

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

**LEGAL EDUCATION CERTIFICATE
FIRST-YEAR EXAMINATIONS, 2004**

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 24, 2004)

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

Questions 1 and 2 are based on the following facts:

Kathy Thompson has been living at 10 Downing Street, Uptown, which she bought 10 years ago with her son Ken Thompson who is 12 years old. Her next-door neighbour at 12 Downing Street is Donald Bampton who is the owner of CleanRite Enterprises. For the last 5 years since he moved in they have had a very cordial relationship. Kathy would babysit Donald's child, Yvonne, and very often Donald would do the gardening and cleaning of Kathy's grounds.

As soon as Donald moved in he planted a breadfruit tree on the boundary line between the two properties. Over the years it has grown to a tremendous size and has been shedding its fruit and leaves, much of which falls into Kathy's yard and particularly on the roof over her garage. Kathy has complained to Donald about this situation asking him to cut down the tree or to at least trim the portion of the tree hanging over her property but he has steadfastly refused to do so. This has led to the relationship between Kathy and Donald becoming strained particularly in the last few months.

On April 20, 2004, a water pipe broke in Kathy's house while she and Ken were away for the weekend. It flooded her entire house. Donald offered to do the clean up of Kathy's house resulting from the flood, indicating it was the least he could do for all the trouble he had caused. He completed the job in two days.

One week later, Ken was playing in the garage when a ripe breadfruit fell on top of the garage roof penetrating an area which had been rotted due to falling leaves and fruit. It then fell on top of Kathy's car breaking the front windscreen. Glass from the windscreen struck Ken about his head and face. Ken suffered serious lacerations to his head and face, and was taken to hospital where he spent 2 weeks. The cost of his hospital care was \$3,000 per day. He had to

undergo plastic surgery to correct the unsightly scars on his face and head, which amounted to \$100,000.

Last week Kathy was served with a Claim Form and Particulars/Statement of Claim in which CleanRite Enterprises claimed \$15,000 plus interest against her for breach of contract.

Kathy has now come to you seeking legal advice and representation. She claims that Donald had indicated that when he agreed to do the cleaning job he specifically indicated that he would not take any money for this service in light of all the inconvenience he had caused her over the last few months. She also complains that over the last few years she has had to endure immeasurable suffering as a result of this breadfruit tree which she initially bore because of the good relations she had had with Donald. However, she now wants compensation for all her losses including the replacement of her garage roof and cleaning services which she has had to employ to clean her yard since Donald has stopped doing so since she refused to pay the bill he sent her.

Kathy has given you a medical report from the Plastic Surgeon Dr. Deon Days. She has also given you an estimate she has received from Q Roofs Limited, to replace her garage roof, for the amount of \$300,000. Cleaning of the yard has been costing her \$1,000 per week.

QUESTION 1

Discuss the legal issues that you would consider before responding to or taking any legal action indicating in relation to each issue what course of action you would adopt.

QUESTION 2

The Particulars/Statement of Claim of Claim served on Kathy is reproduced below. You have acknowledged service, giving notice of intention to defend. Based on the instructions above, please draft the appropriate statement of case in response.

You may add any additional information which is necessary to sustain your claim.

YOUR COUNTRY

HCA# 2343/2004

**IN THE HIGH/ SUPREME COURT
BETWEEN**

CleanRite Enterprises Ltd.

Claimant

and

Kathy Thompson

Defendant

1. The Claimant is a company limited by shares and registered under the Companies Act with its registered office located at 33 Orville Street, Spicetown. It specialises in janitorial and landscaping services.
2. On 15th April 2004 the Claimant through its managing director, Mr. Donald Bampton, entered into an oral contract with the defendant to provide cleaning services to clean and rehabilitate her house located at 10 Downing Street, Uptown, which had been flooded by water. As the full extent of the work was difficult to determine until the job was completed,

the parties agreed that the Claimant would present its invoice at the end of the job.

3. The Claimant delivered a bill for its services to the Defendant which amounted to \$250,000 on 18th April, 2004 requiring payment in 14 days. Despite repeated requests for payment, the Defendant has refused to pay the sum as a result of which the Claimant has suffered losses amounting to \$250,000 as the cost of services rendered.
4. Further the Claimant claims interest pursuant to (legislation in your jurisdiction) on the amount found to be due to the Claimant at such rate and for such period as the Court thinks fit.

AND THE CLAIMANT CLAIMS:

1. Damages;
2. Interest;
3. Costs;
4. Further or Other Relief.

Jim Lawless
Attorney at Law

FILED on the 4th day of May, 2004 by Messrs Lawless & Co of 10 Prince Street,
attorneys for the Claimant.

Jim Lawless
Attorney at Law

QUESTION 3

Karen Tyson lives in a second storey apartment in Seaview Apartments located in the plush residential district of Goodlands Park. Gary King and Kevin Littlepage are flatmates who live in the apartment above her. Last month they went on vacation together for a week and forgot the bathroom tap running. Water soaked through the floor and drenched Karen's apartment damaging much of her furniture and appliances.

On their return they promised to compensate Karen for her loss but since then Karen has not seen them. Incensed, she now comes to you demanding that you commence immediate legal action against them.

She informs you that Gary's sister, Sandra, told her that Gary has migrated to England to live with their mother at 34 Arrowpoint Lane, London W3. However, she cannot locate Kevin but knows that he is the owner of Ladies' Fancies, a business importing women's shoes and clothing located at 101 Barrow Street, Seaport. She tells you that he receives mail at this address because she had written to him demanding payment several weeks ago and he had replied asking her for time to pay.

Discuss the procedure you would adopt to serve process on Kevin and Gary.

QUESTION 4

You act on behalf of Allison Ramsey. Allison had been living with Tony Jackson for the previous 3 years in a common law relationship.

She claimed that she had entered into an oral contract with Tony to loan him \$250,000 to be paid in 20 equal monthly instalments of \$12,500 and that if there was default on payment for 3 consecutive months then the entire loan together with an additional amount of \$25,000 representing total interest would be called in. This loan was to enable Tony to get back on his feet after the break up. However Tony defaulted on the loan and has refused to make any payment.

You issued and served a Claim Form and Particulars/Statement of Claim to which Tony's attorneys-at-law acknowledged service, giving notice of intention to defend. However, the time to file/serve a defence in this matter has passed and Allison is now demanding that you act expeditiously to conclude this matter as quickly as possible in her best interest.

Discuss the procedural options available to you at this point to get an early judgment in this matter and indicating your preference.

QUESTION 5

You are the attorneys-at-law acting for Ace Compon, the claimant in proceedings issued against Cash Sales Limited. A claim form and Particulars/Statement of Claim has been issued with causes of action in negligence and occupiers liability in that on February 24, 2004, Ace Compon, slipped and fell in premises owned by Cash Sales Limited.

Cash Sales Limited have filed a defence annexing documents which reveal that the owners and occupiers of the relevant premises at the date of the accident were not Cash Sales Limited but John Kens Ltd.

Your clients have also discovered that Noby Ben, a firm of contractors was working on the roof of the premises at the time of the accident and may well have been responsible, or partly responsible for the state of the floor.

Advise your clients on procedural steps you will now take on their behalf bearing in mind that you have a date for a case management conference in 4 weeks time.

PART B

QUESTION 6

On May 5, 2002, Lisa Fairgate, waitress, married John Adderley, chef, at the Saint Francis Anglican Church in Motwon. They have one son, James Moxley, born on January 25, 2003. On December 10, 2003, John won the competition for the best chef in Motwon and went on a prize winning trip to Miami.

While in Miami, John decided to buy a lottery ticket. John later discovered that he had won the \$5,000,000 jackpot and was entitled to receive the sum of \$250,000 annually.

On April 1, 2004, Lisa answered a knock at the door of the couple's home and received the shock of her life when she was confronted by a young woman, claiming to be Alice Adderley, wife of John Adderley. Alice produced a marriage certificate evidencing her marriage to John on December 26, 1996. She also showed Lisa the birth certificates of her twin girls Joan and Joanna born on October 3, 1997. She further informed Lisa that John had been working on a cruise liner when he had been dismissed for insubordination. He had left the

cruise liner in June 2000 and had disappeared. She had only recently been shown a newspaper report of John's good fortune and his whereabouts.

Lisa immediately contacted John who was on the golf course which is where he spends most of his days since leaving his job after winning the lottery. John confirmed Alice's story and told Lisa he was sorry that she had to find out that way.

Lisa comes to your office for advice. She wants to know the procedure for dealing with the status of her marriage. Include in your advice a list of all documents that should be filed in respect of any relevant application to the Court.

QUESTION 7

Susan Langdon has received news that her husband Wayne Langdon is having an affair with Elizabeth Gray an old school friend of his, who had recently returned to the country. She had observed that he had been working late consistently for the past 6 months. He had not been contributing to the family home and explained that he had to pay a heavy bill for the medical expenses of his mother who had recently died.

On a visit to her sister-in-law after she heard about the affair, she learns that Wayne had made no contribution to his mother's medical bills. Her sister-in-law commented that he must have spent his money at expensive restaurants around town dining with Elizabeth.

Susan is unwilling to end her nineteen year old marriage to Wayne, but is finding it difficult to manage the household and care for the three children of the

marriage, Annette born on December 24, 1989, Shane born on May 7, 1991 and Shelley born on July 15, 1993.

Advise Susan of all her options for obtaining an order for reasonable maintenance from the courts and the procedure that must be followed in respect of each option, outlining the contents of the documents to be filed.

QUESTION 8

Marie Mahabir and her daughter Geeta, aged 18 years, come to your office. Geeta gave birth to a baby boy, Johnny on March 23, 2004. Geeta informs you that Anthony Singh is the father of her child, but that he is denying that this is so.

Marie tells you that she knows that Anthony is the father because she twice caught him having sex with Geeta on her couch in the living room. On both occasions she had returned home early from her evening shift at the hospital where she is a nursing assistant.

She tells you that Geeta never went out of the house, except to go to school and had never had a boyfriend until Anthony moved in next door a year ago. He is 24 years old and a university graduate. He works at the Ministry of Finance and had offered to help Geeta with her 'A' Level accounts.

Marie said that exactly nine months after the second time she had seen them together, Johnny was born. Marie has spoken to Anthony about supporting the child, but he is claiming that he always used protection with Geeta. Geeta denies his.

Advise Geeta as to how she should proceed.