

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST-YEAR SUPPLEMENTARY EXAMINATION, 2002

CIVIL PROCEDURE AND PRACTICE I

(FRIDAY, AUGUST 9, 2002)

Instructions to Students:

- (a) Time: 3½ 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 student 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 not necessary to transcribe the question you attempt.
- (f) Answers should be written in ink.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## PART A

### Facts relating to Questions 1, 2 and 3

You are instructed by Unity Playground Limited who own and operate a playground. The Managing Director, James Hardwicke, tells you that the company was served with the following documents today:

- a writ/claim form issued on March 29, 2001;
- an order dated April 10, 2002, renewing/extending the writ/claim form;
- a statement of claim.

Mr Hardwicke informs you, that the company had been informed about the Plaintiff's injuries and claim, by a letter before action which they received from attorneys-at law for the Plaintiff, sometime in June 2000. He says that the company's investigation of the accident confirmed that the Plaintiff had been injured on March 30, 1995. The company was not, however, aware of the nature and extent of his injuries.

He said that the company had attempted to settle the claim without any admission as to liability, but these negotiations broke down sometime in December 2000. They did not hear further from the Plaintiff or his attorneys-at-law.

Mr. Hardwicke has also informed you that the company had a service contract with Zebra Limited to service and repair all the equipment in the playground, which included the swing. He tells you that Zebra Limited were independent contractors, and that Unity Playground Limited had taken all reasonable steps to satisfy themselves that Zebra Limited were competent to carry out the work. He says that it appears that Zebra Limited had failed to tighten the lug attaching the swing to the frame.



## PARTICULARS OF NEGLIGENCE AND/OR BREACH OF STATUTORY DUTY

The Defendants their servants or agents were negligent and/or in breach of statutory duty in that they -

- a) failed adequately or at all in time or at all to examine, inspect repair or maintain the swing or the means of attachment of it to the frame;
  - b) failed to institute or operate any or any adequate system of routine preventative maintenance and inspection so as to ensure that the swing was or would remain safe to use;
  - c) failed until after the Plaintiff's accident to repair the swing or otherwise to withdraw it from use;
  - d) failed to warn the Plaintiff of the dangerous or defective condition of the swing or otherwise to withdraw it from use;
  - e) exposed the Plaintiff to a danger or a trap or a foreseeable risk of injury;
  - f) provided for use by the Plaintiff, playground equipment that was defective and dangerous;
  - g) failed to take any or any adequate care for the safety of the Plaintiff.
4. By reason of the matters aforesaid the Plaintiff who is now aged 15 years having been born on December 10, 1996, suffered pain injury, loss and damage.

## PARTICULARS OF INJURY

- a) Pain and shock
- b) Fracture of the head of the right femur requiring operative treatment
- c) Bruising to the right side of the body
- d) Cuts and bruising

PARTICULARS OF SPECIAL DAMAGE

1) Hospital fees	\$250,000
2) Damage to clothing	8,000
3) Value of wrist watch damaged beyond repair	5,000
4) Medication	2,000
Total	\$265,000

5. Further the Plaintiff claims interest (as appropriate to your jurisdiction) on the amount found to be due to the Plaintiff at such rate and for such periods as the court thinks fit.

AND THE PLAINTIFF claims:

- 1) Damages
- 2) Interest as aforesaid
- 3) Costs

DATED

Signed

QUESTION 1

Advise the Company as to the procedure you would adopt on their behalf in relation to the writ/claim form which has been served upon them.

**QUESTION 2**

Draft an appropriate pleading/statement of case in response to Document 1.

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**QUESTION 3**

Advise your clients as to the steps, if any, that they may take against Zebra Limited. Describe the contents of the documents and the procedure to be adopted.

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**QUESTION 4**

Jeff Busy consulted your firm earlier this year. He carries on business as a sole trader, selling various types of fabric.

In December 2001, Sarah Scafe purchased several metres of material known as "golden myrrh" for a Christmas project she was doing. The total cost of the material was \$350,000.

He told you that the accounts rendered for the fabric have not been paid and in response to letters written to Ms. Scafe, she has written to him indicating that she has a cash flow problem.

You issued a writ/claim form with details of the claim against Ms. Scafe endorsed thereon. She has filed an appearance/acknowledgment of service form giving

notice of intention to defend. She has also filed a defence in which she states that although she used the material, it was not the correct colour of "golden myrrh" she had seen on the sample. This is the first time your client is hearing this complaint.

Describe how you would now proceed on your client's behalf.

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### QUESTION 5

Mr. Busy came into see you again. He tells you that over the weekend, he saw Ms. Scafe and her boyfriend Mr. Don One at a cricket match.

He said they were both glaring at him but he managed to avoid any direct contact with them while in the cricket ground. However he says, as he was driving away from the cricket ground, he noticed Mr. Don One driving behind him in a very dangerous manner. He tells you that Mr. Don One eventually collided into the back of his car. The police attended and Mr. Don One was charged with a driving offence.

Mr. Busy tells you that his car is substantially damaged and he has an estimate for the repairs of over \$250,000. Mr. Busy also suffered a minor whiplash for which he has been having treatment.

He tells you that Mr. Don One's reputation is well known, he has a lot of cash, and Mr. Busy wishes to know whether he can include this action with the one against Ms. Scafe.

Advise him.

## PART B

### Facts relating to Questions 6 & 7

Laura Bell and Gifford Taylor met ten years ago, when Laura's daughter, Tanya, by a previous relationship, was eight years old. Tanya was born on February 12, 1984.

Tanya never lived with her mother and Gifford, but visited them during the holidays. She went to live with her father in the United States when she was about fifteen years old. Gifford and Laura were never married.

Laura died of cancer in November last year, and Tanya returned for the funeral. She and Gifford found they were very attracted to each other and decided to marry on Valentine's Day this year at Bethel's Church. Gifford is 15 years older than Tanya and was born on February 13, 1969.

Unknown to Tanya and Gifford at the time of the ceremony, the minister, Rev. Cedric Murray, who is a marriage officer, fell ill on his way to the church but his identical twin brother Audley, an active lay member of the church performed the ceremony.

Tanya and Gifford found out about the substitution at the wedding reception, and Gifford promised Tanya a "proper marriage", as soon as he could arrange one. They agreed not to consummate the marriage until after the second ceremony.

Tanya consults you today, as Gifford has done nothing to fulfil his promise. He told her yesterday that he believes they are husband and wife and she is "fussing about nothing".



Tanya tells you that she has recently met Baden, a much younger man, and Baden has convinced her that she is being very disloyal to her mother's memory in becoming involved with Gifford. He tells her that Gifford never married her mother, because he was in fact married to Rosie Taylor, who had become insane and had disappeared shortly after the marriage. He tells her that Gifford does not know Rosie's whereabouts.

**QUESTION 6**

Advise Tanya.

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**QUESTION 7**

Draft an appropriate petition on Tanya's behalf.

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**QUESTION 8**

Ursula met Vernon in May 2001. At the time she was living separately from her husband Nigel. Ursula tells you that she left him because she no longer found him exciting.

Ursula became pregnant. In January of this year, a son, Zack was born.

Vernon refused to attend to register the birth of Zack with Ursula and his name does not appear on Zack's birth certificate. He has told Ursula, that he does not

believe that Zack is his child and has made no payments for maintenance since Zack was born.

Ursula's husband issued divorce proceedings the day after Zack was born. The decree nisi has been pronounced, and a date has been obtained for the decree absolute later this month.

Advise Ursula, who wishes to obtain maintenance for Zack.

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