

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2010

CIVIL PROCEDURE AND PRACTICE I

(THURSDAY, JUNE 3, 2010)

(ORIGINALLY TIME-TABLED FOR MONDAY, MAY 24, 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.
- (g) **Where the current date is relevant in answering any question, that date is to be treated as being the date for which this examination paper was originally time-tabled as shown above.**

PART A

QUESTIONS 1 AND 2 ARISE ON THE FOLLOWING FACTS:-

Your Supervising Partner has passed you the following documents –

“ATTENDANCE NOTE

Client: Winerys Limited

Date: May 1, 2010

Time: 45 minutes

I saw Mr Brown, Managing Director of Winerys Limited, a small private wine business whose premises and registered office are at 100 Hope Avenue, Greenbay in the jurisdiction.

He had previously dealt with Mrs Mary Lakey, the owner of Shacks Wine Bar at 20 Merrick Avenue, Horton, in the jurisdiction. In 2002 and 2003 she had ordered several cases of wine from the company which had been delivered. Payment had been satisfactorily made by cheque.

On December 23, 2004, Mrs Lakey made an order by phone. Mr Brown himself dealt with the order as it was late on that day and staff members had been given time off to do their shopping. He remembers that they had a discussion about different types of wine and delivery before Christmas. Mrs Lakey ordered 50 cases of “Yellow Tail Merlot” to be delivered to Shacks Wine Bar. Mr Brown said he did not anticipate any difficulties. He recorded the order on one of the company’s standard forms immediately after the conversation and supervised the order himself to ensure delivery of the wine late in the evening on December 24, 2004.

The invoice was sent with the delivery of the wine. Mr Brown says he called Mrs Lakey on January 8, 2005, and was told that she had been in a car accident over the holiday season and had suffered serious injuries and would not be available for several months. He said he felt very sorry for her, she appeared to be a mature woman of substantial means and he decided he would wait for her to contact him when she was well.

In January 2005, he wrote to Mrs Lakey stating that he hoped she had recovered and that he was looking forward to receiving payment as soon as possible. He also called Shacks Wine Bar periodically, usually at the time of his end of year accounting period when his accountant enquired about the debt.

Shacks Wine Bar seemed to be operating business as usual. His calls were always answered although he was never able to speak to Mrs Lakey directly. He was told that she would not be in the office and would be asked to return his call. Notwithstanding that she never did, he told his accountant that he was not that concerned and believed that she clearly operated as a sole proprietor and that once she was back on her feet he would receive payment.

However the downturn in the economy has seriously affected his business and at the beginning of this year he again wrote to Mrs Lakey on the advice of his accountant. He received a reply from her in February 2010, stating that she had been very grateful for his forbearance and that her recovery had indeed been very slow but that she would make payment by the end of the month.

Mr Brown is now agitated as Ms Lakey has not fulfilled her promise to him and he now wishes to collect this outstanding trade debt. He believes based on what his accountant has told him that he has a deadline to bring an action against Mrs Lakey.

I explained to him the legal position on suing on a debt and asked about the relevant documentation to prove his case. He gave me a copy of the delivery note which is attached. He does not believe that Mrs Lakey could have any complaints about the wine.

Mr Brown wants to claim the 2% interest per month referred to on the invoice. I told him that I was not sure whether this could be recovered. I discussed the cost of litigation and explained the firm's charges and my position as a paralegal. I told him that the matter would be passed to an attorney-at-law who would write to him.

It seemed to me that he had a reasonable prospect of securing an early judgment.

INVOICE

Winerys Limited, 100 Hope Avenue, Greenbay, Telephone 787-3222

Invoice to

Mrs Mary Lakey

Shacks Wine Bar

20 Merrick Avenue,

Horton

December 24th, 2004

Account no 569210

Delivered herewith 50 cases of Yellow Tail- Merlot at \$5,500 per case.

Total due \$275,000

Cheques made payable to Winerys Limited.

Payment due within 14 days of delivery. A late payment charge of 2% per month or part thereof is levied on overdue accounts from date of delivery."

QUESTION 1

Advise Mr Brown on behalf of the company as to the pre-litigation issues, stating how you would commence proceedings on behalf of the company should it become necessary. Describe the document(s) you would prepare, briefly outlining their contents.

QUESTION 2

Set out the potential methods for securing an early judgment in this matter stating the likelihood of success. Outline the contents of the document(s) to be prepared to achieve each method.

QUESTIONS 3 AND 4 ARISE ON THE FOLLOWING FACTS

Ramon Barton (a minor) brings an action through his father and next friend against your client. An extract from the particulars/statement of claim appears below.

"BETWEEN	RAMON BARTON	CLAIMANT
	(A MINOR BY HIS FATHER AND NEXT FRIEND WILLIAM BARTON)	
AND	MAC ADAM SUPERMARKET LIMITED	DEFENDANT

1. *The Claimant is a minor and brings this action by his father and next friend William Barton.*

2. *The Second Defendant is a company registered in [the jurisdiction] carrying on business as a supermarket at 12 Mac Adam Drive, in [the jurisdiction].*
3. *On November 23, 2009, the Claimant entered Mac Adam Supermarket when he slipped on a step which was wet because the staircase was being washed by employees or agents of the Defendant.*
4. *The incident was caused by the negligence on the part of the Defendant their employees or agents.*

PARTICULARS OF NEGLIGENCE

The Defendant was negligent in that it:

- a) *allowed the Claimant to walk up the staircase when it was wet and unsafe;*
 - b) *failed to direct the claimant to make use of an alternative staircase;*
 - c) *allowed the staircase to be washed in such a manner that all parts of it were wet at the same time, which was unsafe;*
 - d) *failed to supervise their employees or agents, adequately or at all;*
 - e) *failed to keep the claimant away from the staircase by placing a barrier across the foot of it or by some other means;*
 - f) *failed to give the claimant any or any adequate warning that the stair case was wet and unsafe;*
 - g) *failed in all the circumstances to take reasonable care for the claimant's safety.*
5. *As a result of the matters set out above the Claimant suffered pain and injury and sustained loss and damage.*

PARTICULARS OF INJURY

- a) *Fractures to lumbar vertebrae 3,4 and 5;*
- b) *Damage to spinal canal;*
- c) *Bruising, shock and pain.*

The Claimant, who was born on the April 1, 2000, was taken to Hospital where he was required to lie flat and motionless for a week. An operation was performed to rebuild the affected vertebrae. He remained in hospital for 10 weeks with severely limited mobility. He was able to walk with the aid of a frame after about 6 months. The Claimant has made a good recovery and is able to resume school but was unable to sit his high school entrance examinations in January 2010. The Claimant will rely on the report of Dr Thomas Bull served with the Particulars/Statement of Claim.

PARTICULARS OF SPECIAL DAMAGE

<i>Hospital fees</i>	<i>\$500,000</i>
<i>Cost of painkillers</i>	<i>\$15,000</i>
<i>Total</i>	<i>\$515,000</i>

6. *The Claimant further claims interest on such damages as may be awarded to him, 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*

Filed by etc."

The Managing Director, Mr John McAdam, admits that the incident occurred on the day stated in the statement of case. However he informs you that the cleaning of the stairway was not being undertaken by the employees or agents of the company but that the company had hired an independent cleaning firm. The cleaning firm is called Good Good & Clean. It is a partnership which is located in the jurisdiction at 45 Vaze Drive,

Barbican. Mr McAdam said as it was an independent firm he expected them to take the necessary precautions.

Mr McAdam also tells you that the claimant was running up and down the stairs and sliding on them even though they were slippery. He believes that the claimant's father who accompanied him into the supermarket failed to supervise him properly by preventing him from running or sliding on the stairs when it was clearly unsafe to do so. He also states that the spelling of the company's name is incorrect on the documents he has received and should state McAdam Supermarket instead of Mac Adam Supermarket.

QUESTION 3

Draft a defence on behalf of the defendant in accordance with the instructions.

QUESTION 4

Assume that after the defence is filed and after the first case management conference, the claimant's attorneys-at-law indicate that they now wish to amend the claim form and particulars/statement of claim on behalf of their client as follows –

- a) to include a cause of action under the Occupier's Liability Act against your client;
- b) to join Good Good & Clean in the proceedings as a second defendant;

- c) to correct your client's name to McAdam Supermarket and not Mac Adam Supermarket.
 - (i) Advise your client as to whether or not these amendments can be made at this stage and the steps the claimant would need to take to achieve this.
 - (ii) Would your answer be any different if the limitation period had expired by the time the claimant's attorneys-at-law indicated their intention? Give reasons.
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QUESTION 5

Your firm has been contacted by Mr Desmond Prescott. Mr Prescott is a citizen of your jurisdiction who has been resident in England since May 2005. He currently works in the UK as a security supervisor. Prior to leaving the jurisdiction he was employed as a security guard. He says he migrated to England to join his wife who had taken up employment there as a teacher in September 2004.

Recently he received a claim form with particulars/statement of claim through the post at his address in England, 70 Drewsbury Ave, Streatham, London SW16. The claim has been brought by Mr Victor Alexander in relation to an incident which took place in your jurisdiction in April 2005.

Mr Alexander claims against Mr Prescott, as well as his former employers, Guardsboy Ltd, damages for assault, battery, wrongful arrest and false imprisonment.

Mr Prescott says that he remembers the incident well. It occurred when Mr Alexander refused to produce his ID in order to enter a gated community complex where Mr Prescott was posted. Mr Alexander got out of his car and assaulted Mr Prescott. Mr Prescott retaliated and an altercation took place between them. Mr Alexander was subsequently locked in the security guardhouse at the complex until the police came. When Mr Prescott was asked by the police if he wanted to press charges he indicated that he would be leaving the jurisdiction the following month. He was told by the police there was no point in doing so as the case would not be concluded within that period. Mr Alexander was consequently released without charge. Mr Prescott says there were no witnesses to the incident but it had been recorded on a security camera at the gate.

Mr Prescott wonders how it is possible for him to be sued now that he no longer resides in the jurisdiction. He also feels very much that he was the victim in the incident. He states that he would rather not return to the jurisdiction to deal with this matter and wonders what steps he should take.

Write a letter to Mr Prescott advising him on the procedural issues and how you would deal with the matter on his behalf.

PART B

FAMILY

QUESTION 6

Dennis and Yvonne Weatherley were married on March 5, 1995, at the Blessed Holiness Church in the parish of St. John in your jurisdiction by Colin Harris, a Marriage Officer. Dennis was born on August 31, 1965 in the parish of St. Simon and Yvonne was born on

July 28, 1967 in the parish of St. John. They have two children, Susan born August 14, 1995 and Sedley born November 21, 1997. When Sedley was born, Yvonne's father James Wright set up a trust whereby Susan and Sedley upon attaining the age of 25, will each receive \$2,000,000 and a half share in a three bedroomed house at 5 Beech Drive in the parish of St. Simon.

When Yvonne gave her grandmother's recipe for salad dressing to Dennis and suggested they manufacture it commercially, a family business was started under the name of 'Sensuous Seasonings'. Yvonne handles the production side of the business and Dennis looks after the management side. Dennis has 70% shares in the company, Yvonne has 20% and the remaining 10% is split between the children.

The couple lived in a greathouse called the Pines in the parish of St. John which was left to Dennis by his aunt who died in 1994 and is currently registered in Dennis' name only. Although it was in poor condition when they moved in in 1996, Dennis and Yvonne have since renovated the property to luxurious standards. In 2001 the marriage was severely tested when Yvonne found out that Dennis' secretary had given birth to his child, Edward, born October 10, 2000. Dennis and Yvonne received counseling and they were able to save the marriage.

In May 2009, Yvonne went into Dennis' computer and found pictures of Dennis and his personal assistant Catrina in various compromising positions. Yvonne confronted Dennis who told her that if she didn't like it she could leave. On May 31, 2009, Yvonne left with the children and rented a 3 bedroomed house at 8 Chestnut Avenue in the parish of St. John. Shortly after Yvonne moved out, Catrina moved into the Pines; whereupon Yvonne applied to the magistrate's court in St. John for maintenance. On November 8, 2009, Dennis was ordered to pay maintenance of \$20,000 per month for each child up to the age of 18 and \$10,000 per month for Yvonne for three years.

On May 17, 2010, Yvonne attended your office seeking advice. She told you that she has discovered that documents have been lodged with the Registrar of Companies to convert 'Sensuous Seasonings' into 'Creative Condiments', a limited company with Dennis and Catrina as joint shareholders. She also told you that since January 2010 the firm's accountants have been instructed to reduce her monthly salary by \$10,000. She also brought with her a prenuptial agreement which states that if the marriage is terminated by Yvonne before the youngest child reaches 18 she will only be entitled to 10% of all marital assets.

QUESTION 6

Draft a Petition on behalf of Yvonne.

QUESTION 7

Advise on the legal issues which would arise upon an application for division of property and list the orders you would seek on behalf of Yvonne.

QUESTION 8

Horatio Smith and Wendy Jones began living together in 1997. Wendy already had a child Adrian Clarke born on June 10, 1995, whose father Patrick lives abroad and plays

no part in Adrian's life. On February 8, 1999, Wendy gave birth to Benjamin. Having just registered the child in Horatio's name and in the afterglow of birth at the hospital, Horatio proposed to Wendy.

They were married on July 16, 1999. The couple did well: Wendy is an accountant now aged 41 who initially gave up work to look after Adrian (who calls Horatio "Daddy") and Benjamin. After eighteen months she set up the 'Creative Kids Nursery' which is run from the matrimonial home at 5 South Road in the parish of St. Ann. The nursery is quite successful and Wendy employs three workers so that as well as running the nursery she is able to take on private accounting work from time to time. Wendy earns approximately \$150,000 per month.

Horatio is a driver who earns \$60,000 per month, he is now 55 years old and has one child Carl born May 20, 1996 from a previous relationship. Carl has impaired hearing and suffers from a speech impediment.

Horatio's wages are paid into the bank and Horatio has given Wendy the debit card to access this account. Wendy therefore paid the mortgage, all the bills and family expenses out of their pooled resources. One day Horatio asked Wendy for money to fix his car. Wendy refused Horatio's request because she wished to buy a piece of equipment for the nursery. Horatio was furious and took back the debit card saying he would control his own money henceforth. There then ensued two weeks of heated arguments between Wendy and Horatio at the end of which on February 10, 2010, Horatio moved out.

Horatio is now living in rented accommodation. He pays \$15,000 per month for rent, \$10,000 per month for Carl, \$10,000 to his retirement fund and the rest on food and living expenses.

On May 14, 2010, Horatio came to your office with a summons requiring him to attend court. The summons states that Wendy is seeking maintenance for herself, Adrian and Benjamin.

Horatio tells you that he doesn't see why he should maintain Adrian, he doesn't think that Benjamin is his child and apart from the fact that Wendy is greedy, he has been told by a neighbour that Wendy has a regular male visitor.

Advise generally on how you would contest the applications for maintenance in respect of (a) Wendy, (b) Adrian and (c) Benjamin including consideration of the merits and any procedural steps you would take.
