

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2006**

CIVIL PROCEDURE & PRACTICE 1

(MONDAY, MAY 22, 2006)

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 ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTIONS 1 AND 2 ARE BASED ON THE FOLLOWING FACTS:

Jai Maraj, a farmer, owns 50 acres of land in Richgrow in the parish of St. John where he also resides. He plants bananas and cantaloupes. He sells his bananas on the local market to Best Foods Ltd., of 18 Agrilots Ave, Capital City, a food processor which produces banana chips among other products. He also has a thriving business exporting his cantaloupes to the USA.

On December 15, 2005, he contracted in writing with Mr. Donald Ying, the marketing manager of International Food Distributors Ltd. of 19897 East 14th Street, Manhattan, New York 11321, to sell the company 500 tons of cantaloupe to be delivered by May 15, 2006.

Maraj also has a contract with Best Foods Ltd. to supply them with 500 lbs of bananas on the 15th day of each month. This arrangement has been in force for over three years and is determinable by one month's notice by either party.

On April 2, 2006 an unseasonal storm ravaged the country. It caused severe damage to 75% of Maraj's banana crop although his crop of cantaloupes were safe. In order to expedite its growth Maraj doubled the fertiliser input to his bananas. Maraj obtains all the agricultural inputs for the cultivation of his crops from AgriChem Ltd. of 11 Cropstart Boulevard, St. Patrick's County.

Unfortunately, the type of fertiliser that he used was past its due date by two months and AgriChem Ltd. had used a new input into the type of fertiliser they supplied to Maraj which had not been previously tested. This new input caused the active chemical composition of the fertiliser to deteriorate. When the fertiliser was applied to the banana crop, it caused the roots to be burnt and the crop was

destroyed. Consequently, Maraj had to terminate his contract with Best Foods Ltd.

On May 1, 2006, Donald wrote Maraj informing him that International Food Distributors Ltd would no longer be honouring its contract of May 15, 2006 because there was a glut on the international market and they were getting cantaloupes cheaper from a farmer from Costa Rica.

Maraj seeks your advice.

QUESTION 1

Advise Maraj as to the legal issues you will consider before commencing proceedings.

QUESTION 2

Draft the statement of claim/particulars of claim on behalf of Maraj in this matter.

QUESTION 3

On March 31, 2005, your client Garth Cadogan of Best Designs and Associates, a firm of architects, was served with a claim form issued on the same day. The

claimant claimed damages for loss occurring as a result of his negligent supervision of a building project at 2 Graham Terrace in the city of Plymouth.

The claimant was granted permission to serve the statement of claim/particulars of claim after service of the claim form. The limitation period had already expired.

In the statement of claim/particulars of claim, there was an additional claim for damages arising out of the negligent design of the building which was alleged to have taken place on October 15, 1997.

- (i) Advise what steps you would next take on your client's behalf.
 - (ii) Briefly outline the matters which the court will consider in granting any order which you may seek.
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QUESTION 4

Mary Jones visits your office and instructs you that on September 20, 2005, she was shopping at Low Prices Supermarket Ltd in the city of Roseau when she slipped and fell on the floor suffering severe personal injuries resulting in permanent disability.

Ms. Jones further instructs you that when she fell, one of the employees assisted her and told her that a bottle of cooking oil had spilled on the floor. The floor had not been cleaned nor had any sign been placed indicating that the floor was slippery.

Ms. Jones tells you that she wants this matter dealt with expeditiously and she understands there is a way to obtain a quick judgment.

Outline the steps you will now take to obtain judgment quickly on Ms. Jones' behalf.

QUESTION 5

Answer either (a) or (b)

- (a) You have been retained by Michael Taitt to act on his behalf. Mr. Taitt presents a statement of claim/particulars of claim to you. An extract of the document is set out below.

STATEMENT OF CLAIM/PARTICULARS OF CLAIM

BETWEEN	MARTINA WILLIAMS	CLAIMANT
AND	MICHAEL TAITT	DEFENDANT

- 1. On the 10th day of January 2004 at Lonely Road in the parish of Saint Andrew a collision occurred between a motor vehicle bearing registration number PAC145 owned and driven by the Defendant and a motor vehicle bearing registration number G1234 owned and driven the Claimant.***
- 2. The said collision was caused by the negligent driving of the said motor vehicle bearing registration number PAC 145 by the Defendant.***

3. ***By reason of the matters aforesaid, the Claimant who is now aged 48 years having been born on the 24^h day of October 1964 has suffered pain, injury, loss and damage.***
4. ***Further, the Claimant claims Interest pursuant to the [relevant legislation in your jurisdiction] Act on the amount found to be due to the Claimant at such rate and for such period as the Court shall think fit.***

AND THE CLAIMANT claims:-

- a. **Damages**
- b. **Interest as above**
- c. **Costs**

Dated the day of 2005.

Advise what are the appropriate steps you will next take on Mr. Taitt's behalf.

- (b) A claim form and statement of claim/particulars of claim have been served on your client, Marion Johnson, claiming damages for injury, loss and damage as a result of an accident caused by the negligence of Ms. Johnson on April 3, 2002.

Ms. Johnson instructs you that while her car did strike the claimant's car, it happened because another car was about to collide with her and in an effort to avoid that collision, she collided with the claimant's car.

The driver of the car which Ms. Johnson avoided colliding with, stopped after the accident and provided his name and contact details to the police.

Ms. Johnson is of the view that she should not be held liable for the claimant's claim.

Advise what are the appropriate steps to take to ensure that Ms. Johnson is not held liable for the claim.

PART B

QUESTIONS 6 AND 7 ARE BASED ON THE FOLLOWING FACTS:

Andrew and Donna Hunte were married in May 1997. The marriage produced two children Zoe born on January 25, 1998 and Jordan born on June 14, 1999. Andrew is the owner of a very successful construction company and he has a net income of \$25,000,000 per year.

Donna is a qualified corporate secretary but Andrew asked her to remain at home following the birth of their second child in 1999, to take care of the children. At that time, Donna was earning \$5,000,000 per year and was fully able to maintain herself.

Andrew and his family enjoyed a very high standard of living having purchased a very large home at 10 Millennium Heights in the parish of St. George in 2000 for the sum of \$41,000,000. The property was purchased in the names of Andrew and Donna but Donna made no monetary contribution to the purchase. In addition, the family went on holidays every year at Andrew's expense. The children attend St. Gabriel's School which is a very costly private school.

In 2002 Andrew became so engrossed in his work that he started to neglect Donna. Donna became very depressed and as a result started to neglect the

children. She would forget them at school and also forget to take them to their extra curricular activities.

Donna was so upset about her situation that she decided to move out of the matrimonial home and into her mother's home at Hillaby in the parish of St. Andrew in February of 2002. Donna took the children with her but they were extremely uncomfortable as her mother's home is very small and occupied by Donna's grown siblings and their own children. Donna had to share her mother's room with her mother and Zoe and Jordan. They all sleep on a double bed. As a result, Zoe and Jordan are not performing very well in school. They are unable to do their homework because of the noise in the house and they do not rest well at night.

QUESTION 6

Donna visits your office and instructs you that she wishes to apply for custody of the children.

- (a) Advise Donna on the following:
 - (i) The procedural steps to be taken in the High Court/Supreme Court on applying for custody and the documents required.
 - (ii) What matters will guide the court in making an order?
- (b) Draft the question to be determined by the court in the relevant application.

QUESTION 7

Donna also instructs you that she no longer wishes to reside in the matrimonial home and wants it sold so that she can obtain her share in the property.

- (a) Advise Donna on the procedural steps required to be taken in the High Court/Supreme Court and the documents required.
 - (b) Draft the question to be determined by the court in the relevant application.
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QUESTION 8

Onell and Rocky have lived together for 16 years. However, their relationship has been a very 'rocky' one. Rocky is extremely jealous and constantly suspects Onell of having relationships with other men. From about the beginning of 2005, Rocky has been physically abusing Onell every time she returns home after going out on her own. Onell has even had to be hospitalized on one occasion as result of the physical abuse.

Onell visits your office and instructs you to initiate non-criminal proceedings against Rocky.

Advise Onell on the following –

- (i) the relevant procedural steps to be taken under the domestic violence legislation;
 - (ii) the matters that will be taken into account by the Court; and
 - (iii) the orders that the Court may make in the circumstances.
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