

# FINAL DRAFT

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2007

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 21, 2007)

## 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 a separate answer booklet.**
- (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 -**

Nathan and Ethele celebrated their 50<sup>th</sup> wedding anniversary in your jurisdiction on April 15, 2005. Their daughter Andrea decided to throw an unusual anniversary celebration for her parents who she often referred to as the “young and restless” because they were young at heart.

Andrea decided that she wanted to use a disc-jockey called Mitzah who she had seen at another anniversary party when she was a student in Miami. Andrea was referred to Entertainca a corporation registered in Orlando, Florida who were Mitzah’s employers.

Andrea signed a contract with Entertainca to supply Mitzah as a disc-jockey. Andrea agreed to pay (US) \$5000 for Mitzah’s services, of which (US) \$1000 was paid upon signing the contract. The balance was to be paid at the conclusion of the event.

Andrea also signed a contract with a local electronic company registered in the jurisdiction (Sound Systems Co Ltd) to supply and set up speakers, sound board, lights and other equipment for Mitzah’s use. The contract with the local company provided that the requisite equipment would be in “proper working order.”

On the day of the event, Sound Systems Company’s employees arrived to set up the equipment. Mitzah was present and assisted in directing Sound Systems’ employees as to where she wanted the speakers and other equipment to be placed. Some of the wires and cables extended across the dance floor.

Mitzah was a very entertaining disc jockey, she engaged the guests who were mostly long time friends of Nathan and Ethele and in their late seventies in a

limbo and hula-hoop contest. Nathan was doing the limbo when his foot got caught in one of the equipment wires, which caused an enormous speaker to topple off the stage and onto his head. He was rushed to the hospital and required medical attention and ongoing follow up care. Although Nathan is retired, he continues to freelance as an accountant and has missed several weeks of auditing work and incurred thousands of dollars in medical bills.

Andrea has not paid the balance due to Entertainca for Mitzah's services as she regards Mitzah as partly responsible for the incident. Entertainca have written to Andrea demanding the balance of the money and indicating that without further notice to her they intend to bring proceedings for the outstanding amount.

Mitzah has returned to Miami.

Nathan and Andrea consult you.

### **QUESTION 1**

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

---

### **QUESTION 2**

Assume that you have commenced proceedings state how you will effect service on parties outside of the jurisdiction and the considerations that apply.

---

**QUESTIONS 3 & 4 ARE BASED ON THE FOLLOWING FACTS -**

You are instructed by Roger Corbett to act on his behalf. Mr. Corbett presents a particulars/statement of claim to you as set out below.

Mr. Corbett denies that he was negligent. He says the brakes on his car failed although he had just taken his car for servicing a few days earlier to Thompson's Auto Cars Limited at 15 Cressley Avenue in your jurisdiction.

He believes that the failure of the brakes and accordingly the accident was caused by the negligence of Thompson's Auto Cars in failing to service the car properly. In addition he claims that had Mr. Webb been driving within the speed limit and not using his cellular telephone at the time, he would have been able to avoid the collision.

Mr. Corbett's car was badly damaged in the accident. The estimate to repair his car is \$450,000.

**STATEMENT OF CLAIM/PARTICULARS OF CLAIM**

|                |                      |                  |
|----------------|----------------------|------------------|
| <b>BETWEEN</b> | <b>RICHARD WEBB</b>  | <b>CLAIMANT</b>  |
| <b>AND</b>     | <b>ROGER CORBETT</b> | <b>DEFENDANT</b> |

1. On January 10, 2007, the claimant was driving his motor vehicle registration number 7622 DN in a southerly direction along Valley Road, when a motor vehicle registration 2233 EZ being driven by the Defendant in the opposite direction along the said road, crossed the centre line and collided head on with the Claimant's vehicle.

2. The said collision was caused by the negligence of the Defendant

#### Particulars of Negligence

The Defendant was negligent in that he:

- a) drove too fast in all the circumstances;
  - b) drove at a speed in excess of the maximum permitted on the said road;
  - c) failed to have or to retain any or any safe or sufficient control over his motor vehicle;
  - d) lost control over his motor vehicle;
  - e) drove in the path of and collided with the Claimant's vehicle
  - f) caused permitted, or suffered his motor vehicle to drive or to skid or to slide onto the wrong side of the road;
  - g) failed to take any or any adequate care for the safety of the claimant;
  - h) failed to stop , to slow down, to swerve or otherwise so to manage or control his motor vehicle as to avoid the said collision.
3. By reason of the matters above the Claimant who is now aged 35 years suffered pain, injury loss and damage.

#### Particulars of Injury

- (a) pain shock, bruising
- (b) fracture of right wrist requiring operative treatment
- (c) restriction of movement
- (d) continuing pain

Particulars of Special Damage

|       |               |           |
|-------|---------------|-----------|
| (i)   | Value of car  | \$750,000 |
| (ii)  | Hospital bill | \$150,000 |
| (iii) | Medication    | \$25,000  |

4. The Claimant claims interest pursuant to the (relevant legislation in your jurisdiction) 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      2007

**QUESTION 3**

Draft an appropriate statement of case in response to the particulars/statement of claim based on Mr. Webb's instructions to you.

\_\_\_\_\_

**QUESTION 4**

- (a) Advise Mr. Corbett on his options for proceeding against Thompson's Auto Car Ltd.

- (b) Assume that a medical report was not attached to the particulars/statement of claim as required by the Civil Procedure Rules of your jurisdiction. What steps would you take on your client's behalf to deal with the claimant's failure?
- 

### **QUESTION 5**

You are consulted today by Mr. Ihava Problem. He shows you a copy of the particulars/statement of claim extracted below. It was prepared by his daughter who is a final year law student over the spring break. It was filed in the Supreme/High Court on April 23, 2007 and served on the defendant on the same day, together with the claim form and other supporting documents.

Mr. Problem tells you that he received an acknowledgment of service form from the defendant on May 1, 2007.

His daughter has now gone abroad to resume her studies.

### **IN THE SUPREME/HIGH COURT**

**BETWEEN  
AND**

**IHAVA PROBLEM  
JUSTIN TIME**

**CLAIMANT  
DEFENDANT**

### **STATEMENT/PARTICULARS OF CLAIM**

1. The Defendant drew a cheque on his account on January 10, 2007 with Blankety Bank plc payable to the Claimant in the sum of \$900,000.

2. The Claimant presented the cheque for payment but it was dishonoured.
3. By a letter dated February 2, 2007, the Claimant gave notice to the Defendant that the cheque had been dishonoured. The Defendant had stopped payment of the cheque that was marked "refer to drawer".

**AND THE CLAIMANT CLAIMS**

1. \$900,000.
2. Interest pursuant to the (appropriate statute in your jurisdiction) from the date of dishonour to April 23, 2007.
3. Interest from the date hereof to the date of judgment or earlier payment.

**Certificate/Statement of Truth**

I believe that the facts stated in these Statement/Particulars of Claim are true.

Dated this 23<sup>rd</sup> day of April 2007

Advise Mr. Ihava Problem on the steps and options available to secure an early judgment in this matter.

---

## **PART B**

### **FACTS RELATING TO QUESTIONS 6 & 7**

Mr and Mrs Wanderer got married on December 31, 1987. They have two children, Puncie born August 31, 1987 and Pablo born July 12, 1988.

Mr Wanderer attended a weekend retreat organised by his employers at a luxurious hotel on the north coast. On the Saturday night he and several co-workers went to a nearby club to relax and unwind. The following morning Mr Wanderer woke up in bed with Mary Manners a work colleague. Mr Wanderer was struck by guilt and upon his return confessed to his wife who with surprising grace forgave him.

Unknown to Mr Wanderer the reason for Mrs Wanderer's uncharacteristic acceptance was that whilst Mr Wanderer was away she had indulged in a 'steamy episode' with the pool cleaner. She was so relieved that her husband was too caught up in his own guilt to detect hers that she embarked on a campaign of lavish treatment and pampering of the bewildered Mr Wanderer.

After 3 months Mr Wanderer could take no more. He confronted his wife and stated that he was sick and tired of what had become an unnaturally perfect marriage and that he was going away to find himself. Mrs Wanderer encouraged him to take all the time he wanted, partly because she intended to rekindle the affair with the pool cleaner. Mr Wanderer left and has not been seen or heard of in the last seven years.

As far as Mrs Wanderer knows, all Mr Wanderer's relatives are deceased and she has no way of knowing where he may be found.

Puncie is currently in the 1<sup>st</sup> year of a law degree at UWI. Pablo is working at a local recording studio.

Mrs Wanderer is now seeking a divorce in order to marry the former pool cleaner – now business owner – with whom she has a child Petal born May 2, 2004.

---

### **QUESTION 6**

Draft a Petition on behalf of Mrs Wanderer.

(Candidates answering this question can supply the incidental information that will be necessary to draft the Petition.)

---

### **QUESTION 7**

Advise on the legal issues and procedural steps in relation to service of the petition, listing the necessary document(s) and summarising the contents.

---

### **QUESTION 8**

Damion is a club owner who has been so violent towards his wife Trixie that she has been injured on several occasions and consequently is in great fear of him.

Damion and Trixie are separated and Trixie has commenced divorce proceedings. The couple have a child Dudley who is seven years old and lives with his mother who has made no application in the petition for custody. Damion has Dudley on alternate weekends.

Dudley is a well adjusted child who is doing well at the prestigious prep school that he attends. Damion is devoted to his son and organises trips and activities to fill their time together, as well as speaking to him on the telephone during the week. Damion is proud of the fact that he has never beaten Trixie when Dudley has been present.

One day Trixie announces that she is going to the U.S.A. to further her studies and will take Dudley with her. Damion discovers through Trixie's helper that Trixie has met an 'old flame' who is unemployed and living in a tiny apartment in the Bronx with two children from a previous marriage. Trixie intends to join her old flame and "find her way in life". Trixie's domestic helper who is paid by Damion provides a steady supply of information as to the comings and goings at Trixie's house.

One Sunday evening as Damion is dropping off Dudley, Dudley informs his father that there will be no need for him to collect him from karate class on Thursday because he (Dudley) is going to live in America on Wednesday.

Damion objects to Dudley being removed from the jurisdiction and wishes to apply for custody.

Advise Damion as to the procedural steps in relation to this application and the likelihood of success.