

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2014

CIVIL PROCEDURE AND PRACTICE I

(AUGUST 13, 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.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

## **PART A**

### **QUESTION 1**

You act for Phil Armstrong who was involved in a three-vehicle collision on Mandela Highway in your jurisdiction. He (Phil) was joined as a party to the proceedings when Sandra Butler, the Defendant to the original claim, brought him in as an Ancillary Defendant. Phil seeks your advice on the following:

- (i) the steps he should take to preserve his rights and why he should take them;
  - (ii) the effect of the ancillary claim if the Claimant and Sandra Butler agree to settle the claim;
  - (iii) the effect of the ancillary claim if the Claimant's claim is struck out because the Claimant failed to comply with an order of the Court; and
  - (iv) the likelihood of the Claimant's application for default judgment against Phil being successful where Phil has failed to acknowledge service of the Ancillary Claim Form.
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### **QUESTION 2**

You act for Michael Morris, the Defendant in a claim brought against him by Sophia Blagrove. The claim number is 2013 HCV 4566. Michael has brought you the Claim Form with Prescribed Notes, Acknowledgment of Service Form and Defence Form (collectively hereafter referred to as the "Claim Form"), along with Particulars/Statement of Claim, Attested Default Judgment, Notice of Assessment of Damages and other documents. He says he was served with the Claim Form and

Particulars/Statement of Claim documents on January 4, 2014. He was however served with the Attested Default Judgment, Notice of Assessment of Damages and the other documents on August 2, 2014. The Claim Form is still valid. When asked why he had not brought the Claim Form and Particulars/Statement of Claim before, he said he was not able to do so as the Claim Form and Particulars/Statement of Claim were served on him on the very day he got the news that his mother was dying in Calcutta, India and he had to rush off to India to take care of her. His mother died on May 18, 2014 and he returned to Jamaica on June 25, 2014 after attending to the funeral arrangements and closing her home in India.

You peruse the documents and note that the claim against the defendant is a claim for breach of contract. Michael instructs you that he honoured the contract and provides you with documentation to prove that he had in fact supplied the goods, for which the Claimant has filed the claim. The Claimant's signature appears on all the invoices acknowledging receipt of the goods.

Michael asks you if there is anything he can do to prevent the matter from proceeding to assessment of damages.

- (i) Advise him on the step(s) he should take.
- (ii) Prepare the application which will enable you to take the step(s) on behalf of Michael.
- (iii) Draft the Order which the Court will make if you are successful.

The relevant form is available.

### **QUESTION 3**

The Defendant, for whom you act, has provided you with a Particulars/Statement of Claim which appears below.

#### **PARTICULARS OF CLAIM**

IN THE SUPREME/HIGH COURT OF JURISDICTION

CLAIM NO 2014 HCV 1234

BETWEEN	GEORGE DALEY	CLAIMANT
AND	ROGER HEADLY	DEFENDANT

1. The Claimant, George Daley, was at all material times a Construction Worker, of 14 Barbican Drive, jurisdiction.
2. The Defendant was at all material times the owner and driver of motor vehicle bearing registration number 123PCT.
3. On January 3, 2013 the Claimant was lawfully walking along Morant Main Road when the Defendant's motor vehicle bearing registration number 123PCT collided into the Claimant.
4. The incident was caused by the negligence of the Defendant.

#### **PARTICULARS OF NEGLIGENCE OF THE DEFENDANT**

- (a) Driving too fast in the circumstances.
- (b) Failing to sound his horn.

- (c) Failing to swerve or so manoeuvre his vehicle so as to avoid colliding with the Claimant.
  - (d) Failing to keep any or any proper lookout as he drove on the main road.
  - (e) Failing to give any or any adequate warning of his approach on the main road.
5. As a result of the matters set out above the Claimant suffered pain and injury and sustained loss and damage.

**PARTICULARS OF INJURY**

The Claimant was born on April 1, 1980. He was treated by Dr Angel McIntosh and a medical report dated February 14, 2014 prepared by Dr Angel McIntosh, MD, FRCS is annexed hereto. The Claimant's injuries are listed below:

- a) Fracture to right patella
- b) Fracture to right ankle
- c) Bruises to left and right forearms

**PARTICULARS OF SPECIAL DAMAGES**

Hospital fees	\$500,000
Cost of pain killers	<u>\$ 15,000</u>
Total	\$515,000

6. The Claimant 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 of your jurisdiction.

Dated the 6<sup>th</sup> day of May 2014

### Certificate of Truth

I, George Daley, do hereby certify that the facts set out in this Particulars of Claim are true to the best of my knowledge, information and belief.

George Daley

SETTLED BY

GIBSON, SHERLOCK AND POWELL

F Powell

Attorneys-at-Law for the Claimant

#### AND THE CLAIMANT CLAIMS

- (i) Damages
- (ii) Interest
- (iii) Costs

Filed by....

You are instructed that there was in fact an accident on January 3, 2013 involving the Claimant and the Defendant. The Defendant however instructs you that the collision was not his fault. He further instructs you that the speed limit on that part of the main road is 50kph. He was driving along the roadway at 40kph when the Claimant suddenly and without warning ran from the right side of the road to the left side of the road and collided into the motor vehicle which the Defendant was driving. After the incident he was informed that the Claimant had just stolen some mangoes from a vendor at the market and was being chased by a mob when he ran into the road without paying any attention to the vehicular traffic which was travelling on the main road. The Defendant said he was unable to stop the car before hitting the Claimant although he had applied his brakes. He also swerved his car but was not able to move out of the path of the

Claimant in time to avoid the collision. The Defendant suffered no property damage as he was at the material time driving his Hummer bearing registration number 123PCT.

Draft a Defence to the Claimant's claim.

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#### **QUESTION 4**

- (a) You appeared on behalf of the Claimant before Master Carmen Jones who presided over the Case Management Conference held on July 18, 2014. The usual case management conference orders were made. In addition to the usual orders, the Court, on the application of the Claimant, made an order appointing Dr Medgar Jacobson, Consultant Psychiatrist, as an expert. The claim number is 2010 HCV 1001. The parties to the claim are Albert Highfive, Claimant and Mesha McIntosh, Defendant.

Draft the Case Management Conference Orders which is to be signed by Master Jones. (For these purposes, you may assume such dates and information as are necessary but are not inconsistent with the facts set out above).

- (b) At a Notice of Application For Court Orders hearing which took place on February 14, 2014, the Court ordered the Defendant to amend his defence on or before March 10, 2014, failing which his case would be struck out. The Defendant failed to amend the Defence and as such his case was struck out.

You act for the Defendant in the matter. You made every effort to contact the Defendant in order to get proper instructions so that the amended defence could be filed in time, but you were unable to do so.

The Defendant attended on your office on August 2, 2014. He instructed you that he had been shot in his head by a uniformed policeman on February 20, 2014 and had been in the Balentine Public Hospital since that time. He was discharged on August 2, 2014 and travelled from the hospital directly to your office.

- (i) What step(s) will you take on behalf of the Defendant in relation to his case being struck out?
- (ii) What are the grounds on which you will make the application?
- (iii) What will the Court consider in making its decision as to whether or not to grant the application sought?

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### **QUESTION 5**

You act for Sally Gray, the Claimant in a matter. You have filed a claim on her behalf against Brenda Bain, the First Defendant, and Clay Moron, the Second Defendant. Brenda is the owner of the motor vehicle which Clay was driving. The claim against Clay is for negligence. Clay, however, lives in Minnesota in the United States of America. You are required to serve the documents on him there.

Your managing partner asks you to prepare a legal opinion as to:

- (i) how to effect service out of the jurisdiction;
- (ii) what the court takes into consideration when making a determination as to whether to allow service out of the jurisdiction;



- (iii) what evidence must be brought to the court's attention in order for the court to make the decision; and
- (iv) when Clay should be expected to acknowledge service and file a defence provided the court allows service out of the jurisdiction.

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**PART B**  
**FAMILY LAW**

**Question 6**

HennieWann instructs that she has been living with Paul Robbe since January 2005.Hennie became pregnant. On July 14, 2007, her daughter Precious was born. Mr. Robbe refers to Precious as his 'wonder child'.

Mr. Robbe lost his job in August 2013. The family is now heavily indebted as he was the sole breadwinner.

In March this year Hennie contacted Adam Steele with whom she had a wild weekend in late 2006. She is seeking maintenance from him for Precious. Adam told Hennie that he does not believe that Precious is his child, he refuses to maintain Precious. His name does not appear on her Birth Certificate.

Hennie wishes to obtain maintenance for Precious, advise her.

### **Question 7**

Mr. & Mrs. Sinclair got married on January 1, 2008. They have triplets Janet, Jillian and John born December 25, 2009.

When they met Mr. Sinclair owned a house situate at 12 Hibiscus Drive in St. James. This house is registered in his sole name. The family lived in this house.

Mr. Sinclair has a gambling problem. Unknown to Mrs. Sinclair he used the family savings to settle his gambling debts. This caused a strain on the family and the parties separated on February 14, 2012. At that time Mr. Sinclair agreed to transfer his interest in the house to his wife as he had no money to contribute to the maintenance of the children.

Mrs. Sinclair obtained a substantial home improvement loan which she used to refurbish the house, as well as to construct an extension of 2 bedrooms and 2 bathrooms. The value of the house has increased significantly. She has asked Mr. Sinclair to sign the transfer documents, he has refused, saying the house is his 'heirloom'.

Mrs. Sinclair wishes to bring proceedings for division of matrimonial property.

Advise her on the merits of any claim she may have.

## **Question 8**

On May 2, 2012, Eleanor Treasure, Cook, married Thomas Cross, Bartender at the Nottingham Baptist Church in Oxnards. They have one daughter, Andrea Brown, born on January 20, 2013. On December 5, 2013, Thomas won the competition for the best Bartender in Oxnards and went on a prize winning trip to Dupontin France.

While in France, Thomas decided to buy a Lottery Ticket. He later discovered that he had won the \$20,000,000.00 Jackpot and was entitled to receive the sum of \$2,000,000.00 annually.

On April 1, 2014 Eleanor answered a knock at the door of the couple's home, to her shock she came face to face with a woman claiming to be Mary Cross, wife of Thomas Cross. Mary produced a Marriage Certificate proving her marriage to Thomas on December 20, 2006. She also showed Eleanor the Birth Certificate of their son Timothy, born on October 8, 2007.

She further informed Eleanor that Thomas had been working on a Cargo Ship when he had been dismissed for gross misconduct. He had left the Cargo Ship in June 2010 and had disappeared. She had only recently been shown a billboard promotion of Thomas' good fortune and his whereabouts.

Eleanor immediately contacted Thomas who was at the Marina which is where he spends most of his days since leaving his job after winning the lottery. Thomas confirmed Mary's story and told Eleanor he was sorry that she had to find out that way.

Eleanor comes to your office for advice.

Advise her on the procedure for dealing with the status of her marriage. Include in your advice a list of all documents that should be filed in respect of any relevant application to the court.

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END OF PAPER