

**COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL  
LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2016  
CIVIL PROCEDURE AND PRACTICE I  
( AUGUST 8, 2016)**

**Instructions to Students**

- (a) Time: **3 ½ hours**
- (i) Answer **THREE** questions from Part A and **TWO** from Part B.
- (ii) **Answer Part A and Part B on separate answer booklets.**
- (iii) 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.**
- (iv) It is unnecessary to transcribe the questions you attempt.
- (v) Answers should be written in black or dark blue ink.
- (vi) Calculators may be used and are provided.

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

## **PART A**

### **QUESTION 1**

On March 31, 2015, your client, Garth Rowe of Best Designs and Associates, a firm of architects, was served with a Claim Form (along with Prescribed Notes to Defendant, Acknowledgment of Service of Claim Form and Defence form) issued on the same day. The claimant claimed damages for loss occurring as a result of the firm's negligent supervision of a building project at 5 Graham Drive in the town of Vegas in your jurisdiction.

The claimant was granted permission to serve the statement/particulars of claim after service of the claim form. This was done before the limitation period had expired.

The limitation period has now expired.

In the statement/particulars of claim, there was an additional claim for damages arising out the negligent design of the building which was alleged to have taken place on October 15, 2006.

- (i) Prepare an opinion advising on the issues which arise.
  - (ii) Briefly outline the matters which the court will consider in granting any order which you may seek.
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### **QUESTION 2**

You are an associate attorney-at-law in the firm, Berry and Jones. Earlier this year, Mary Johnson visited the firm and instructed that on September 20, 2015, she was shopping at

GetReady Supermarket Limited in the town of Angeles in your jurisdiction, when she slipped and fell on the floor, and suffered severe personal injuries, resulting in permanent disability.

Ms Johnson further instructed that when she fell, one of the employees assisted her and told her that a bottle of cooking oil had spilled on the floor. The floor had not been cleaned nor had any sign been placed indicating that the floor was slippery.

Your firm has already filed and served a claim form and particulars/statement of claim, and the defendant has acknowledged service.

Ms Johnson now tells you that she wants this matter to be dealt with expeditiously and she understands that there is a way to obtain judgment quickly.

Your senior partner asks you to prepare a memorandum advising on the options for obtaining early judgment, giving reasons.

Prepare the memorandum.

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### **QUESTION 3**

A Claim Form, along with Prescribed Notes to the Defendant, Acknowledgment of Service of Claim Form and Defence form and Statement/Particulars of Claim, has been served on your client, Shaggy Paul, claiming damages for injury, loss and damage as a result of an accident caused by the negligence of Mr Paul on April 4, 2016.

Mr Paul instructs you that while his car did strike the claimant's car, it happened because another car was about to collide into the car he was driving. Owing to his efforts to avoid that collision, his car collided with the claimant's car.

The driver of the car with which Mr Paul avoided colliding, who had been speeding, had stopped after the accident. He gave his name as Stephen Lewis, and provided his contact details to the police.

Mr Paul is of the view that he should not be held liable for the claimant's claim.

Your senior partner has asked you to prepare an opinion on the appropriate steps to take to ensure that Mr Paul is not held liable for the claim.

Prepare the opinion.

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#### **QUESTION 4**

Samson Deliliah attends your office and instructs you that he was served with a Claim Form and Statement/Particulars of Claim with respect to a motor vehicle accident. An extract from the Statement/Particulars of Claim appears below.

*"CLAIM NO. 123 OF 2014*

*BETWEEN            RAHAB CALEB            CLAIMANT*

*AND                    SAMSON DELILIAH    DEFENDANT*

- 1. The Claimant was at all material times a police officer residing at 15 Walk Away District in the jurisdiction.*
- 2. The Defendant was at all material times the owner and driver of motor vehicle bearing registration number PG3455.*

3. *On March 12, 2011 the Claimant was a passenger in the Defendant's motor vehicle which was travelling along the Johnson Main Road in the jurisdiction when on reaching the vicinity of the Texaco Gas Station the Defendant drove his motor vehicle and collided into the rear of the motor vehicle which was travelling ahead of him.*
4. *The collision was caused by the negligence of the Defendant.*

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

- a) *Colliding into the rear of the vehicle in which was travelling ahead of him*
  - b) *Driving too fast in the circumstances*
  - c) *Failing to drive within braking distance of the motor vehicle which was travelling ahead of him*
  - d) *Failing to keep any or any proper lookout*
  - e) *Failing to stop, slow down, swerve or in any other way so to manage or control the motor vehicle so as to prevent the collision.*
5. *By reason of the Defendant's negligence the Claimant sustained personal injuries, suffered loss and damage and incurred expenses.*

#### **DETAILS OF INJURIES TO THE CLAIMANT**

*The Claimant born on August 17, 1984 suffered the following injuries, which are contained in the medical report of Dr Abi Sabi, copy of which is attached hereto.*

1. *Head injuries*
2. *Cervical strain (whiplash injury to neck)*
3. *Broken right big toe.*

### **SPECIAL DAMAGES**

1. Medical expenses including medical report	\$40,000.00
2. Transportation costs	\$ 5,000.00
3. Loss of Income	<u>\$70,000.00</u>
Total	\$95,000.00

*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 statute in your jurisdiction.*

### **AND THE CLAIMANT CLAIMS**

1. Damages
2. Interest
3. Costs
4. *Such further and other relief as this Court shall deem fit."*

You act for Samson Deliliah in this matter. He admits that a collision did in fact take place. This he said was because the driver of the motor vehicle which was travelling ahead of him had stopped suddenly to try to solicit people, who were standing at a bus stop nearby. The driver of the vehicle, Jacob Isaac, had stopped without warning, even though the traffic was proceeding at a moderate pace and the traffic lights were showing green in his favour. It was the abrupt stop which caused the collision. In addition, Rahab was not wearing her seatbelt at the time of the accident and had she been wearing the seatbelt, she would not have been injured.

Jacob's motor vehicle bore registration number PP 7658.

Draft a Defence on behalf of Samson.

## QUESTION 5

Carson Peter instructs you that he is the sole director of Belgian Sparkies Company Limited (the “Company”), a company incorporated in your jurisdiction. On February 17, 2005, the Company entered into a contract with Tony Stark. Pursuant to the terms of the contract, it was agreed that the Company would lend Stark the sum of US\$1M and that the sum would be repaid in equal monthly instalments over the course of five years. No interest was charged.

Peter further instructs you that Stark had made fifteen payments, but that thereafter he had become delinquent.

Despite Peter’s best efforts, he has not been able to recover the amount due from Stark.

On March 14, 2015, Peter, on behalf of the Company, wrote a letter to Stark reminding him of the outstanding debt. Stark responds in a letter addressed to the Company dated June 1, 2015 saying:

*“I am really sorry, Old Chum. I know I owe the sum but I have been a bad way off. Can you please give me some more time?”*

Peter does not respond to the letter. He instructs you that he needs to recover the money and wants you to assist him in doing so.

What prelitigation issues must you consider?

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## **PART B**

### **FAMILY**

#### **QUESTION 6**

Peter Piper, a divorced father of two, attends his ten-year high school reunion in April 2016. It is held in a local park and family members are invited. He is delighted to see his old friends, but is particularly interested in “bumping into” his old flame, Virginia Lovelace. Virginia had married the class bully, Steven Sting, shortly after graduation and they have a daughter, Stella. Unfortunately, their marriage did not last and Virginia and Steven are separated. Steven, however, maintains and has frequent access to Stella, with whom he has a good relationship.

When Peter meets Stella he is shocked, as she looks like a female version of him. He does some calculations and is convinced that Stella is his daughter. He confronts Virginia with his suspicions that he is the father, and she denies it. Peter does not believe her.

Peter is a very involved father with his two children and wishes to get involved in Stella’s life.

Advise Peter on:

- (i) whether there is any application he can make to confirm his suspicions about Stella and, if so, what it would entail; and
- (ii) the factors that a court will consider in an application for custody and the implications, if any, for maintenance if Stella is found to be his daughter.



**The following facts apply to both Questions 7 and 8.**

Jon Snow, a contractor, wants a lot of land on which to build a house. His father, Sam, transfers a quarter of an acre of land adjoining his family's property to Jon as a gift. Jon begins to build on the land in 2009, using the proceeds of a mortgage from a local bank.

In 2011, Jon meets and falls in love with Sharon Marks, a teacher. He invites her to live with him in the unfinished dwelling house. However, Sharon expresses concern about living in a property that is not hers, and Jon assures her that what is "his is hers". In an effort to further convince her, Jon proposes marriage. She accepts the proposal and moves in. They get married in 2013.

Jon and Sharon both contribute their savings as well as their labour to complete the dwelling house. Jon earns far more than Sharon, and following the completion of the house, he continues to pay the mortgage and the majority of the household expenses. Sharon only pays the cost of groceries as her car loan payment almost exhausts her monthly salary.

Jon develops a drinking habit, and is violent when he drinks. This violence is usually aimed at Sharon. Two weeks ago, after a particularly bad episode, Sharon had to run for her life, leaving all her personal belongings behind. Jon sends a text message to Sharon to say that he has donated her things to the Salvation Army and she is not to return to the house or she will face his wrath. Sharon is living off the generosity of friends as she is unable to afford rent.

Sharon is staying away from the house, but Jon keeps showing up at Sharon's school, disrupting her classes and screaming obscenities in the presence of students. The school's principal has given Sharon an ultimatum that either she resolve the matter or lose her job.

Sharon has accepted that the marriage is over.

**QUESTION 7**

Sharon tells you that she wants what is “hers”.

Advise Sharon as to:

- (i) any interest she may have in the house; and
  - (ii) the procedure which would be used to establish her interest.
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**QUESTION 8**

In light of Jon’s violent behavior and the principal’s ultimatum, advise Sharon on:

- (i) the application which she may make and the matters that will be taken into account by the court; and
  - (ii) the order(s) that the court may make in the circumstances.
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**END OF PAPER**