

**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE  
FIRST-YEAR EXAMINATIONS, 2005**

**CIVIL PROCEDURE AND PRACTICE I**

**(MONDAY, MAY 23, 2005)**

**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.

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

## PART A

### QUESTIONS 1 AND 2 ARE BASED ON THE FOLLOWING FACTS:

Franklin Richards is a fourteen-year-old child prodigy who assists and understudies his father, Reed Richards, an internationally renowned scientist, with whom he resides and works at Four Freedoms Plaza, 5<sup>th</sup> Avenue, Fantastic City.

On Monday, January 23, 2004, at about 10:00 a.m., Franklin was riding his bicycle on the left side of 5<sup>th</sup> Avenue, Fantastic City, on his way to work. As he was proceeding along 5<sup>th</sup> Avenue, a green car, Registration Number DOOM 500, owned by Metaphysics Laboratories Ltd., of 23 Latveria Street, Fantastic City, and driven by Victor Von Doom. Von Doom, who is the chief executive officer employed by the company, was approaching from the opposite direction at a very fast speed and travelling in the centre of the road.

At the same time, a yellow car, Registration Number PBR 127, owned and driven by Galen Galactus of 20 Alwayshungry Avenue, Fantastic City, was about to overtake Franklin's bicycle. PBR 127 was travelling in a zig-zag fashion.

As a result of PBR 127 overtaking Franklin's bicycle, the approaching DOOM 500 swerved into the path of and collided with Franklin and his bicycle.

As a result of the collision, Franklin and his bicycle fell to the ground. The bicycle, which was one of a kind, custom designed and made by Franklin and his father themselves, and valued at \$420,200, was damaged beyond repair. At the time of the collision, Franklin was carrying on his person a duffel bag which contained certain scientific equipment, namely, an ultimate nullifier valued at \$50,000, and a universal translator, valued at \$30,000. These items were never located following the collision. Franklin also sustained a broken left hip and leg,

for which he had to seek medical attention at a cost of \$65,000. He was also unable to return to work for eight weeks at a loss of earnings of \$5,000 per week.

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**QUESTION 1**

Discuss the legal issues that you would consider before taking any legal action indicating in relation to each issue what course of action you would adopt.

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**QUESTION 2**

Draft a Particulars/Statement of Claim on behalf of Franklin Richards.

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**QUESTION 3**

On January 31, 2005, while walking along Rainbow Bridge, Donald Thor Blake, is knocked down and injured by a motor vehicle, Registration Number PXX 387, driven by Amora Enchantress and owned by Skurge Executioner.

Blake's attorney-at-law filed a Claim Form/Writ of Summons on March 2, 2005, together with Particulars/Statement of Claim against Enchantress and Executioner, claiming damages for negligence. The documents were served on the same day.

Enchantress filed a Defence without an Acknowledgment of Service/Appearance on March 10, 2005.

Neither an Acknowledgement of Service/Appearance nor a Defence is delivered within the prescribed time on behalf of Executioner.

As a result, Blake's attorney-at-law enters judgment in default of Acknowledgement of Service/Appearance against them both.

- (i) Describe the procedural steps taken by Blake's attorney-at-law in entering judgment in default, giving details of the contents of all relevant documents.
- (ii) Enchantress and Executioner are desirous of having the default judgment, entered by Blake's attorney-at-law, set aside. State and describe the procedural steps to be followed by both defendants in order to achieve this objective and the likely outcome of each application.

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#### **QUESTION 4**

On Monday, January 17, 2005, a Claim Form/ Writ of Summons was issued on behalf of your client, Emil Blonsky, against Bruce Banner, claiming damages for assault and battery.

On the following day, Thadeus Ross, an authorized process server of 5 Equity Lane, was instructed to effect service on Banner, whose address was given as 10 Jadejaws Town.

On March 19, 2005, Ross returned the Writ/Claim Form unserved with the following notation:

"On January 21, I arrived at 10 Jadejaws Town at about 9:00 a.m. I did not see the defendant, but a young woman, who identified herself as Banner's wife, Betty. She informed me that the defendant no longer resided at 10 Jadejaws Town. Further, she told me that her husband had been a famous scientist, but following an industrial accident one year ago he had been diagnosed with a personality disorder and had been living life as a nomad since then.

She however informed me that she understood that he tends to visit a friend of his, Dr. Stephen Strange, somewhere in Spring Garden, but was unable to furnish his exact residential address.

On February 3, at approximately 1:30 p.m., I made enquiries in the Spring Garden area but was unable to locate the defendant. I returned to the area on February 23 at 10:30 a.m. and again on March 14, at approximately 4:00 p.m. but was still unable to locate Banner.

I understand from Mrs. Banner, that Banner is employed from time to time at the Roxxon Corporation as a scientist who is paid daily."

- (i) Advise as to the options available to effect service on Banner and the likelihood of success.
- (ii) State and describe the contents of the documents you will need to file (if any) in support of the step(s) at (i) above.

## QUESTION 5

Chandler and Monica Bling consult you. They were served with a Claim Form/Writ of Summons together with Particulars/Statement of Claim on April 11, 2005.

Their adjoining neighbours, Joey and Phoebe Buffon, have brought proceedings in negligence against them claiming that when the Bling constructed a basement extension to their home a few months ago the construction resulted in the foundations of the Buffons' home being undermined which has caused slippages.

A report from Cecil Goldson, a Senior Structural Engineer, is annexed to the Particulars/Statement of Claim. The report confirms that the construction had damaging consequences to the Buffons' property.

The Blings tell you that they employed DFD Contractors Ltd. (DFD) to construct their basement extension and they show you a copy of the contract which contains *inter alia*, the following clause:-

“The Contractor shall be liable for and shall indemnify the Employer against any expense, liability, loss claim or proceedings whatsoever arising under any statute or at common law arising out of works carried out by the Contractor, except to the extent that the same is due to any act or neglect of the Employer or of any person for whom the Employer is responsible.”

The Blings are very annoyed with DFD since they have also been having leaks in the basement. They have received a report from an independent consulting engineering firm, namely, Bogle & Partners. The report indicates that the leaking is as a result of DFD failing to ensure that the waterproofing membrane was laid on a fully dressed parapet wall.

The Blings are also incensed at the Buffons, since they claim no attempt was made to speak to them before proceedings were brought. They tell you that 4 months ago the Buffons' Rottweiler killed their two corgi pet dogs. They also tell you that now they feel there is no neighbourly goodwill to lose, and they wish to make a claim for the loss of their pets and that each dog was worth \$100,000.

Advise the Blings how you will proceed on their behalf.

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## **PART B**

### **QUESTION 6**

Susan Biscuit instructs you that Don Reid is the father of her unborn child.

She wants him to maintain the child and help her with other costs associated with her pregnancy and delivery.

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

Susan tells you that her brother Carl introduced her to Don and was frequently with them during their 13 months relationship. She tells you that Carl would be prepared to give evidence on her behalf.

Advise Susan.

**QUESTIONS 7 AND 8 ARE BASED ON THE FOLLOWING FACTS.**

Mr. Keith Talliman tells you that in May 2001, he and his wife Lorraine Talliman separated. Shortly after the separation she brought proceedings for custody in respect of the 2 children of the marriage: Petal and Rosy. She was granted custody. No divorce proceedings were brought.

Mr. Talliman tells you that the Court also made a maintenance order for the children.

A year after the order, Mrs. Talliman left for California leaving the children with Mr. Talliman.

Mrs. Talliman returned a month ago with her boyfriend, who is a native of New Zealand. They are staying at Mrs. Talliman's mother's house. Mrs. Talliman wishes to have the children who are now aged 12 and 15 return to live with her and has told Mr. Talliman that he is in breach of the order.

Mr. Talliman says the children are now settled with him and refuses to give them back despite the fact that the custody order had granted sole custody to Mrs. Talliman. He tells you that Mrs. Talliman had very little contact with the children while she was away. He says she did however send them Christmas and birthday presents.

Mr. Talliman says she only wants them back with her to get money from him as neither she nor her boyfriend is working. He says the girls are happy living with him and that they are doing very well at school. They have only met their mother's boyfriend once.

Mr. Talliman informs you that Rosie remarked after the visit to her mother that she did not know what to say to her mother and to her boyfriend. However, she



did hear her uncle, Peter, say of her mother's boyfriend "he is the coolest white man I have ever met. He can eat hot spicy food, love the beach and will even like a spliff." Mr. Talliman says that he did not explain to Rosie that "spliff" meant ganja.

Mr. Talliman has obtained a report from the Principal of the girls' school indicating how well they are doing and that Mr. Talliman is a devoted and involved father.

Mr. Talliman says that his wife's mother's house is very crowded and that three of his wife's adult siblings continue to live at home. He describes them as having "no ambition". His wife's family he says did not visit or have any contact with the children during the period of her absence from the country.

#### **QUESTION 7**

Mrs. Talliman has told Mr. Talliman that she intends to issue divorce proceedings against him. He tells you that he does not wish to defend the divorce but wants to know how it will proceed.

Advise Mr. Talliman.

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#### **QUESTION 8**

Advise Mr. Talliman how he may proceed in relation to the custody dispute and the likely outcome of any application he may make.

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