

FACTS RELATING TO QUESTIONS 6 AND 7

On June 1, 2008, Lola Aston, a registered medical practitioner born in Browns Town on May 10, 1967, met and married Hugh Forest, an engineer who was born in Blues Town on September 4, 1965. It was a quiet morning wedding held on the grounds of Silver Skies Hotel in the city of Port Worth. They went off on a short honeymoon. On that occasion, Hugh was engaged in taking a snapshot of his new wife. He was insistent that she should make herself smaller so she could fit in the view-finder of the camera and was most irate that it would not happen. He lambasted her for her size. She was deeply hurt and thought him most insensitive and impolite.

After the honeymoon, the couple returned to the city to live in Hugh's house at 74 Breadfruit Drive. They each practised their profession in the main town. Hugh often

took to attending at his wife's surgery, standing in the waiting room and berating his wife in the most insulting terms. He accused her of having men and being fat and being a poor lover. This kind of conduct continued for about three months. She began having headaches, became depressed, lost her appetite and of course her patients. A doctor recommended her going away for a bit. She did so but on return to her practice, her husband's atrocious conduct began all over again. She again became ill and left him in April 2009. She now consults you as she has become quite disenchanted with the marriage.

QUESTION 6

Write an opinion as to what action she can take and draft the affidavit in support of the appropriate application.

QUESTION 7

Draft the proposed petition.

QUESTION 8

Gwen Smith and Charles White were born in neighbouring districts in the parish of St. Edmond. Charles, a cultivator, was born on August 10, 1912 and Gwen, a seamstress born June 5, 1920, began a relationship in the summer of 1942. Although they lived in different places, they were seen 'walking out' most evenings, initially accompanied by Gwen's elder sister, Agnes.

Six months after the birth of their first child, David, Gwen and Charles began living together in a small board house which Charles had constructed. David was born on April 10, 1945 and because Charles was working in his field, Gwen had David's birth registered without including Charles' name or particulars. Three children followed David –

Paul born May 6, 1947 – now deceased

Jane born February 8, 1952 – now residing in the United States

Mary born July 14, 1957 – still residing in the old house in St. Edmond

Like David, Paul's birth certificate does not record Charles as his father, but Jane and Mary's certificates state under Father's Particulars – Charles Owen White, Cultivator, born August 10, 1912.

The family lived happily together; Charles was caring but strict with the children and a good provider. In 1962 David left home and at first stayed with his Aunt Agnes who still lives in Portside near the city. Charles died on December 15, 1984 and Gwen died on March 14, 1985. Jane is now sponsoring David to join her in the United States, but the embassy will not accept David's birth certificate as proof of their relationship.

David attends your office with his own birth certificate and that of each of his siblings. He also has a copy of his registration at primary school in which the registering parent is recorded as Owen Charles White born April 10, 1912.

- (i) Advise David on the application that you would make in order to satisfy the embassy and indicate the evidence you would rely on to establish your case, giving reasons; and
- (ii) Draft the order(s) you would expect the court to make.