

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2013

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, AUGUST 12, 2013)

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 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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

John Brown attends on your office. He instructs that he has been served with a Claim Form and Statement/Particulars of Claim in which he has been sued for negligence. An excerpt of the Statement/Particulars of Claim is set out below.

STATEMENT/PARTICULARS OF CLAIM

IN THE SUPREME COURT/HIGH COURT OF YOUR JURISDICTION

CLAIM NO HCV 2012 HCV 1234

BETWEEN PATSY CAMPBELL CLAIMANT

A N D JOHN BROWN DEFENDANT

1. At all material times the Claimant was the owner of motor vehicle bearing licence number 7777ET.
2. The Defendant was at all material times the owner and driver of motor vehicle bearing licence number 8888ZZ.
3. On November 15, 2011 the Claimant was lawfully driving her motor vehicle along Mandela Highway heading towards Jericho Boulevard when on reaching the vicinity of First Baptist Black People Church, the Defendant drove his motor vehicle along the said road causing it to collide head-on into the motor vehicle which the Claimant was driving.

4. The said collision was caused by the negligence of the Defendant.

PARTICULARS OF NEGLIGENCE OF THE DEFENDANT

- a. Driving too fast in the circumstances.
 - b. Driving at a speed in excess of the maximum permitted speed on the said road.
 - c. Losing control of his motor vehicle.
 - d. Colliding into the Claimant's vehicle.
 - e. Driving on the wrong side of the road.
 - f. Failing to sound his horn on his approach on the roadway.
 - g. Failing to stop, slow down or to swerve so as to avoid the collision.
5. By reason of the Defendant's negligence the Claimant has suffered personal injury, suffered loss and damage and has incurred expenses.

PARTICULARS OF INJURIES

The Claimant who was born on August 17, 1984, was caused pain, suffering and loss of amenities. Brief details are set out below. Further information is contained in the attached medical report of Dr Frederick Johns dated March 13, 2013.

- i. Whiplash injury to the neck with muscle spasms;
- ii. Muscle spasms in the lower back;
- iii. Fractured right leg;
- iv. Permanent Partial Disability 10%.

Special Damages

i.	Medical Expenses including medical report	\$40,000.00
ii.	Transportation Costs	10,000.00
iii.	Loss of Income - 2 weeks @ \$35,000 per week	<u>70,000.00</u>
	Total	\$120,000.00

6. 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 discretionary statute for your jurisdiction].

AND THE CLAIMANT CLAIMS

1. Damages
2. Interest
3. Costs
4. Further and other relief as the court shall see fit

Filed by

John Brown's instructions are that the accident did in fact take place on November 15, 2011 as alleged in the Statement/Particulars of Claim. He says he was driving at 80kph along the Mandela Highway at 12:00 midnight in your jurisdiction when he suddenly came upon a truck which was parked on the highway. The truck did not have on any reflectors or its park lights and John did not see the truck until he was right up on it. When he saw the truck he took evasive action by swinging to the right. In doing so, he collided with the Claimant's car, which

was travelling in the opposite direction. The truck is owned by Carlton Carrington who resides at 16 Shippey Place and is a truck driver.

Draft the relevant statement(s) of case you would file on John's behalf. (The relevant forms are provided).

FACTS RELEVANT TO QUESTION 2 AND QUESTION 3

Mr Saul Sheldon attends on your office and instructs that his daughter Moya Sheldon, who was born on February 2, 1995, was injured at the home of their neighbour, Catherine Pazzaz. The incident, from which Moya sustained injuries, took place on October 10, 2010.

Up to October 2010, Moya and Catherine's daughter, Michelle were best friends. They attended the same high school, St Elmo's High School, and were both in grade 10. Mr Sheldon and his wife had forbidden their daughter from going to Catherine's house as they did not believe that Catherine's parenting skills were good. Catherine had the habit of serving wine to Moya. Mr and Mrs Sheldon did not approve of that as they did not believe that children should be exposed to alcohol at such an early age. In addition, Catherine allowed Moya to speak to her any manner she pleased, and felt that as Moya became more and more an adult, she should be allowed freedom of expression without fear of reprimand.

Mr and Mrs Sheldon had also told Catherine that they did not want Moya to visit Michelle at her home and that if Moya came to their house, she should be immediately told to go back to her parents' house. Catherine told the Sheldons that she had no intention of complying with that request and that Moya was always welcome at her (Catherine's) house and would never be turned away.

Moya was sent an invitation to attend Michelle's 16th birthday party, which was scheduled to take place on October 10, 2010. Mr and Mrs Sheldon told Moya she was not allowed to attend and even told Catherine that Moya was not allowed to attend. However, Mr Sheldon instructs that it appears that Moya attended the party and was injured after falling from a table while doing the "gangnam style". It is also stated that Moya was served alcoholic beverage at the party by Catherine and she was in a state of intoxication while doing the "gangnam style".

Moya sustained the following injuries from her fall – broken neck, broken foot, broken hip, a permanent partial disability of 27%. She is left with a severe limp. At the time of the accident Moya was an aspiring netball player. She already played netball for the Junior National Team and was slated to transition to the Senior National Team upon graduation from high school. Already, she had won several trophies and her skills as a netballer were known throughout the region. She is now no longer able to play netball.

She was treated for her injuries by Dr Carson Blake, consultant orthopaedic surgeon, and a medical report dated January 17, 2013 prepared.

No medical expenses were incurred by Moya as the Government of the jurisdiction paid all the medical bills, in keeping with its "free health care policy."

QUESTION 2

Discuss the legal and procedural issues you would consider prior to issuing proceedings on behalf of Moya.

QUESTION 3

Draft the Statement/Particulars of Claim for filing in the Supreme/High Court of your jurisdiction.

QUESTION 4

Peter Johnson entered into a contract with Russell Cow for the purchase of a 2010 Mercedes Benz SUV. Russell Cow wanted to sell the car because he was relocating overseas. He now lives at 7 Maple Cross, Canada and works at 16 Ottawa Lane, Canada. It was a term of the contract that the SUV would be transferred in mint condition.

The contract was witnessed by Sandra Forbes and Cathy Sinclair who both live in your jurisdiction.

Two days after the purchase price was paid and the car transferred to Peter Johnson, he started to have problems with it. Russell told him to take the car to Motor Mus Car Dealers, specialists in Mercedes Benz repairs and servicing, and that he would pay the cost of remedying the problem.

Russell left for Canada before paying the bill due to Motor Mus Car Dealers, although the invoice was ready and submitted to him by Peter. He now refuses to pay the invoice and Peter has been left “holding the bag.”

Peter paid \$10M to Russell Cow for the car and paid Motor Mus Car Dealers \$450,000 for the repairs.

You act for Peter and have already filed a Claim Form and Statement/Particulars of Claim in the matter. The Claim Form is valid until September 18, 2013. You wish to serve the Claim Form and Statement/Particulars of Claim on Russell Cow.

- i. Draft the relevant application. (The relevant form is provided).
- ii. Draft the order that the Court is likely to make.

QUESTION 5

You are employed to the law firm, XY&Z, Attorneys-at-Law. Your senior partner, Frederick Ihatehim, has informed you that the firm's client, Norma Davis, issued proceedings against Delroy Pine and Saka Saaka Limited for damages for personal injury. The personal injury sustained by Norma was as a result of an accident in which Delroy Pine, a shop assistant employed to Saka Saaka Limited, negligently collided into Norma. Delroy Pine was carrying a huge box to the shop from a delivery van and collided into Norma, knocking her to the ground.

An Acknowledgment of Service Form has been filed on behalf of both defendants. To the question "Do you intend to defend the claim?", the defendants respond "No but the

defendants request the claimant to provide proof of General and Special Damages". The defendants have not filed a defence.

Mr Ihatehim has asked you to prepare a memorandum as to what, if any, steps must now be taken on Ms Davis' behalf.

Prepare the memorandum.

PART B

FAMILY

FACTS RELATING TO QUESTION 6 & 7

Mary, a dancer, is the mother of two (2) children, Janet who was born on November 6, 2004 and James who was born on July 22, 2006. In 2007, Abe, the children's father, divorced Mary and in a matter of months Mary married Dennis.

Dennis is a nurse who works on the night shift. During the marriage 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 Abe and call Dennis "Daddy". They live at 6 Rose Court, Smith Town in your jurisdiction. This is a two-bedroom apartment and the rent is \$50,000 per month. The premises are ten minutes away from Regent Preparatory, the school that the children attend. They have extra-curricular activities which cost \$10,000 per month each and extra lessons at \$5,000 per month each.

Mary spent her time going to auditions and hanging out at coffee shops with her friends. Mary took little interest in the children's lives, had no patience with them and had been known to lose her temper and slap them. Nevertheless the children were dazzled by their 'glamorous' mother.

One day in February 2009, Dennis picked up the children from school and returned to their rented apartment and found a note from Mary which said that she was moving on to a 'better life'.

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

Dennis and the children were devastated. Life was difficult but Dennis' devotion to the children kept going. At first Dennis 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. He occasionally took a chance by leaving them at home alone whilst he was at work.

In May 2013, Dennis was served with a divorce petition. Mary informed him that she intends to marry Roger and is about to go off on a world tour with Roger's latest musical revue in which she stars. Mary is earning a nominal \$20,000 per month and Roger has promised her a percentage of the royalties. Roger currently pays all her expenses. Dennis said he had no objection to the divorce but he needs money. Mary said that rather than give him money, she would take the children herself.

Dennis instructs you that he cannot meet his monthly expenses. He is currently earning \$70,000 per month and has taken out a loan of \$150,000 which he is repaying at a rate of \$8,000 per month over five years. This is to help to cover the children's expenses. Mary pays

the children's tuition fees at Regent Preparatory which are \$50,000 each per term, and nothing more.

QUESTION 6

Advise Dennis on the merits and procedural steps to apply for custody and maintenance of Janet and James.

QUESTION 7

Draft Dennis' affidavit in support of the application for custody and maintenance for James and Janet.

QUESTION 8

Felicity Jumpp visits your office and instructs you that she was married to Judas Jumpp for twenty-five years. Mrs Jumpp was recently served with a Petition/Application for divorce filed by her husband. She is not in agreement with some of the content of the Petition/Application and is resolute that although she too wants the divorce, the inaccuracies must be corrected.

The parties have one son, Samuel, who is 9 years of age.

The parties still live in the same house which they purchased together but which is registered in Mr Jumpp's sole name. He has told her that the house is his. Mr Jumpp wants her to leave the house immediately and to take Samuel with her. Mrs Jumpp thinks it best that the house be sold now.

- i. Advise Mrs Jumpp on the application(s) that can be made on her behalf, the probable settlement the court will award her and attendant orders which she may seek in respect of the house.
- ii. Advise Mrs Jumpp on the procedural steps and document(s) to be filed on her behalf to fulfil her wish in respect of the Petition/Application.

END OF PAPER