

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS 2018

CIVIL PROCEDURE AND PRACTICE I

(AUGUST 00, 2018)

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. Erasable pens are not allowed.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

You are a student intern at the firm Podds and Foxx, Attorneys-at-Law. Ms Jane Dorenda instructs you that her former attorneys-at-law, James, White and Green, have brought a claim against her for a debt outstanding, in the amount of \$1,500,000, for unpaid legal fees. Ms Dorenda tells you that the legal fees were accrued when James, White and Green represented her in a land matter, which was brought in the Supreme/High Court and then later appealed. The invoice for the legal fees incurred was determined as follows - \$500,000 for work done at the Supreme/High Court and \$1,000,000 for work done at the Court of Appeal.

The matter was appealed because the former attorneys-at-law did not agree with the decision of the Supreme/High Court and had indicated to Ms Dorenda that they would do the appeal on a *pro bono* basis.

Ms Dorenda says she is not paying for the work done at the Court of Appeal as the lawyers had told her that it was being done on a *pro bono* basis. She admits to owing \$500,000 for legal fees incurred at the Supreme/High Court and has paid that sum. She gives you a receipt evidencing payment. The balance outstanding is now \$1,000,000. Her previous attorneys-at-law have applied for summary judgment on the outstanding balance and the application was served on her. She hands you the application and you see that the date is set for hearing on September 20, 2018.

Write a memorandum to your senior as to the significance of the summary judgment application and whether or not it is likely to succeed. Your memorandum should include the orders the court can and is likely to make.

QUESTION 2

Starlet Limited, a registered company, is your firm's client and is in the business of selling electrical components. Jason Gordon is the company's managing director.

Jason instructs you that Chester Johnson bought a new flat-screen HD television set from the company on April 20, 2017 and has filed a Claim Form and Particulars/Statement of Claim for damages. Chester claimed that when the recently purchased television set was first switched on, it exploded and caused a small fire.

Your client has had the television examined by an expert (Peter Kind) and the report reveals that the problem resulted because Chester's house had been poorly wired and some areas had 110 voltage instead of 220 voltage and this was what caused the explosion.

Jason also instructs you that Starlet Limited has a contract with the manufacturers of the TV set, Besttv Components Limited, for an indemnity. In addition, he tells you that on the date Chester attended the store, he had his three year old daughter, Sasha, with him. Sasha was quite hyperactive and ran around the store uncontrollably. In fact, on the day in question, while she was running through the store, she knocked over a component set which was destroyed. The value of the component set is \$750,000.

Discuss the legal issues, which you would consider before responding to or taking legal action, indicating in relation to each issue the course you will adopt.

QUESTION 3

You recently graduated from the Norman Manley Law School and are now employed to Slim, Jim and Pim, Attorneys-at-Law. The law firm acts for and on behalf of Jack Black, the Claimant, in an action against the Attorney General of your jurisdiction. The Claim Form (with supporting documents) and Particulars/Statement of Claim were served on the Attorney General's

Chambers. Service was acknowledged on January 6, 2018 but the Attorney General's Chambers has not filed a defence to date.

Mr Slim, your senior, has asked you to prepare a memorandum as to:

- (i) the steps you must now take on Black's behalf, setting out the relevant procedure and your reasons;
- (ii) how the Attorney General's Department is likely to respond to those steps; and
- (iii) the orders (if any) the court is likely to make, giving reasons.

QUESTION 4

You are a junior associate who commenced working for the firm, Law Justice & Associates, Attorneys-at-Law. The firm acts for Ever Ready Loans Limited, which is a limited liability company duly registered under the companies legislation of your jurisdiction. Its registered office is located at 21 Manley Boulevard, in your jurisdiction.

By virtue of a loan contract dated March 10, 2016, Ever Ready loaned its customer, Mr Breezy Poplar, the amount of \$3,500,000 at a rate of 15% per annum, totaling \$4,025,000 to be repaid over a period of five years by way of equal monthly payments of \$67,083.33. The monthly payments were to be made by salary deductions authorized by Mr Poplar, who is employed to Smith's Electrical Engineering Limited.

The firm's instructions are that at the time the loan was obtained by Mr Poplar, he submitted proof of his employment which indicated that he held the position of Engineering Manager for a period of over seven years. To date, Ever Ready has only received nine payments by way of salary deductions. On enquiring of Smith's Electrical as to the reason the payments had stopped, the client was informed that Mr Poplar had abandoned his job to live permanently in the United States of America with his fiancée.

On further enquiry, you are able to discover that Mr Poplar now resides in Maryland with his fiancée, and his current address, is 1041 Cherry Blossom Parkway, Maryland 34104, USA. You have also been advised that Mr Poplar has started to work for the Big Wheels Engineering Inc in Maryland, at the address of 1410 Freedom Boulevard, Maryland, 34104, USA. The firm sent letters of demand to Mr Poplar at both addresses in February 2017, and he responded by saying that he recently migrated with the intention of getting married. He also said that his wedding expenses were more than he had anticipated and as soon as he returned from his honeymoon in the Seychelles in June 2017, he would start to make payments for the amounts due and outstanding to your client.

However, despite letters being sent to Mr Poplar reminding him of his obligation, he has only responded with further promises and no payments.

In his last letter to Ever Ready in October 2017, Mr Poplar boasted that his wife was pregnant with twins, and as soon as he was able to ascertain what his new budget would be, he would start to make payments to the client. No payments, however, have been made and the client has instructed your firm to file a claim against Mr Poplar.

The claim was initiated and filed in the Supreme/High Court this year and assigned claim number 77874.

Prepare the affidavit which would support the application you would have to make in this matter in order to serve the initiating documents on Mr Poplar.

QUESTION 5

You are employed to Bing, Dong and Ken, attorneys-at-law for the Claimant in a motor vehicle accident. You have been given the following information, with instructions to prepare the Particulars/Statement of Claim.

“My name is Sarah Wilson. I am the wife of John Wilson who was critically injured in a motor vehicle accident on December 1, 2017. We live together at 8 Oswald Crescent in the jurisdiction. My husband is 79 years old and has been diagnosed with Alzheimer’s disease. I am his primary caregiver.

I am told that my husband was a passenger in his brother’s car. His brother’s name is James Wilson. James was driving his motor vehicle along Wellington Main Road in the jurisdiction. He was driving on the correct side of the road. When James reached the intersection of Wellington Main Road and Barnes Avenue, Anna Kaye Gordon drove her car from the minor road on to the main road and collided into the side of the car my husband was on. My husband was sitting in the front passenger seat of his brother’s car. The police investigations reveal that Ms Gordon was texting on her cellular phone when she collided into the car my husband was travelling in.

The police informed me that Ms Gordon resides at 17 Holywell Road in the jurisdiction and is the owner of the motor car she was driving. The motor car has licence plate number 89988 and is insured with Insurance Company Limited. She is an entertainment coordinator at Merriview Hotel.

John sustained a broken right hand, concussion, broken left hip and a punctured lung. His permanent partial disability has not yet been assessed and his doctor, Dr Andrew Buchannan, has indicated that he will have to do a further medical report when John has reached his maximum medical improvement. Dr Buchannan has already prepared a medical report. It is dated May 1, 2018. Here it is.

John has not incurred any expenses. He receives his treatment at the public hospital and everything is free. He is however in a lot of pain and sometimes cries because of the pain.”

Draft the Particulars/Statement of Claim.

PART B

FAMILY

QUESTION 6

On June 1, 2014, Portia Jarrett, a dentist born in Connors District on July 10, 1977, met and married Aiden Weatherfield, a businessman who was born in Emmerdale on October 14, 1975. It was a quiet evening wedding, held on the grounds of the Hyatt Hotel in the city of Mayberry. They went off on a short honeymoon. While on their honeymoon, Aiden, who was engaged in taking a photograph of his new wife, insisted that she should make herself smaller so she could fit in the view-finder of the camera. He was most irate that it would not happen and lambasted her for her size. She was deeply hurt and thought him most insensitive and impolite.

After the honeymoon, the couple returned to the city to live in Aiden's house at 50 Stilwell Drive. They each practised their profession in the main town. Aiden often took to attending at his wife's surgery, standing in the waiting room and berating his wife in the most insulting terms. He accused her of having men, being fat and being a poor lover. This type of conduct continued for several months. She began having headaches, became depressed, lost her appetite and, of course, her patients. A doctor recommended her going away for a while. Upon her return, the couple sought counselling, and Aiden's behaviour became more like that of the man she had grown to love prior to their marriage. Aiden stayed away from her practice, and she focused on rebuilding it. However, in December of 2016, her husband's atrocious conduct began all over again and one occasion Aiden slapped Portia across the face. Portia again became ill and left Aiden in February of 2017. Despite the fact that she has left Aiden, he has continued to show up to her surgery several times a month, throwing insults at her and acting in a most boisterous manner.

Portia now consults you as she has become quite disenchanted with the marriage and fears for the future of her practice.

- (i) Write an opinion as to what action she can take to curtail her husband's behaviour and its effects.
 - (ii) Outline the contents of the Petition that you will prepare on Portia's behalf.
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QUESTION 7

Muriel and Earl have lived together for seven years and have been married for four of them.

Muriel is a certified chef and Earl has a diploma in Business Administration. A year after they began co-habiting, they formed a company called Grandma's Best Ltd. Earl had given his grandmother's recipes for cornmeal pudding, bread pudding and banana bread to Muriel, and suggested that they manufacture them commercially. Muriel handles the production side of the business, and Earl looks after the management side. Muriel has 80% of the shares in the company, and Earl has 20%.

They live in a splendid great house which has been renovated to luxurious standards. This property was purchased three years ago, following the success of their business.

One day, Earl accesses Muriel's computer and finds pictures of her posing in the nude with her personal assistant, Steven. Earl moves into the cottage on the property, telling Muriel that he "needs some space". Earl has been in the cottage for two months.

Earl attends your office, seeking advice about terminating the marriage and sorting out the property. He advises that he wishes to purchase Muriel's interest in the great house.

- (i) Advise Earl as to the legal issues to be considered in determining his interest in the great house and the procedural steps that you will take.
- (ii) Draft the fixed date claim form/originating summons to carry out Earl's instructions.

QUESTION 8

Clement Barber, an elder in the Nature's Way denomination of churches, died on December 8, 2017. At the time of his death, he had been married to Anne for 35 years, and was the father of their four adult children, Rachel, Abel, Jonah and Leah.

Dara and Ruth, twins, aged 23, have come to see you. They tell you that Clement Barber is their father but his name does not appear on their birth certificates. Their mother had been a member of the Nature's Way church choir when she became pregnant.

Dara and Ruth instruct you that they have always known that Clement Barber was their father. He had maintained a relationship with their mother up until his death, and throughout their lives would come and go as and when he pleased to visit their mother and them at their home. On these visits, he often brought groceries, gifts and school supplies for them. Whenever he travelled overseas, he would also bring them gifts and souvenirs from his journey.

Dara states that their father had attended all their graduations and had been the guarantor to both their student's loans. Both girls had graduated from teachers' college a year and a half earlier.

They provide you with several birthday and Christmas cards addressed to either or both of them, all signed by "Daddy" or "Your Dad" and a note dated February 6, 2016, which reads:

"I could not be more proud of the daughters you are and the women you have become. Love today and always. Dad"

Dara instructs you that this note had been attached to their 21st birthday present from their father, two tickets for a weekend trip to Miami.

Dara and Ruth instruct you that their father has died intestate, and they wish to claim an interest in his estate.

- (i) Advise Dara and Ruth on the matters the court will take into consideration if you were to make the relevant application on their behalf.
- (ii) Detail the procedure that should be employed to make the appropriate application.

END OF PAPER