

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2009

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 25, 2009)

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

QUESTION 1

You are instructed by Mr Basil Barker who has consulted you on behalf of his son James Barker. James was born on November 15, 1996.

Mr Barker tells you that on the morning of James' eighth birthday he suffered personal injuries. These were caused when a motor vehicle owned by the Public Works Department of Portside District and driven by Mr John Presham the Public Works Inspector, collided with James as he was crossing a pedestrian crossing on the Portside Main Road.

Mr Barker says James had set out for school at about 8.00 a.m. and was crossing the Portside Main Road to get to the Portside Primary School when the collision occurred. Mr Barker tells you that the vicinity of the pedestrian crossing has marked signs indicating not only the presence of the crossing but additionally there is a school sign, indicating a school in the vicinity. Mr Presham, he says, lives in the district and is aware of where the school is situated.

Mr Barker says the children are usually assisted in crossing the road by a crossing guard. The crossing guard, Carl Mason, is employed by the Ministry of Education. However, on that morning he arrived for work late and about 30 minutes after the collision occurred.

James suffered a number of injuries and missed school for 2 months. His father says that although he has made good recovery, he now walks with a permanent limp. The doctor has told him this is caused by a fracture, resulting in the shortening of his left leg. He also suffered head injuries, which has left him with an inability to concentrate for any reasonable length of time. This has been confirmed by a neurosurgeon.

Mr Barker says James was once a promising scholar. However due to the collision, he did not do well in the exams he took for secondary school in 2007 and is now attending a school where he is unlikely to attain a high enough educational standard to fit him for entry into the legal profession as his parents had hoped. His father describes him now as a clumsy and forgetful young man.

Mr Barker tells you that he is an employee at the public works department and has been very reluctant to issue proceedings against Mr Presham, who is one of his supervisors. He thought Mr Presham would do "right by James" but so far he has offered to pay the medical fees of \$400,000 and has said nothing further.

Advise Mr Barker on behalf of James.

QUESTIONS 2 & 3 ARISE ON THE FOLLOWING FACTS:-

Belinda Clore brings an action against Andrew Brown and his employers Dean Taggart & Sons Ltd claiming that she suffered personal injury in a motor vehicle collision. An extract from the particulars/statement of claim appears below:-

BETWEEN	BELINDA CLORE	CLAIMANT
AND	ANDREW BROWN	FIRST DEFENDANT
AND	DEAN TAGGART & SONS LTD	SECOND DEFENDANT

1. *The First Defendant was at all material times the servant of the Second Defendant company and was driving a Ford Avalon Lorry registration number K123 EW owned by the Second Defendant.*
2. *At all material times the First Defendant was driving the said Ford Avalon Lorry in the course of his employment.*
3. *The Second Defendant is a courier company registered at the company registry in the jurisdiction carrying on business at 11 Guildhall, New Town.*
4. *On September 25, 2007 the Claimant was a passenger in a Toyota Sierra motor car, registration number H708 FA which was travelling north to south at Maze Road and approaching the traffic lights when the First Defendant drove the said Ford Avalon Lorry into the rear of the said Toyota Sierra motor car.*
5. *The said collision was caused by the negligence of the First Defendant.*

PARTICULARS OF NEGLIGENCE

The First Defendant was negligent in that he:

- (a) *drove into the rear of the Toyota Sierra Motor car*
- (b) *failed to keep any or any proper lookout*
- (c) *drove too fast*
- (d) *drove too close to the vehicle in front of him*
- (e) *failed to brake in time or at all*

(f) *failed to stop, slow down, swerve or in any other way so to manage or control the Ford Avalon Lorry so to prevent the collision.*

6. *By reason of the First Defendant's negligence the Claimant has suffered personal injury, loss and damage.*

PARTICULARS OF PERSONAL INJURY

The Claimant, who was born on May 3, 1962, suffered whiplash injury. She was treated by her General Practitioner and referred for a physiotherapy programme at Westminster Hospital. She attended hospital on 30 occasions and wore a neck collar for 8 weeks which she found uncomfortable. She was prescribed painkillers. She continued to suffer pains in her neck and back for 6 months after the collision. The Claimant will rely on the report of Dr Cavendish dated March 11, 2008, a copy of which is annexed hereto.

PARTICULARS OF LOSS AND DAMAGE

<i>General Practitioner's Fees</i>	<i>\$150,000</i>
<i>Physiotherapy fees</i>	<i>\$100,000</i>
<i>Cost of painkillers</i>	<i>\$20,000</i>
<i>Travel to hospital</i>	<i>\$17,000</i>

7. *The Claimant further claims interest on such damages as may be awarded to her, at such rate and for such period as the court may deem fit pursuant to the [relevant discretionary statute for your jurisdiction].*

And the Claimant claims against the First and/or the Second Defendants:

1. *Damages*
2. *Interest*
3. *Costs*

Filed by etc.

You are acting for the First Defendant Andrew Brown, a courier, who admits the collision and tells you that he was at that time making deliveries on behalf of his company and denies he was negligent. However, he says that the vehicle in which the Claimant was travelling, which was owned and driven by one Xavier Young, stopped suddenly without the driver giving any hand signal or otherwise indicating to the vehicles behind him that he was slowing down or stopping at a time when the traffic lights were showing green in his favour. This was in order for Xavier Young to speak to a friend of his. Mr Brown says it was the abrupt stop by Xavier Young which resulted in the collision.

Mr Brown also states that it was not any negligence on his part which caused or contributed to the Claimant's injury and that had the Claimant been wearing a seat belt she would not have suffered the injuries and consequential losses. His employer's vehicle was not damaged in the incident.

QUESTION 2

Draft a Defence on behalf of Andrew Brown in accordance with his instructions.

QUESTION 3

Advise Mr Brown -

- (i) as to the steps he can take in respect of Xavier Young, outlining the required documents and procedural requirements; and
 - (ii) how and why you would expect the Claimant to respond to the steps you advise Mr. Brown to take above.
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QUESTION 4

- (a) On January 7, 2007, Mr Anderson commenced proceedings against Mr Carr by way of a claim for breach of contract which occurred on January 8, 2001. A defence and counterclaim was filed by Mr Carr on February 12, 2007. On April 4, 2008, Mr Carr died. Mr Anderson's attorney-at-law, without any permission from the court, amended the claim form and particulars/statement of claim, to substitute your client Christine Dixon who is Mr Carr's executor under his Will. The amendments were made on December 2008.

Miss Dixon was surprised to be served with the amended documents and wonders whether she has any grounds on which to challenge the amendment and the likelihood of success. Advise her.

(b) The firm in which you are doing your in-service training is instructed in a matter in which they are acting for a Claimant. The firm failed to give responses to a request for further information of the Claimant's statement/particulars of claim. An order was made at the Case Management Conference held on April 30, 2009 giving 14 days to provide the information. However, the firm has failed to comply, largely through carelessness in interpreting the time allowed and also because an expert who has been instructed to calculate certain required particulars is taking a long time to do so.

You have been asked to set out the likely consequences of the failure and the steps that should now be taken in the matter.

QUESTION 5

Alex Cowan is a young mechanic engaged in the business of repairing BMW motor cars. He has been served with a claim form and particulars/statement of claim in which the Claimant, Claudette Johnson, claims against him damages for breach of an oral contract.

Ms Johnson claims that on or about a date in January 2004, she delivered her BMW motor car to Mr Cowan and paid him \$150,000 on account of the cost of purchasing parts and effecting repairs to her car. She claims that in breach of contract he failed to effect the repairs.

Mr Cowan was served with the claim form and particulars/statement of claim which were issued and filed on September 18, 2008, on the same day. He tells you that he filed an acknowledgment of service form within 14 days and subsequently received

advice from “a lawyer friend” of his. The advice was that he did not have to do anything because he was the shareholder and managing director of Body Autos Ltd incorporated in the jurisdiction, that it was the company that entered into the contract with Ms Johnson and that he Mr Cowan was just an employee of the company. Consequently he did not bother to file a defence.

Mr Cowan says that the repairs to the vehicle had not been completed because an engine which was purchased abroad was damaged in transit and that he had advised Ms Johnson about further costs for insurance but that she had not agreed to pay these. You note that the invoice confirming the purchase of the engine and the cargo damage are made out to Alex Cowan. However you also note that there is a document indicating that other parts, which were never installed, were eventually sent to Ms Johnson and that the document is in the name of Body Autos Ltd.

Ms Johnson obtained a judgment in default of defence in February 2009. An assessment hearing is fixed for May 30, 2009.

Advise Mr Cowan -

- (i) as to whether or not you agree with the advice he was given and, if not, how he should have proceeded after acknowledging service;
- (ii) whether or not there are step(s) he can now take setting out the procedure required and the likelihood of success.

PART B

FAMILY

QUESTION 6

Delia's marriage to Dave was on the rocks and she had been sleeping in the guest bedroom for 10 months. She was drowning her sorrows in a cocktail bar when she met Michael. They got on well together and embarked on a short steamy affair. It ended as quickly as it began, when Delia discovered she was pregnant. Michael's response when she told him was, "You live with your husband, it can't be mine!"

Delia therefore moved out hastily and shortly thereafter commenced divorce proceedings against Dave. The Decree Absolute was granted in May 2000. Delia's child, Marcia, was born on April 10, 2000. No one's name is recorded as father on her Birth Certificate. Delia was delighted with her daughter but longed to meet someone with whom she could settle down. Delia met and married Harry in February 2002. He had no children and was happy to bring up Marcia as his own child. Marcia believes Harry is her father. They have an excellent relationship. Marcia is a happy pleasant child who is doing well in school.

One year ago Michael started calling and emailing Delia. He wants to get to know his daughter and thinks she should know his side of her family. Delia told Harry what was happening. Harry made it plain that Michael can play no part in Marcia's life because he is her father now. He also hinted that this could jeopardize their marriage. Last week Delia was served with Michael's application for custody.

Delia, who wishes to contest the application, seeks your advice on the issues which the court is likely to consider and the order(s) the court is likely to make.

Advise Delia.

FACTS RELATING TO QUESTIONS 7 AND 8

Patsy Smith, a dressmaker born January 16, 1960, and Oscar Jones, an electrician, have lived together for ten years at 64 Church Drive. They were born within ½ mile of each other in the sleepy district of Montrose in the parish of St. Matthew. They have three children together, namely:

Jean born March 10, 1983

Keith born June 6, 1991

Larry born February 8, 1993

Patsy and Oscar got along very well together and were quite happy except for the fact that Patsy kept nagging Oscar to get married. Eventually Oscar relented and on February 14, 2008 the couple was married at the All Saints Church in the parish of St. Matthew by Bishop David Handel.

Three months later Patsy got a visit from Tina who informed her that on Oscar's last 'night of freedom' they slept together and she is now pregnant. That evening when Oscar got home Patsy told him to move his things into the small bedroom at the back of the house. She would not wash, cook or clean for Oscar and he began to frequent the local bar. One night Oscar came home and in his drunken state broke the door to

Patsy's room and assaulted Patsy. Patsy obtained a restraining/protection order on July 4, 2008, from the Family/Magistrate's Court in St. Matthew.

At the end of November 2008, Patsy overheard Oscar telling Keith that he had a baby sister and that he Oscar was moving out to live with Tina and the baby, Marie. By May 2009, Oscar has still not moved out but Tina and the baby are frequent visitors.

Patsy attends your office enquiring about divorce proceedings.

QUESTION 7

- (i) Advise her; and
 - (ii) draft a petition.
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QUESTION 8

Patsy also asks about maintenance. She tells you that -

- (1) Keith has just been offered a place at the University of the Antilles to study engineering commencing in September 2009.
- (2) Larry is an athletic teenager who is the favourite nephew of Patsy's wealthy sister Angella who often sends him food and clothing packages.

(3) Jean is wheelchair bound but good with her hands. She has had several operations and may need more in the future.

Advise on:

- (i) the merits of maintenance claims for herself and the children; and
 - (ii) the procedural steps that you would take to obtain any maintenance orders.
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