

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2008

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 19, 2008)

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

Statement of Eva Drummond

I was born on December 15, 1978 and I am a free-lance photographer. I live in South Africa. My address is 8 Cape Town Mews, South Africa.

I arrived in the jurisdiction on May 10, 2008, with my 8 year old daughter Cameron Drummond. I had a contract to photograph some thirty buildings and sites for the South African Architectural Digest over a six week period. I was to earn \$20,000 for completing this assignment.

On May 19, 2008, I was standing on the pavement opposite the local legal aid clinic which is situated on Atlas Highway. It is a remarkable building and I wanted to photograph it. It had won an architectural prize.

Cameron was sitting on the grassy area beside the pavement slightly behind me. It was about 5:30 p.m. and although it was dusk it was not yet dark. I was standing adjusting my camera, when I felt a sharp impact and was struck to the ground. The impact resulted in me falling on top of Cameron who hit her face on the pavement. I heard Cameron scream.

I had been hit by a vehicle being driven by Michael Mendez a permanent resident of Miami Florida. He is also a citizen of the jurisdiction. Mr. Mendez was driving eastbound on Atlas Highway. It appears that Mr. Mendez was so distracted by the striking architecture of the clinic I was photographing, that he lost control of the vehicle and mounted the pavement striking me and resulting in the injury to Cameron.

Mr. Mendez came out of the car and immediately started shouting. He said that I had contributed to this. He said I was silly to be out of my car at that time of the evening and especially with a young child. I do not think I did anything that resulted in the incident and believe that Mr. Mendez was appallingly careless. He was driving his mother's car. Her name is Helen Mendez. The car is a new Jaguar motor car licence number ZZ 2V. Mr. Mendez appeared to be more concerned about the damage to the car than he was with the injuries sustained by myself and my daughter.

Cameron and I were transported to Tiger Mart Hospital by ambulance. X-Ray examinations revealed that Cameron had dislocated her jaw and that I had fractured my leg. Cameron had to have emergency surgery to her jaw. We were both hospitalized for 3 days. I was fitted with a plaster cast which I have to wear for 10 months. I have incurred medical expenses for myself of \$70,000 and for Cameron of \$ 250,000. I have also been told by Dr. Pearson that because of the accident he expects that I will have an onset of osteo-arthritis in about 2-3 years which will severely restrict my movements. This will affect my work severely as I frequently travel overseas on photographing assignments.

Mr. Mendez gave me his mother's address at 18 Munster Road in the jurisdiction, which is where he was staying. He is however due to leave the jurisdiction on May 31,2008. He has given me his address at 1188 Pine Ave, Pembroke Pine, Miami, Florida 33244. I am very concerned about my ability to bring proceedings against him because of where he lives.

My injury has severely affected my mobility and I am currently considering returning home without completing the assignment as many of the buildings I was expected to photograph are in places that are difficult to navigate with my injury.

QUESTION 1

Advise Mrs. Drummond, explaining the procedure you will adopt and outlining the contents of the documents you will be required to prepare, in order to bring proceedings to the attention of Mr. Mendez.

QUESTION 2

The Senior Partner has instructed you that although he is not yet in receipt of the medical reports that you are to prepare a first draft of the Particulars/Statement of Claim for his approval from the information contained in Eva Drummond's statement.

QUESTION 3

Mary Duggam, trading as Emerald Gift Shop in No-Bay in your jurisdiction, borrowed \$500,000 from the Cedar Development Bank (CDB) in May 2002. This loan was to repair the damage to her gift shop following Hurricane Ian in September 2001.

The agreement provided for interest at 10% per annum. Mary has defaulted on the loan and CDB wishes to issue proceedings against her.

The Bank Manager, Scurry Settle, has told you that Mary is a personal friend of his and as a result he has been very patient with her. The Bank has however

written a number of letters to Mary who acknowledges her indebtedness but states that the gift shop is not doing very well due to the low tourist arrivals. She also states that the Government of the jurisdiction is to be blamed for the situation and that there is nothing she can do until things improve.

Scurry Settle says that his last letter to Mary was in January this year and she responded on February 28, 2008, repeating her position.

Scurry Settle tells you that he is being transferred to another branch and he needs to ensure that the position with Mary's loan is dealt with. He believes that she can make more of an effort to make payments on the loan. He saw her in the VIP section of the music festival recently and activity on her business account makes it clear that she could be making payments on the loan.

Advise CDB on:

- (i) the pre-action steps you will take and the procedure you would adopt on its behalf to issue proceedings; and
- (ii) its options for an early judgment in the matter.

QUESTION 4

The Director of the Legal Aid Clinic assigns the file of Richard Willis to you which had previously been handled by another attorney-at-law who has left the clinic.

You note that following a fire in his building, your client Richard Willis, the owner of the building, brought a claim against the firm of Architects. The cause of action was stated to be negligence in designing the building.

In the years since the building had been completed, the Architects had changed both their name and address. Formerly it was called Kilour Architects & Partners and it is now Kilour Lane Architecture & Partners. The firm had also moved from 9 Treven Road to 10 Avoid Way in the jurisdiction.

After expiration of the limitation period and before the expiration for service of a claim form within the jurisdiction, the attorney-at-law previously acting for your client sent the Claim Form together with the Particulars of Claim/Statement of Claim by post to Kilour Architects & Partners at 9 Treven Road.

The documents did get to the Architects at their current address but only because the local postman knew of them. The Defendants have now filed an acknowledgment of service indicating that they intend to seek to set aside service of the Claim Form and Particulars/Statement of Claim.

Your client is keen to proceed with the claim and tells you that since proceedings were issued they received an expert report and they wish to amend the statements of case to include the following:

A new and additional cause of action against the Architects to include not only negligence in designing the building but also negligence in supervising the builders that the Architects advised them to engage;

Adding the builders L& D Building Ltd as defendants and bringing a cause of action against them in contract and negligence.

Advise your client on:

- (i) the procedure the Defendants will adopt and the likely outcome of their application; and
 - (ii) his application to amend the Particulars/Statement of Claim as instructed.
-

QUESTION 5

Your client, Kevin Facey, operates a business servicing racing cars. He tells you that he always closes his business during the month of April to attend 2 racing meets which are held in San Francisco. While he was away this April a claim form together with a Particulars/Statement of Claim was delivered to his address on April 14, 2008. He did not see the documents until his return on May 14, 2008. It was his intention to instruct you in the matter, however, the following morning he received a default judgment against him. He comes to see you today.

An abstract of the Particulars/Statement of Claim is set out below:

- “1) The Defendant operates a joke operation as a mechanic.
- 2) On January 7, 2008, the Claimant, a racing driver enthusiast, took his prize sports car to the Defendant for servicing.
- 3) Since the Defendant serviced the Claimant’s car it has not been running properly.

- 4) The Claimant was unable to compete in the racing event held at Rover and consequently lost \$100,000 in the prize money.

The Claimant claims

- (i) \$100,000
- (ii) Damages
- (iii) Interest"

- (i) Advise him on the procedure and the likely outcome of an application to set aside the default judgment made against him.
- (ii) Assuming he is successful, state how apart from filing a defence you would challenge the Statement/Particulars of Claim filed by the Claimant and the procedure for doing so.

PART B

FACTS RELATING TO QUESTIONS 6, 7 & 8

On the 1st day of January 1985 Bradley and Angela Fitt got married at the Holy Angels Church in the parish of St. Mark. The Reverend Peter Goodheart officiated. Bradley Fitt was 23 years of age at the time of the marriage having been born on the 22nd day of December 1962, in the parish of St. Mark and Angela Cookwell was 22 years old having been born on the 5th day of September 1963. They had two (2) children David who was born on the 20th day of April 1992 and Davinia who was born on the 6th day of July 1994.

Angela who was a teacher gave up work after David was born to look after the family full time. Bradley was an accounts clerk in a local company when they got married. Bradley was successful and well liked. He became General Manager for the company.

The family started off in a small house in a new scheme bought just after the couple was married. Although both contributed towards the deposit, the house was in Bradley's name alone because he dealt with all the paperwork and it was more convenient. When Angela's aunt died and left some money Bradley bought a condominium in Prosperity Pines, Florida in both their names which was used as a holiday home for the family.

In 1999, when Davinia was five (5) years old, Angela surprised everyone by announcing that she was going abroad to get a degree and resume teaching. Bradley was shocked because he'd just moved the family into a luxurious house in the exclusive community called the Tree Tops in the parish of St. John and thought that Angela was settled and happy. In the next two (2) years, whilst Angela was away doing her degree (only returning during the holidays), Bradley got domestic help to care for the children and had an affair with Teisha a young teller at the local bank.

In 2001, upon Angela's return, Bradley broke off the affair with Teisha. Teisha was very annoyed and threatened to tell Angela everything unless Bradley bought an apartment for her. Bradley had put a substantial part of the family savings into the Big Money Alternative Investment Club and was seeing good returns so he agreed to Teisha's demand and purchased apartment number 7, Regal Palm in the parish of St. Mark. Bradley and Teisha own the property as joint tenants and the mortgage was paid from the interest payments from Big Money.

In 2003, two (2) years after Angela's return, Big Money crashed. Bradley lost the family savings and was no longer able to pay the mortgage for the apartment. Bradley decided to tell Angela everything. Having heard Bradley's confession Angela left in 2003 with the children and settled in the Florida condominium.

Teisha moved in to the Tree Tops with Bradley and the apartment was rented out to pay the mortgage. Over the next five (5) years Bradley begged Angela to return, she refused and has indicated to Bradley recently that she intends to bring proceedings for division of matrimonial property. In addition Teisha is now pregnant and Bradley wishes to divorce Angela. David and Davinia are currently visiting Bradley.

QUESTION 6

Describe the steps to be taken in these divorce proceedings up to the grant of the decree absolute.

QUESTION 7

Advise Bradley on the steps to be taken if he wishes to make an application for custody of David and Davinia and the basis upon which the court would decide the matter if Bradley's application is contested by Angela.

QUESTION 8

Advise Bradley on the merits of Angela's claim for division of matrimonial property and how the proceedings will be commenced.