

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2007**

CIVIL PROCEDURE AND PRACTICE I

(FRIDAY, AUGUST 3, 2007)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

FACTS RELATING TO QUESTIONS 1 AND 2

Sandro Gonzalez, a citizen of Florida who lives in Tallahassee, was involved in a collision while visiting your jurisdiction.

Gonzalez tells you that on May 6, 2002, at about 12:15 a.m. he was crossing the northbound carriageway of Legent Street, just north of English Harbour at the traffic lights. He was walking from west to east on a marked crossing controlled by a pedestrian automatic traffic light which was showing in his favour, when he was struck and thrown to the ground by a Subaru motor car registration number M23FA being driven by Carl James, a citizen of your jurisdiction in a northerly direction up Legent Street.

The vehicle is owned by Carl's employer, Victor George Ltd a company registered in your jurisdiction. Carl is employed as a chauffeur.

Gonzalez who was born on April 10, 1970, had to be taken to the Accident & Emergency Department of Queen Elizabeth Hospital.

He says the car was going very fast and failed to stop at the traffic lights although it was showing red. He said no warning was given by Carl of his approach. Carl was eating a patty and talking on his cell phone. Apparently he immediately said, "Oh God, I am sorry. I have been working late and am now rushing home."

The medical report from Dr. Benjamin indicates that Gonzalez had to be admitted to Queen Elizabeth Hospital for treatment. He had a fracture to his mid shaft of right tibia and fibula and bruising to his leg. He is now walking with a stick and has had to resign from his job as a health inspector for the Tallahassee Borough Council. He is restricted to sedentary employment and his disabilities are

permanent. He has sent you his hospital bills of \$500,000 and loss of earnings of \$280,000 both of which are still continuing.

QUESTION 1

Describe the factors that you will take into consideration in deciding to initiate legal proceedings and list the documents you will need to file, briefly describing the contents.

QUESTION 2

Draft an appropriate statement/particulars of claim to be filed on behalf of Mr. Gonzalez.

QUESTION 3

You are instructed by Anthony Hudson, Managing Director of Tourist Enterprises Limited, who say they are the owners of and entitled to possession of a Hi Ace Minibus Registration No. 227FO.

The company employed Arthur Pen as a driver. In the course of his employment he was permitted to have custody and use of the Hi Ace van.

Mr. Pen was dismissed from his employment on March 10, 2007 and on the same day by a letter written by Mr. Anthony Hudson, a demand was made for the return of the vehicle. To date Mr. Pen has not returned the vehicle.

Mr. Hudson recently saw a gentleman driving the vehicle. He confronted the gentleman and asked how he came into possession of the vehicle. He tells you he was told by the gentlemen that Mr. Pen was in the process of transferring the vehicle to him to pay off a loan Mr. Pen had with him (the gentleman).

The gentleman refused to give Mr. Hudson his name and address.

Mr. Hudson instructs you to issue proceedings in the High/Supreme Court of your jurisdiction claiming damages for conversion against Mr. Pen. He is very concerned that a trial is likely to be a long way off and is keen to know how you might be able to secure an expeditious judgment in the matter.

Advise Mr. Hudson.

QUESTION 4

Your client is Peter Hoperoy, the Managing Director of Homewood Blinds Ltd, a company registered in your jurisdiction.

He tells you that in January this year he received an order to supply and install electrical retractable blinds at Lauren Pellers' home. The company supplied the retractable blinds valued at \$500,000. They arranged for their usual electrical contractors, Electricity Supplies Ltd, to wire up and connect the blinds. The blinds were delivered and fully installed on February 5, 2007.

Miss Pellers had paid a deposit of \$200,000 and was then invoiced for the balance of \$300,000 on March 5, 2007. Since then nothing further was heard from Miss Pellers, until proceedings were served last week claiming that the blinds had not been installed properly and there was an electrical short circuit resulting in the blinds falling onto Miss Pellers' wooden deck on March 1, 2007, damaging the floor badly as well as destroying many valuable plants she had on her deck. She claims the return of the \$200,000 deposit and a further sum of \$300,000 in damages.

Your client believes that any defects were as a result of the faulty electrical wiring and believe Electrical Supplies Ltd. should be responsible.

- (i) Advise Homewood Blinds Ltd. as to the steps they should now take.
- (ii) Assume on the above facts that your client had been served with proceedings on March 30, 2007 and had taken no steps at all because of their belief that responsibility rested with Electrical Supplies Limited. They have today been served with a default judgment.

Advise Homewood Blinds Ltd.

QUESTION 5

You are instructed by Donald Murphy an avid art collector.

Mr. Murphy tells you that on January 8, 2000, he bought a painting from Auburn Gallery Limited, a company registered in your jurisdiction. He says the directors of this company were Mr. & Mrs. Auburn. Mr. Murphy informs you that it was an

express term of the oral contract that it was an original drawing signed by the artist.

In December 2005 the drawing was revalued by an art expert who cast doubt on its authenticity and after investigations it was found to be a reproduction. He tells you that on January 3, 2006, his previous attorneys-at-law issued proceedings on his behalf claiming for recovery of the purchase price of the painting as money paid under a mutual mistake of fact. The claim form was issued naming the defendant as Auburn Court Gallery Limited.

Mr. Murphy has now discovered that sometime in 2005, Mr. & Mrs. Auburn separated. The Auburn Gallery Limited from whom he bought the painting is now managed by Mr. Auburn. Mrs. Auburn has set up her own art gallery on the ground floor of the same building and it is registered in the jurisdiction as Auburn Court Gallery Limited.

The claim form was in fact served by post pursuant to the relevant legislation on Auburn Court Gallery Limited at 30 Gaze Road, on the January 5, 2007.

The claim form and supporting documents were returned by post to the office of the attorney-at-law on February 28, 2007, with a note attached saying "this company was formed in 2005, and has no details in relation to the transaction stated to have occurred in 2000".

Mr. Murphy has come to see you. He is very displeased with his former attorney-at-law and wants to know whether he can still proceed with his claim.

Advise Mr. Murphy.

PART B

QUESTION 6

Jack and Jill were high school sweethearts who began living together on May 1, 2001, after Jack got his first job as an accounts clerk. Jill was working at a fast food restaurant. Money was in short supply, but they split the bills and somehow made ends meet. They were deliriously happy.

In January 2002, with the help of a study grant from his employers Jack began a full time degree course in Financial Management. After the first year, Jill got a 5 year loan from her credit union to pay the rest of Jack's school fees, and got a part time job to increase the couple's income as Jack was no longer receiving a salary.

In Jack's final year, he began an intimate relationship with Wendy and convinced Jill that in order to complete his course on time he needed to spend the week on campus and could only come home at weekends. Jack lived with Wendy during the week.

After Jack graduated, Jill's father found office space for Jack's then newly formed consultancy - Dollars Investments. Jill received a gift of money from her parents which she had intended to use to finance a course in interior design but instead used it to refurbish Jack's office. The business went well and in a short time Jack had many clients and made a lot of money.

In March 2006 Jack sent Jill on a cruise in gratitude for all that she had done for him. Jill returned on May 2, 2006, to find a note attached to the door saying that her things had been sent to her parents and the relationship was over. The note is dated April 15, 2006.

Jill gave up her job and went home to be comforted by her parents. On hearing that Jack had subsequently married Wendy, Jill was involved in a motor vehicle collision later that day. She will need successive operations in order to recover fully. On April 1, 2007, Jill attends your office seeking maintenance from Jack.

Advise Jill.

FACTS RELATING TO QUESTIONS 7 AND 8

Kit and Kin Smith have a very successful marriage. They have been together for 20 years and have been married for 15 of them. Kin is a year older than her husband. They adopted two children Steadman and Olive born on October 24, 1997 and March 17, 1999 respectively.

Kit has a degree in Chemical Engineering and Kin has a diploma in Business Administration. They started a family business when Kin gave her grandmother's recipe for ginger beer to Kit and suggested that they manufacture it commercially. Kit handles the production side of the business and Kin looks after the management side. Kin has 80% of the shares in the company, Kit has 10% and the remaining 10% are split between the children.

They live in a splendid great house which has been renovated to luxurious standards. This property was left to Kin by her grandmother. They also own a penthouse in town, and have approximately \$10M in various investment instruments. Kin also has a \$20M pension. Kit is very proud of his wife and prefers to leave the promotion of the business to Kin and stay in the background with the children.

One day Kit goes into Kin's computer and finds pictures of Kin posing in the nude with her personal assistant Steve. Kit moves into the cottage on the property telling Kin that he 'needs some space'. Kit has been in the cottage for 2 months when his father who lives abroad and did not attend the wedding pays an unexpected visit. As they are looking through the wedding pictures the father Rod points to Kin's mother and says "What is this woman doing at your wedding? She tried to trap me into marriage by getting pregnant but I dropped her as soon as I found out! I heard she had a girl but I couldn't take on that responsibility. I married your mother soon afterwards and fortunately she never found out." Kin is an only child.

Kit attends your office the following week seeking advice about terminating the marriage and sorting out the property. He anticipates that the children will stay with him.

QUESTION 7

Advise Kit as to his options for terminating the marriage.

QUESTION 8

Advise Kit as to the legal issues to be considered in the division of property and the procedural steps that you will take.
