

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2012

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 21, 2012)

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

FACTS RELATING TO QUESTIONS 1 AND 2

Mary Danton bought Moochie, a neutered pure-bred poodle, in 2005. She has always regarded him as a beloved family member. From the date she obtained him, Moochie was treated and boarded by St Francis Animal Hospital Limited (SFAH) a company registered in your jurisdiction.

In September 2006, Moochie was boarded for 17 days. He was also seen by SFAH for veterinary treatment of a wound and for his routine vaccinations. On September 23, 2008, Mrs Danton left Moochie with SFAH to board for 2 weeks until October 8, 2008, as she had decided to go on a cruise with her husband. She entered into a written contract for SFAH to board Moochie and monitor his health. The boarding costs were the equivalent of US\$500 per week as SFAH is a 24-hour animal care facility with latched cages and locked entrances and exits. Mrs Danton was required to pay the total amount of the equivalent of US\$1,000 when she signed the contract.

On or about October 1, 2008, Moochie disappeared from the premises of SFAH. Mrs Danton and her husband terminated their vacation early and returned to the jurisdiction on October 3, 2008, after receiving the call that Moochie was missing. They searched diligently for several years to find Moochie. They incurred several items of expenditure, putting several notices in the newspapers, putting up posters in their community and surrounding areas and using the internet to search for Moochie. Mrs Danton has given you receipts for advertisements, printing and other associated costs to the amount of the equivalent of US\$3,000.

In December 2011, Mrs Danton had to be hospitalized for a week. She was at that time put on medication by her medical practitioner Dr Adam Karp for depression and was diagnosed as suffering from hypertension. Dr Karp attributes these factors directly to the loss of Moochie. He has stated in a written medical report that up until then Mrs Danton was very hopeful about finding Moochie but by that time she seemed to have given up hope and started to accept that

Moochie was likely to be permanently lost or deceased. Bills for medical costs for Mrs Danton amount to the equivalent of US\$1,000. Mrs Danton had bought Moochie for the equivalent of US\$1,500. A similar pure-bred poodle now costs the equivalent of US\$2,000.

Mrs Danton, who lives at 4 Crescent Way, St Thomas, in your jurisdiction, has consulted you with a view to issuing proceedings against SFAH.

QUESTION 1

Draft a letter to Mrs Danton setting out the pre-litigation matters you consider necessary.

QUESTION 2

Draft the Particulars of Claim/Statement of Claim you would issue should proceedings become necessary.

QUESTION 3

On August 26, 2005, Ms Logan who was employed by Plus Supermarket Limited slipped in liquid which had been spilled on the floor while she was walking in the supermarket. She suffered serious personal injury. On May 1, 2011, Miss Logan issued proceedings against Plus

Supermarket Limited, claiming damages for negligence and/or breach of statutory duty under the Occupiers Liability Act.

The proceedings were not served on the Defendant because the respective attorneys-at-law were engaged in detailed negotiations with a view to arriving at a settlement. On January 21, 2012, the attorney-at-law for Ms Logan wrote a letter in connection with the negotiations and in the same letter asked the attorney-at-law for Plus Supermarket Limited whether they had instructions to accept service on behalf of the Defendant. The Defendant's attorney-at-law responded to the letter but omitted to state whether they had instructions to accept service.

The claim form was sent to the firm of attorneys-at-law on May 1, 2012, with a letter indicating that further to the letter of January 21, 2012, service was being effected upon the Defendant by sending it to the firm as the Defendant's nominated attorney-at-law. No steps were taken by the firm as they did not regard the service of the claim form and supporting documents as valid service.

You commenced your in-service training with the firm on May 1, 2012 and your supervisor has asked that you write a memorandum to her stating:

- (i) whether service has been validly effected; and
- (ii) if a default judgment entered for failure to acknowledge service, which has been served on the firm today, can be set aside.

QUESTION 4

Your client, Mr Ian Lawes, is served with a claim form which was issued on May 14, 2012, which states *inter alia* the following:

“The Claimant’s claim is against the Defendant to recover the sum of \$2,000,000 being the balance owed by the Defendant to the Claimant as at April 30, 2005 being money loaned by the Claimant to the Defendant.”

Mr Lawes admits the loan and tells you that he is a gambler. He instructs you that the money was loaned to him by his brother, Mr Clive Lawes (the Claimant), on April 30, 2004. Ian Lawes tells you that in December 2007 he had offered to pay the money to his brother as he had won over \$2,000,000 gambling at the races but the Claimant and his wife, who are very religious, declined to take the money on the basis that he could not accept money which had been won through gambling. Mr Lawes tells you that he has a copy of the letter he wrote to his brother enclosing the cheque, but the cheque was returned to him. He has subsequently lost all of the money he had won and now has several gambling debts. He tells you that he is taken by surprise by his brother’s claim. He believes that his brother who had put monies in an investment scheme - Money Forces - has suffered tremendous losses and his brother’s wife no doubt has put him up to this intending that should “lady luck” smile on Ian Lawes once again, this time they would take the money. Mr Lawes has also been served with an application for summary judgment on the claim.

- (i) Advise your client how you will proceed on his behalf; and
- (ii) Draft the order(s) and ground(s) you would set out in any application for court orders you would make based on Mr Lawes’ instructions.

QUESTION 5

Your client, Venture Bank Ltd, brought proceedings against John Guild on November 26, 2011, claiming the sum of \$2,700,000. The Particulars of Claim/Statement of Claim alleges that on October 6, 2010, a cheque for the sum of \$300,000 was presented to the bank to be lodged to Mr Guild's account and by mistake the account was credited with the sum of \$3,000,000. The Bank then discovered that the sum of \$2,700,000 was withdrawn from Mr Guild's account. A demand by the Bank for recovery of the amount has not met with success.

Mr Guild has filed a Defence and Counterclaim which alleges that the \$3,000,000 was correctly credited to his account and alleges alternatively that if the sum was credited erroneously then it was the Bank's negligence and as a result he has suffered loss and damage.

A Case Management Conference was held on January 15, 2012 and the following orders were made –

- (1) *Application by the Defendant to strike out the claim as disclosing no reasonable cause of action dismissed.*
- (2) *Standard Disclosure on or before April 15, 2012.*
- (3) *Inspection of Documents on or before April 12, 2012.*
- (4) *Witness statements to be filed and exchanged on May 1, 2012.*
- (5) *Listing Questionnaires to be filed by May 8, 2012.*
- (6) *Trial by Judge alone.*
- (7) *Trial set for 2 days June 5 & 6, 2012.*
- (8) *Costs in Claim.*

The Bank has complied with all the directions and to date the Defendant has failed to comply with any of the orders of the Court.

You have also today received notification that an order was made on May 14, 2012, vesting the assets of Venture Bank Ltd in West Bank Ltd.

Your supervising attorney-at-law has asked that you set out in a memorandum to her how these matters should be dealt with.

PART B

FAMILY

QUESTION 6

Hope and David Chance were married on February 14, 2007. Hope and David lived at 12 Welcome Drive in the parish of St. Thomas. They have two children, Paul born April 25, 1998 and Halle born May 3, 2002. Halle attends Berryborough Government School in the parish of St. Andrew and has started preparation for the high school entrance examination which she will sit next year. Paul has a learning disability and was recently admitted to the Simon Experimental High School in the parish of St. Andrew, where he is able to receive specialized teaching. He however excels at his creative drawing club which he attends on Saturdays.

After 5 years of marital bliss David decided to leave his Pilot Trainee Programme as it was taking forever and the monthly \$30,000 stipend was discouraging. Hope was not in agreement for the family to migrate to Canada to join David's siblings. She had just been promoted to the post of assistant manager and was enjoying her new status and increased monthly salary of \$90,000. David complained that since Hope's promotion the marriage suffered as they rarely communicated or saw each other. He eventually moved in with his retired aunt Mable at her house in Freedom Lane, St. Thomas, leaving the children with Hope.

Hope has since learnt that David has become a popular party player and a consumer of Moët and Hennessey. Overcome with rage, Hope swore that he would now have to pay Paul's school fee of \$25,000 per term, the rent of \$30,000 per month and all the children's educational expenses. Hope decided to send David an output statement showing *inter alia* the monthly grocery cost of \$15,000, utilities of \$10,000, Halle's dance lesson cost of \$10,000, and the weekly housekeeper's cost of \$2,000.

David complained to Mable about Hope's unreasonable expectations and that although his monthly personal expenses amounted to \$20,000 he could not afford to be wasteful with the \$80,000 monthly rental income which he earns from his "legacy".

Hope believes that the separation has been long enough and is on her way to your office to discuss filing for divorce and obtaining maintenance from David for her children when her telephone rings. It is her "banker" who wants her to know that the "partner" is about to restart and the monthly sum has increased to \$4,000.

- (i) Advise Hope on the legal issues and procedural steps in obtaining a maintenance order on behalf of the children.

- (ii) Draft the supporting Affidavit.

QUESTION 7

Jollyann visits your office and instructs you that she has been married to John Spearman for 20 years. They have three children, two of whom are in high school and the oldest is 18 years of age and is currently in his first year of an associate degree programme.

They jointly purchased a 2 bedroom house at 45 Berry Drive during the second year of their marriage. They separated in February 2007, but continued to reside at the house as neither of them owns any other real property.

Jollyann also instructs that they are employed and, while John's salary can maintain the family, he is more interested in spending money on his 1980 classic Jaguar. Jollyann states that last

year she single-handedly paid the enormous cost to refurbish the house. She tells you that her high school sweetheart is her one true love and he is back in her life 'for good' this time. She has never been to court before but she now wishes to divorce John.

- (i) Advise Jollyann on how the proceedings for divorce will commence and the steps to be taken up to the grant of the Decree Nisi.

 - (ii) Advise Jollyann on the legal issues which would arise with respect to the house at 45 Berry Drive.
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QUESTION 8

Mr. and Mrs. Hallibutton, both aged 62 years, are the grandparents of Victoria aged 6. Primrose Hallibutton (Victoria's mother and the Hallibutton's daughter) died last year of unknown causes at the age of 38. Primrose had five children altogether, with Victoria being the youngest and the oldest being 16 years of age.

While Primrose was alive, she and her children lived with the grandparents in an extended family arrangement. The first four grandchildren have the same father. Victoria has a different father whose name is Victor. He is a married man with a family of his own. Victor is in his early 40's and is gainfully employed, travelling all around the island as a salesman. He lives in upper St. Andrew in splendour and extravagance with his wife and two older sons who are both in their teens. His wife suffers with poliomyelitis and one of his sons only wants to play cards and smoke marijuana.

Victor and Primrose were never married and were of different social and spiritual backgrounds. Victoria has been raised a Christian while Victor is of the Baha'i faith. Victoria's siblings and the Hallibuttons are also Christians. The Hallibuttons are persons of modest means. Mr. Hallibutton is a bus driver and Mrs. Hallibutton is a housewife. Victor approached the Hallibuttons for custody of Victoria, and said, "I am her father, she is my lone sunflower and my blood is in her veins." He has filed for custody of Victoria. The Hallibuttons want Victoria to continue living with them and have come to your office stating that they want custody of Victoria.

Advise them on the strengths and weaknesses of any application that you may make on their behalf.

END OF PAPER