

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS 2024**

CIVIL PROCEDURE AND PRACTICE I

(THURSDAY, AUGUST 8, 2024)

Instructions to Students

- (a) Time: **3 ½ hours**
- (b) Answer **ALL** questions from Part A and Part B.
- (c) **Answer Part A and Part B on separate answer booklets.**
- (d) In answering any question, a candidate may reply in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **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

Pentagon Financial Bank Limited (the bank) entered into a loan agreement with Gary Richmond on January 10, 2022, for \$1,500,000 together with interest at a rate of six percent per annum. The purpose of the loan was partly to pay off all debts owed by Gary for his restaurant business, and partly for the purchase of new equipment for the restaurant to make it more efficient.

After receiving the loan principal by direct transfer to his business bank account, Gary used the entire loan principal to pay for emergency surgery for his son, who had suddenly fallen very ill. Gary confessed this to the bank via an email he wrote to his loans officer on March 10, 2022, when he was seeking a six-month moratorium before commencing monthly loan payments.

The loans officer submitted Gary's request to the bank manager who had approved the loan. The bank manager was Gary's friend's cousin, who had learnt from Gary's friend of Gary's son's sudden illness. The bank manager sympathized with Gary's situation and persuaded the board of directors of the bank (the board), to approve Gary's request for a six-month moratorium.

It has now been over two years and Gary has not made any payment on his loan to the bank. Gary's restaurant business went bankrupt due to all of Gary's profits from the business being used to pay for medical expenses to care for his son. The bank manager was recently dismissed. His successor, Harry Green, was tasked by the board with the specific mandate of collecting all outstanding loans. Harry had written a letter to Gary dated July 15, 2024, demanding the full loan principal together with accrued interest, and Gary has failed to meet the bank's payment deadline.

Gary had requested a meeting with Harry, who refused to meet with him. Out of frustration, Gary had posted a message on his Facebook, X, Instagram and LinkedIn accounts page that reads as follows:

"Pentagon Financial Bank Limited and the thief Harry Green have no heart or sympathy for customers and only know how to steal from customers by imposing high interest rates on loans...#thief#cold#wicked#bank."

You were subsequently engaged by the bank to file a claim on its own behalf and on behalf of Harry in the High/Supreme Court for breach of contract for the full loan principal together with the interest, and for defamation, which you have done.

Gary has been personally served with the claim form and particulars/statement of claim and has filed an acknowledgement of service and a defence. In his defence, Gary merely denies that he breached the loan agreement and contends that his post was not defamatory, but true.

Harry instructs you that the board would like the claim to be disposed of as soon as practicable in favour of the bank.

Instructions:

- (i) Advise the bank as to the option(s), if any, available for securing an early judgment in the claim, the procedure to do so and the likelihood of success.
- (ii) Draft the application/notice of application for court order you would file considering your advice at (i). (You are not required to draft any other document. The relevant prescribed form for the application is available for guidance only. Your answer must be completed in your booklet).

QUESTION 2

On Thursday, June 13, 2024, a claim was issued by your firm on behalf of your client, Belinda Savoy, against Avril Manning for damages for assault and battery.

On Friday, June 21, 2024, you engage Rafael Green, a process server, to serve the claim form and statement/particulars of claim, prescribed notes to the defendant, acknowledgement of service form and form defence (“the court documents”) on Avril at her residential address, provided by Belinda, at 145 Blake Street in your jurisdiction. You provided Rafael with a photograph of Avril.

On Thursday, August 1, 2024, Rafael returned the court documents to your office and reported that he had visited the given residential address for Avril on Monday, June 24, 2024, at about 8:00 a.m., where he saw a man who identified himself as Lancelot Manning, Avril’s father. When

he asked him for Avril, Lancelot told him that he and Avril had an argument on Monday, December 25, 2023, about her aggressive behaviour. Avril then left the house upset and he has not seen or spoken to her since.

Rafael explained further that he enquired of Lancelot if he knew where Avril may now be living and Lancelot told him he did not know for sure but suspected that she might be living with one of her boyfriends, Keanu Mighty, at his address at 9 Rayon Street in your jurisdiction.

Rafael informed you that he visited Keanu's address the following day at about 8:00 a.m. but Avril was not there. He spoke with a man who identified himself as Keanu Mighty. Keanu told him that he and Avril are not in a serious relationship, and that she has other boyfriends with whom she stays sometimes. Rafael explained further that Keanu told him he loves Avril, but she would not decide to settle down and live with him. The last time she stayed by his (Keanu's) house was one week ago and he has not seen her since, though he speaks to her every day on the phone. Keanu further told Rafael that he did not know for sure when next Avril would stay the night at his house, but he was hoping that it would be very soon.

Rafael informed you that he again visited Keanu's residential address on Wednesday, July 10, 2024, at about 6:00 a.m. and waited for three hours to see if anyone resembling Avril from the photo he had of her, would enter, or leave Keanu's house. No one did. Rafael returned to Keanu's residential address on Wednesday, July 24, 2024, at about 6:00 a.m. and again waited three hours but no one resembling Avril appeared.

Instructions:

Advise Belinda of the option(s) available to her for effecting service of the court documents on Avril and describe the procedural steps to be taken to ensure that service has been properly effected under the option(s).

PART B

FAMILY

(This Part must be answered on a new answer booklet and titled Part B)

Nina (50) and Frank (55) have been married for 20 years. At the time of their marriage, Nina was a preschool teacher, and Frank was a promising young executive.

After they got married, the couple lived with Frank's parents until they were able to purchase their own home in 2007. They bought a two-bedroom townhouse in a newly developed housing complex in New Harbour. The cost of the townhouse was US\$90,000. Frank paid 80 percent of the down payment, using money he inherited from his grandmother's estate, and Nina paid the remaining 20 percent. The balance of the purchase price was financed by a mortgage, which Frank had taken out solely in his name, as he had a higher credit score and income at the time.

Nina did not actively participate in the home-buying process as she was in the third trimester of her pregnancy and was suffering from severe pregnancy fatigue. Frank, who had handled all aspects of the purchase, registered the townhouse in his name alone. When Nina expressed concern about this, Frank reassured her, saying, "It's just a formality because of the mortgage, honey. We're in this together".

In 2007, Nina gave birth to their twin sons, Slim and Halo (now 17). Frank encouraged Nina to leave her teaching job to become a stay-at-home mom. Nina stayed home to raise their children, while Frank focused on his career, working long hours and travelling frequently for business. He eventually climbed the corporate ladder and became a senior executive. Frank now earns an annual income of US\$180,000.

The monthly mortgage payments were made from a joint bank account, into which Frank and Nina (up until she left her job in 2007), deposited their respective incomes. Costs relating to the maintenance and upkeep of the home, utilities and household expenses, and expenses for the children, were paid from this account.

Throughout the marriage, Nina managed all household chores, including cleaning, cooking, laundry and grocery shopping. She also supported Frank's career by hosting corporate dinners and events.

In 2015, Frank received a large bonus at work for his exceptional performance on a project. He used a substantial portion to pay down the mortgage principal. He also renovated the kitchen and master bathroom of the townhouse, significantly increasing its market value. The remaining sum was invested in a high-yield mutual fund, in Frank's name.

The current market value of the townhouse is estimated at US\$190,000, and the outstanding mortgage balance is US\$30,000.

Nina has come to see you. She shows you the divorce petition, filed by Frank, which she says she received from a court bailiff last Tuesday. She admits that the marriage has broken down irretrievably and has told you that she does not intend to defend the divorce. She agrees with the arrangements Frank has proposed, concerning the custody, maintenance and education of the children.

Frank insists that he is entitled to sole ownership of the townhouse as it is registered in his name and that Nina's financial contribution to the property was insignificant. Nina is concerned about Frank's assertion, as she has been out of the workforce for over a decade and was recently diagnosed with multiple sclerosis.

Advise Nina:

- (i) whether Frank's assertion is correct, including the legal basis for your advice; and
- (ii) on the steps that Frank would take to bring the marriage to an end, identifying the documents and timelines to be observed.

END OF PAPER