

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2008

CIVIL PROCEDURE AND PRACTICE I

(THURSDAY, AUGUST 7, 2008)

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, 2 AND 3

Lawrence Muir's file has been assigned to you and includes the documents set out below:

Notes of meeting with Lawrence Muir

On January 3, 2008, Mr Lawrence Muir, a farmer of Browns Town, St Johns was at the house of Mr Samuel Williams. Mr Williams is a dealer in agricultural and business machinery in Spanish Road Village.

On Mr Williams' living room wall, hung two pictures of racehorses, which Mr Muir believed were oil paintings. He expressed his admiration for them and Mr Williams indicated that he would be prepared to sell them.

Mr Muir saw that the pictures were signed by "Moses" and asked Mr Williams who Moses was. Mr Williams said, "Moses was a celebrated American painter of racehorses working about 100 years ago, these paintings are amongst his best. They are very good paintings."

After some negotiation, Mr Muir agreed to buy the paintings for \$150,000 each subject to a right to cancel within twenty four hours. He went home and telephoned his friend Mr Cooper-Strong who was knowledgeable about art. Mr Cooper-Strong confirmed that Moses was indeed a well known painter of racehorses and that he knew of two paintings by him of the size described by Mr Muir which would certainly be worth at least \$150,000 each. Mr Muir accordingly confirmed the sale and sent Mr Williams a cheque and collected the pictures.

Mr Muir decided in March 2008, to have the pictures cleaned and reframed and sent them to Mr Cooper-Strong, who upon receiving them said, "You have been rooked. These are not paintings. They are prints from an old calendar and are worth at most \$5000 each." This has since been confirmed by an art dealer.

Mr Muir has written to Mr Williams who refuses to take the pictures back and has replied to Mr Muir's letter as follows:-

"Dear Muir,

I have received your letter of demand of March 30, 2008. I am not prepared to return your money. I did not make any statements as alleged in your letter about the pictures. They belonged to my father and I never knew much about them. All I said was that they were nineteenth century American racehorses. I did not say that the pictures were paintings although I had no reason to believe they were not. We made a deal. A deal is a deal. You thought it was a good deal and you took a day to check it out with a dealer. I am sticking to it.

Also do not forget that you owe me \$170,000 for the repairs I had to carry out to two tractors that were damaged by your farm hands when they were on hire to you nine months ago. I also purchased an airplane ticket on my credit card for you in December 2007, when we visited Chicago to look at agricultural machinery. The ticket was over US\$900.00.

Yours truly,

Williams"

QUESTION 1

Advise your client on the legal and procedural issues that arise in relation to this matter.

QUESTION 2

Draft the Particulars/Statement of Claim in accordance with your client's instructions.

QUESTION 3

Assume for the purposes of this part only, that at some later stage, proceedings are commenced and served upon Mr Williams and that thereafter you are served with an application to the court by Mr Williams to strike out your client's claim or/to grant summary judgment to him. The relevant parts of his statement of case read as follows:-

- “1. The Claimant owes the defendant the sum of \$170,000 in respect of money paid to the claimant for travel facilities and repair of equipment.

2. The Claimant is a rookie at everything. He is a rookie in the farming business and damaged my equipment. He is a rookie art buyer – but a deal is a deal”.

Advise your client how you will:

- (i) deal with the matters set out in Mr Williams' statement of case;
 - (ii) respond to Mr Williams' strikeout/summary judgment application.
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QUESTION 4

Ivor Problem invested money in Money Add Limited, a company registered in your jurisdiction. Following investigations into whether or not Money Add Limited were regulated to deal in securities they were served with orders by the regulatory body in the jurisdiction to "cease and desist trading".

Ivor Problem issued proceedings against your client Justin Time who was a Manager at Money Add Limited, claiming that Justin Time made certain representations to him to induce him into investing money with Money Add Limited. Proceedings were served on Justin Time on March 1, 2008.

Justin Time did not acknowledge service of the Claim Form and Particulars/Statement of Claim and has today been served with a default judgment. He has explained to you that he did not respond to the documents because he says it is very clear that investors have taken a risk and he cannot believe that the court has ordered judgment against him when Mr Problem's case has no merits.

In addition he says that following the cease and desist order he could not access the files in his office and so was unable to see Mr Problem's file and determine

the extent of his discussions with Mr Problem when he signed the agreement with Money Add Limited and made the investment.

Justin Time who is now a wealthy man through his own investments with Money Add Limited is concerned that an order to enforce the judgment will be obtained. He insists that Ivor Problem could have been in his Justin Time's financial position, had he invested earlier, unfortunately it was just bad timing.

Advise Justin Time as to the steps you could take on his behalf.

QUESTION 5

On March 3, 2004, Ric Silver slipped and fell on a drink spilled by Lenny Henry in a bar owned by Carl Cohen. Lenny frequents Carl's bar. The following evening Lenny had too much to drink and shouted out in the bar "Carl waters down the beer in this place".

On May 6, 2007, Ric files proceedings in the Supreme/High Court in the jurisdiction, naming Lenny and Carl as defendants, in a negligence/occupier's liability action based on the injuries he sustained in the fall.

Proceedings were served upon Carl on October 1, 2007, but due to an error on the part of the process server, proceedings have not been served upon Lenny.

Carl filed and served a defence and counterclaim on November 10, 2007. In his defence he claims that Ric was contributorily negligent, being intoxicated at the time of his fall. He also includes a claim for indemnity/contribution against Lenny claiming that he was also intoxicated when he spilt the drink. Carl has also

included a claim against Lenny for defamation based on his statement in Carl's bar on March 4, 2004. Carl claims that the statement has seriously affected his business resulting in loss of profits.

Lenny seeks your advice in relation to the claims made by both Ric and Carl against him. Advise him.

PART B

FAMILY

FACTS RELATING TO QUESTIONS 6 & 7

Paula, a dancer, is the mother of two (2) children, Polly who was born on November 6, 1998 and Peter who was born on July 22, 2000. In 2001 Adam, the children's father, divorced Paula and in a matter of months Paula married David.

David was a nurse who worked night shifts. He was primarily responsible for the care of the children and loved them as if they were his own. The children have no contact with Adam and call David "Daddy". They live at 6 Rose Court, Smith Town in St. Paul. This is a 2 bed room apartment and the rent is \$25,000 per month. The premises are 10 minutes away from Kings Preparatory, the school that the children attend. They have extra curricular activities which cost \$5,000 per month each and extra lessons at \$2,000 per month each.

Paula spent her time going to auditions and hanging out at coffee shops with her friends. Paula took little interest in the children's lives, had no patience with them

and had been known to lose her temper and give them a slap. Nevertheless the children were dazzled by their 'glamorous' mother.

One day in February 2005, David picked up the children from school and returned to their rented apartment and found a note from Paula which said that she was moving on to 'a better life'.

She went to live in one of two adjoining townhouses owned by Jake, aged 67, a millionaire producer. Jake lives next door so that Paula can have 'her space'. They live 30 miles away from David and the children.

David and the children were devastated. Life was difficult but David's devotion to the children kept them going. At first David hired a babysitter to stay with the children at nights but eventually found that he could not afford it and subsequently depended on his family and occasionally took a chance by leaving them at home alone whilst he was at work.

In March 2008, David was served with a divorce petition. Paula informed him that she intends to marry Jake and is about to go off on a world tour with Jake's latest Musical in which she stars. Paula is earning a nominal \$20,000 per month and Jake has promised her a percentage of the royalties. Jake currently pays all her expenses. David said he had no objection to the divorce but he needs money. Paula said that rather than give him money she would take the children herself.

David is currently earning \$50,000 per month and has taken out a loan of \$100,000 which he is repaying at a rate of \$4,000 per month over 5 years. This is to help to cover the children's expenses. Paula pays the children's tuition fees at Kings Preparatory which are \$30,000 each per term and nothing more.

QUESTION 6

Advise David on the merits and procedural steps to apply for custody and maintenance of Polly and Peter.

QUESTION 7

Draft David's affidavit in support of the application for custody and maintenance for Peter and Polly.

QUESTION 8

Outline the procedural steps required to effect service of a petition if the respondent is -

- (i) in the jurisdiction at an unknown address;
- (ii) outside the jurisdiction at a known address.
