

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, MAY 2022**

CIVIL PROCEDURE AND PRACTICE I

TUESDAY, MAY 10, 2022

Instructions to Students

- (a) Duration: **24 hours**
- (b) Students shall enter their Examination ID Number **only**, **not their names**, on the cover page, the Academic Integrity Statement and on every separate page of the examination script.
- (c) The examination should be answered on letter-sized (8.5 x 11) paper only.
- (d) The examination should be submitted in Arial font 12 line spacing 1.5.
- (e) Students should clearly indicate the names of any cases with the citation and legislative provision/s (section number and Act) on which they rely to support their arguments. Consider using italics and/or bold text to make references prominent. (For example, *Rylands v Fletcher* [1868] UK HL1; **s.69 Real Property Act**). Sufficient detail is required to allow the examiners to understand the source of law that is being cited.
- (f) Footnotes, endnotes and a bibliography are not to be used.
- (g) Where word limits have been given, the actual word counts must be included at the end of your answer. Students who have exceeded the word limits will be penalised.

- (h) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (i) In answering any Part, a candidate may reply in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **but must state at the beginning of the answer the name of the relevant territory.**
- (j) Each Student **must** ensure that their Anonymous ID in TWEN is changed to their four digit Examination ID Number, prior to submitting their examination script.
- (k) The examination script, with the cover page and Academic Integrity Statement saved in **ONE PDF DOCUMENT**, must be submitted in **ELECTRONIC** format via the **Year I MAY 2022 EXAMINATIONS, CIVIL PROCEDURE AND PRACTICE I DROP BOX on TWEN** by **Wednesday, May 11, 2022 NOT LATER THAN** 1:00 p.m. (Jamaica), 12:00 p.m. (Belize) and 2:00 p.m. (Eastern Caribbean).
- (l) To upload the examination script which has been saved as one pdf document which includes the cover page and Academic Integrity Statement, you must follow these steps:
- Go to ***www.lawschool.westlaw.com***.
 - Log in using your username and password credentials and select the **TWEN** button.
 - Click on the link for **“Assignments and Quizzes”** located on the left-hand side of the navigation screen.
 - Select the relevant examination and the examination drop box as follows:
 - Year I students with Examination ID numbers between **1100 - 1185** must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box A Year I – 1100 - 1185”**.

- Year I students with Examination ID numbers between **1186 - 1271** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box B Year I - 1186 - 1271**”.
- Year I students with Examination ID numbers between **1272 - 1357** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box C Year I - 1272 - 1357**”.

PART A

Rachel Patterson is a beautician who owns and operates a beauty salon registered as All Things Beautiful with registered business address at Unit 3, 567 Montgomery Avenue, Jurisdiction (the salon). The location of the salon is at a commercial complex owned by Rachel. The salon has a large space, which Rachel has subdivided into booths.

Rachel rents booths at the salon to hairdressers, barbers, nail technicians and aestheticians, so that it can provide full beauty services to all its customers. Only Rachel provides makeup artistry services for customers. All other services are provided by Rachel’s tenants.

Rachel had let a booth to Kenneth Truman, a hairdresser. The lease agreement for Kenneth’s booth is dated September 30, 2021 and is for a term of two years. The following clauses, among others, are terms of the lease agreement:

“ ...

3. *All services to be provided by the tenant at the salon are to be marketed and provided under the business name All Things Beautiful.*

4. *The landlord and the tenant agree that this Agreement is not intended to create and shall not be construed as creating between the parties the relationship of employer and employee, principal and agent, joint venture partners, partners or any other similar relationship, the existence of which is hereby expressly denied.*

5. *Any and all liability for the services rendered to customers by the tenant are the tenant’s alone and the tenant shall indemnify and hold the landlord harmless from*

any and all claims by customers arising out of any and all services the tenant provides to the salon customers.”

On January 5, 2022, Laura Lee Reid attended the salon for a hair appointment with Kenneth. Laura’s appointment was for Kenneth to process her natural hair with a relaxer cream. The appointment was made by Laura’s mother, Allison Reid, who was very excited for her daughter to process her virgin hair for her 13th birthday, to be celebrated on January 9, 2022. Allison left Laura at the salon for her appointment upon Kenneth’s assurance that Laura would be well taken care of and that she could return for her in two hours.

While Laura’s hair was being processed, Kenneth’s girlfriend, Jena Blake, entered the salon and began cursing at Kenneth, accusing him of having an affair. This caused a great commotion in the salon as Jena began throwing any and everything she had in her reach at Kenneth. Kenneth, embarrassed and angry, left the salon.

All the other tenants at the salon were so distracted by the incident that no one, including Rachel, realized that Laura still had the relaxer cream in her hair. It was only when Laura began to scream that her head was on fire that one of the tenants offered to wash it out for her. During the wash, Laura cried and expressed that she was in excruciating pain. As a result of the relaxer cream over processing Laura’s hair, much of Laura’s hair fell out when it was being washed, and what remained had stuck to her scalp. When Allison came to pick up Laura, she was shocked to see her daughter crying hysterically and screaming that her head felt like it was on fire.

Allison became furious when Rachel tried to explain to her what had transpired with Kenneth while he was attending to Laura’s hair. Rachel apologized to Allison for what had happened to Laura but Allison was so upset that she slapped Rachel in the face and left the salon with Laura.

On February 18, 2022, at 6:00 p.m., Rachel was personally served at the salon with a Claim Form with Claim Number 00000SU2022 duly sealed by the Supreme/High Court of your jurisdiction together with a Particulars/Statement of Claim both dated and filed on February 16, 2022, Acknowledgement of Service, Prescribed Notes to the Defendant and

Form Defence (together “the court documents”). The claim was by Laura, through her mother, Allison, against Rachel as the first defendant and Kenneth as the second defendant.

The claim is for damages for negligence for personal injury that Laura alleges she sustained, namely third degree burns to the scalp of her head, while processing her hair at the salon. The claim further alleges that Kenneth, at all material times, was a servant and/or agent of Rachel in the course of his duty at the salon.

On the day and time Rachel received the court documents, she was not feeling well and was just about to close the salon to attend an appointment with her doctor. She left the court documents at the salon and attended her appointment. While there, Rachel’s doctor, Dr. Perry Tyler, recommended that she immediately be admitted to the hospital for emergency surgery, that night, to remove her ruptured appendix.

Rachel underwent surgery successfully and remained in the hospital for 14 days thereafter. Upon her discharge from the hospital on March 4, 2022, her doctor advised her to take a period of eight weeks’ sick leave to heal, and ordered her to be on complete bed rest.

Rachel lives at Apartment 576 Money Estates, Money Drive, Jurisdiction and her children live in Miami, USA. Two days after her discharge from the hospital, she flew to Miami to be with her children while she recuperated.

After Rachel returned to the jurisdiction, on her first day back to work on May 2, 2022, she saw, among the mail delivered to her in her absence, a postmarked envelope addressed to her from Clayton Boyce and Leeman, Attorneys-at-Law of 234 Advocate Drive, Jurisdiction. In the envelope was a letter, dated April 21, 2022, from John Clayton, attorney-at-law for Laura, advising that judgment had been entered against Rachel in the claim and enclosing a court document titled Judgment in Default entered on April 18, 2022. It was then that Rachel recalled she had received the court documents on the day she fell ill.

Rachel has today retained your firm, Lawyers and More, Attorneys-at-Law of Ginger Suites, 456 Boulevard City, Jurisdiction, telephone 000-789-4789, fax 000-111-0000 and email lawyersandmore@legal.com. You are the associate assigned to Rachel's case. You have received the above-mentioned instructions from Rachel during your consultation with her. Rachel instructs you that she would like to defend the claim. Assume you have already prepared a draft defence to the claim for Rachel.

Instructions:

- (i) Advise Rachel on the procedural steps you would take on her behalf so that she can defend the claim and the likelihood of success. **(Your advice must not exceed 1,000 words.)**
- (ii) Draft the application, affidavit in support and draft order you would file on Rachel's behalf to enable her to defend the claim.
- (iii) At your consultation with Rachel, she had instructed you that when she returned to work, Kenneth informed her that his mother, June Truman, with whom he resides, had informed him that a process server had, at about 10 a.m., on February 19, 2022, attended their home address at 345 Match Lane, Washington Drive to serve him with court documents but he had already left for work that morning. Kenneth further told Rachel that the process server also came to the salon on February 22 and 24, 2022 but on each occasion, one of the tenants, at Kenneth's request, told the process server he was not there. Kenneth had further informed Rachel that since the process server came by his home, he had not been back there and is staying at Jena's house because he cannot afford to be involved in any court case at this time, when he is trying to save to buy his own house. Rachel expressed to you that what Kenneth told her made her very upset because if it was not for Kenneth's 'drama' with Jena, she would not have been sued.

Rachel has asked for your advice on what, if any, options are available to the Claimant to serve Kenneth with the court documents so that he can take responsibility for the claim.

Advise Rachel on the options to prove service on Kenneth, including the procedural steps necessary for each option. **(Your advice must not exceed 1,000 words.)**

PART B

(This Part must be commenced on a new page and titled Part B)

Morgana Emily Richards, a real estate agent, and Judah Neil Payne, a television producer, were married on February 6, 2009. They were married in Mathews Methodist Church in Petersfield District, James Town, Jurisdiction, which Morgana still attends. The wedding was officiated by the pastor, a marriage officer, Victor Carling. Morgana and Judah are now 33 and 35 years old and were born on October 3, 1988 and December 1, 1986 respectively.

After their marriage, Judah and Morgana settled in Phoenix Valley, James Town, Jurisdiction and would vacation every year with Judah's parents in his birthplace, Georgetown, Cayman. Judah was raised in James Town by his grandmother from the age of five until adulthood. He was born at the Georgetown Hospital in Cayman and Morgana at the James Town Public Hospital.

A year into their marriage, on February 26, 2010, they welcomed a son, Morran Kenneth Payne, who is now 12 years old.

A year after Morran's birth, Judah received an offer to work in the United States of America at an up-and-coming television station, Avalon Corporate Network (ACN). He started residing in the U.S.A. for eight months of every year. Judah and Morgana agreed that in his absence, his brother, Paul, his wife, Annis, and their adult son, Garrick, would move in with Morgana and Morran.

Over the years, Judah and Morgana have purchased several houses. Morgana often learnt of dilapidated properties, which she bought with money Judah had sent. Using her skills and connections, she renovated the properties and sold them at a profit. The money

they made was held in a joint account. Seven years ago, they purchased a five-bedroom house in Kingsbridge Estate, James Town and the family moved there.

In November 2016, Judah returned home to surprise Morgana and found her in bed with an old friend, Gregory Smooth. Judah returned to the United States a fortnight later and despite Morgana's attempts at reconciliation, he has not returned to Jurisdiction since.

Morran has autism. He attends the Albion Institute in James Town and is in grade four. Judah and Morgana agreed to joint custody of Morran and he travels to the U.S.A. to see his father each school holiday. Judah resides in a two-bedroom apartment at 12 Grammarly Suites, New Jersey. Judah ensures that Morran's needs are met by providing US\$400 monthly and purchases clothes and other necessities for him on his visits. Morgana cares for him daily and provides anything else he needs.

A week ago, Garrick returned home and immediately started an argument with his father. Paul had admonished him for coming home late and waking up the whole household. It was clear that Garrick was drunk or suffering from the effects of drugs. His words were slurred and he was loud and boisterous. In the argument which ensued, Garrick deliberately knocked over much of the furniture in the living room and kitchen, breaking several pieces. Morgana tried to intervene and her efforts were met with a barrage of swear words. A similar incident occurred the following night. On both occasions, Morran was awakened. He witnessed the events and was upset and afraid. He has since insisted on sleeping with his mother.

Morgana has spoken to Judah, Paul and Annis about Garrick's behaviour and suggested that he moved out of the house. However, Judah insisted that no harm was done and that Morran would get over it. He was adamant that he would not, "*put out family*". Instead, he suggested that it was time for Morgana to leave. He told her to have the house evaluated and reassured her that he would pay 50% of its value to her. Morgana refused, but she is concerned that matters will escalate as Garrick's behaviour is fueled by his habits of smoking marijuana and drinking with questionable individuals. He continues to return home late at night. He is always drunk and very loud, disrupting the whole family.

Everyone is afraid of speaking to him about his behaviour, fearing a repeat of earlier events.

Last night, Morgana again tried to speak to Judah about the situation and again, Judah insisted that Morgana move out. In the course of their conversation, Judah disclosed that if she left the house, he may permit her to take Morran with her as he (Judah) doubted he was Morran's father.

Morgana has come to see you. She instructs you that she wishes to end her marriage to Judah. She agrees that she owns a half interest in the house but is concerned that Judah will try to prevent her from claiming her rightful interest in the money which they hold in the joint account, a total of US\$45,000. She instructs you further that she has no intention of leaving her home, as she spent much time and effort to modernise it and make it comfortable. She wishes to purchase Judah's interest and believes she would be able to do so if she received a fair portion of the US\$45,000 and could claim a share in her late father's estate.

Morgana instructs you that she wants Garrick out of the house. She is also interested in making an application to formalise Morran's maintenance. However, she is concerned about Judah's doubt about Morran's paternity. She also wishes to know how she may establish her entitlement to a share of her father's estate.

Required:

- (1) Prepare the document(s) to bring the marriage to an end.
- (2) Prepare an opinion on:
 - (i) the legal bases on which Morgana's interest in property acquired in the marriage will be determined;
 - (ii) the steps which may be taken to ensure protection for herself and Morran, giving the legal bases therefor; and
 - (iii) the approach you would take in addressing the question of paternity, giving reasons.

Note:

To complete your answer to (1) above, you may assume any reasonable facts, not inconsistent with your instructions, which you deem necessary.

Your opinion must not exceed **1,500 words**.

END OF PAPER