

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2015

CIVIL PROCEDURE AND PRACTICE I

(AUGUST 12, 2015)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

Charles Rose attends on your office. He presents you with a Claim Form and Particulars/Statement of Claim which he says were served on him on May 1, 2015. The Claimant in the matter is named as Doris Daye. The Claim Form was dated and filed on January 2, 2014 and concerns a claim for breach of contract in which damages are being sought. The breach was said to have occurred on February 5, 2009.

Charles instructs you that the breach of contract did in fact take place but he was unable to fulfil his obligations under the contract because his suppliers, Angel Fast Iron Limited, did not deliver the goods to his store in time for him to make the delivery to Doris Daye.

Anticipated damages recoverable by Ms Daye would amount to no more than the equivalent of US\$500 in your jurisdiction.

What pre-litigation issues would you consider on behalf of Mr. Rose?

The following facts relate to Questions 2 and 3

You act for Fitzroy Davis who instructs you that he was served with a Claim Form and Particulars/Statement of Claim on September 17, 2014. The Claim No is 2014 HCV 9990. Fitzroy instructs you that he failed to acknowledge service or file a defence in time and as such, the Claimant was able to obtain a default judgment against him. On May 2, 2015, Fitzroy was served with Attested Default Judgment (Failure to Acknowledge Service) dated December 3, 2014, Notice of Assessment of Damages, Listing

Questionnaire, Notice of Intention to Tender Documents and Witness Statement. He wishes to file a defence in the matter.

The claim is one in negligence brought against him by Teisha Sinclair who claims that Fitzroy negligently drove his motor vehicle along Main Street in the jurisdiction, causing it to collide into her as she crossed the road.

Fitzroy admits that a collision did in fact take place but that he was not the party at fault. He says he was driving along Main Street at 30kmph when the Claimant suddenly and without warning stepped from the sidewalk and into the main road in an attempt to cross the road. He was unable to stop the car in time to prevent the collision and so the Claimant was struck. There was a pedestrian crossing just 2 feet from where the Claimant attempted to cross the roadway, which she did not use.

Fitzroy instructs you that the reason he did not come to you when he had first received the Claim Form and Particulars of Claim is because he had taken them to another lawyer, Mr Adolfus Hitch but that Mr Hitch had subsequently died from complications related to the chikungunya virus and he (Fitzroy) was just able to recover his documents from Mr Hitch's office. Mr Hitch's office has been closed down since his death. Fitzroy instructs you that having made several trips to the office to recover his file, he was unable to recover it until February 14, 2015 when Mr Hitch's executor finally called him and told him to come and collect it. Unfortunately for Fitzroy, he was out of the jurisdiction at the time travelling on work related business and did not return until May 1, 2015. He went to collect the documents from Mr Hitch's office on May 2, 2015 and when he went there Mr Hitch's executor also presented him with the Attested Default Judgment, Listing Questionnaire, Witness Statement, Notice of Assessment of Damages and Notice of Intention to Tender Documents.

QUESTION 2

Prepare a legal opinion in which you outline the practice and procedure that you will use, which will enable you to file a defence on behalf of Fitzroy and the likelihood that the steps you take will be successful.

QUESTION 3

Draft the Affidavit, which would support any application you would make on behalf of Fitzroy.

QUESTION 4

EXTRACT FROM

PARTICULARS/STATEMENT OF CLAIM

CLAIM NO 2015 HCV 9788

BETWEEN	RACHEL BROWN	CLAIMANT
AND	CHRISTIE DICKSON	DEFENDANT

1. The Claimant was at all material times a teacher residing at 7 Gardenia Avenue in the jurisdiction.
2. The Defendant was at all material times the owner and driver of motor vehicle bearing registration number 1LUVDEM.

3. On January 10, 2015 the Claimant was crossing High Street on a pedestrian crossing in the road when the Defendant drove her motor car along the road and collided with the Claimant and knocked her to the ground.
4. The collision was caused by the negligence of the Defendant.

PARTICULARS OF NEGLIGENCE

- a) Driving too fast.
 - b) Failing to keep any or any proper look out.
 - c) Failing to have any or any adequate regard for pedestrians.
 - d) Failing to see the Claimant in sufficient time to avoid colliding with her or at all.
 - e) Failing to give precedence to the Claimant who was crossing the road on the pedestrian crossing.
 - f) Failing to stop before reaching the pedestrian crossing upon which the Claimant was crossing.
 - g) Failing to stop, slow down or swerve so as to avoid the collision.
 - h) Failing to give any or any adequate warning of her approach.
5. As a result of the Defendant's negligence, the Claimant has suffered injury, loss and damage.

PARTICULARS OF INJURIES

The Claimant was born on June 5, 1988. Further information is contained in the attached medical report of Dr Henry Jacobs dated March 1, 2015.

- a) Broken right wrist
- b) Broken left femur

QUESTION 5

Sashi and Rupi celebrated their 25th wedding anniversary in your jurisdiction on April 2, 2013. Their son, Sanjay, decided to throw them a paid party to celebrate the occasion.

Sanjay decided to use a band called “Tania T and the Monkey Crew” which he had seen play at other parties before. The band is very popular. It has a worldwide following and is usually in very high demand. The band is employed to Monkey Crew Inc., a company registered in New York in the United States of America.

Sanjay signed a contract with Monkey Crew Inc. to supply entertainment at the wedding anniversary. It was a term of the contract that Sanjay would pay US\$3,000 at the signing of the contract and the remainder of the contract price (US\$3,000), at the conclusion of the event. These prices are heavily discounted as Sanjay and Tania T went to school together and are good friends.

On the day of the wedding anniversary the band was unable to play because the band members missed their flight because of a snow storm in New York City and Sanjay was without a band at the anniversary celebrations. All the paying patrons were disappointed. They threw bottles at Sanjay, vandalized the venue and demanded repayment of their monies. Needless to say the 25th anniversary celebrations “flopped”.

Sanjay is upset and instructs you to commence proceedings against the Monkey Crew Inc. for breach of contract. You do so and now wish to effect service on Monkey Crew Inc. outside the jurisdiction.

How would you do this and what considerations apply?

PART B
FAMILY

The following scenario is to be used to answer both questions 6 and 7.

May Smith and Jack Powers started a relationship in 1995. They moved into rented accommodation in 1996. May was a housewife and Jack, a mason. They struggled to make ends meet. In 2000, May, with Jack's encouragement and agreement, migrated to the United States. May obtained a job as a caregiver in a convalescent home and immediately started to send money home to be saved.

May returned home in 2001 and she and Jack got married. After the wedding May returned to the United States and visited home periodically. Together they built a commercial centre on lands which May purchased at Manatee Bay. Jack did much of the construction work on the building himself and asked his family members to assist. Jack used the money sent by May to pay workmen whom he hired, and to purchase building materials.

Jack has recently met someone else and wishes to dissolve his marriage to May.

QUESTION 6

Advise Jack whether he has an interest in the Manatee Bay property and the legal basis of his entitlement.

QUESTION 7

Outline the steps to be taken to dissolve the marriage.

QUESTION 8

April Flowers and John Higginbottom have a son who was born on April 1, 1989. He was registered in the name Thomas Flowers.

Thomas had a good relationship with his father, whom he called 'Pops'. He however, never visited his father's home nor did he meet his wife and other children. John's sister, Merlene, knew of Thomas' birth and would visit him and his mother whenever she travelled to the town where they lived. Over the years, Thomas has developed a bond with Merlene and her two children, Paula and Novlette, as he spent summer holidays with them in the country.

John was killed in a motor vehicle accident. Since John's death, Thomas has been made redundant from his job as a chef and is finding it difficult to cover his monthly expenses. Merlene tells Thomas that John has left a large estate, 75% of which was left in his will to "my children".

Thomas visits your office. He instructs you that he wishes to claim an interest in his father's estate.

Advise him.

END OF PAPER