

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2013

CIVIL PROCEDURE AND PRACTICE I
(MONDAY, MAY 20, 2013)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

Anthony Gooden attends on your office and instructs that he was served with a Claim Form and Statement/Particulars of Claim with respect to a motor vehicle accident. An extract from the Statement/Particulars of Claim appears below.

BETWEEN	JOHN JONES	CLAIMANT
A N D	X&Y COMPANY LIMITED	FIRST DEFENDANT
AND	ANTHONY GOODEN	SECOND DEFENDANT

1. At all material times, the Claimant was a taxi operator and the owner and driver of motor vehicle bearing registration number TT6767.
2. The First Defendant is a motor vehicle parts company, registered at the companies registry in the jurisdiction, with registered office located at 15 Town Square, and is the owner of motor vehicle bearing registration number CG1234.
3. The Second Defendant was at all material times the servant and/or agent of the First Defendant and the driver of the motor vehicle bearing registration number CG1234.
4. The Claimant was driving his motor vehicle along the Everlasting Main Road on August 16, 2009. On reaching the vicinity of the Texaco Gas Station the Second Defendant drove his motor vehicle along the said road causing it to collide into the rear of the motor vehicle in which the Claimant was travelling.

5. The collision was caused by the negligence of the Second Defendant in the operation of the motor vehicle, which negligence is more particularly described below.

Particulars of Negligence of the Second Defendant

- i. Colliding into the rear of the vehicle in which the Claimant was travelling.
 - ii. Driving too fast in the circumstances.
 - iii. Failing to drive within braking distance of the motor vehicle in which the Claimant was travelling.
 - iv. Failing to keep any or any proper look out.
 - v. Failing to stop, slow down, swerve or in any other way so to manage or control the motor vehicle so as to prevent the collision.
6. By reason of the Second Defendant's negligence the Claimant has suffered personal injury, suffered loss and damage and has incurred expenses.

PARTICULARS OF INJURIES

The Claimant, born August 17, 1984, was caused pain, suffering and loss of amenities. Brief details are set out below. Further information is contained in the attached medical report of Dr. Frederick Johns dated November 15, 2011.

- i. Whiplash injury to the neck with muscle spasms;
- ii. Muscle spasms in the lower back;
- iii. Fractured right leg;
- iv. Permanent Partial Disability 10%.

Special Damages

i.	Medical Expenses including medical report	\$40,000.00
ii.	Transportation Costs	10,000.00
iii.	Loss of Income - 2 weeks @ \$35,000 per week	<u>70,000.00</u>
	Total	\$120,000.00

7. The Claimant further claims interest on such damages as may be awarded to him 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:-

1. Damages
2. Interest
3. Costs
4. Further and other relief as the court shall see fit.

Filed by

You act for the First and Second Defendants in the matter. They admit that a collision did in fact take place and that the Second Defendant was driving as the agent of the First Defendant. The First and Second Defendants however deny that the Second Defendant was negligent. They instruct that the Claimant was driving his car along Everlasting Main Road when he stopped suddenly without any warning at a time when the traffic lights were showing green in his favour. The Claimant suddenly stopped the motor vehicle in order to speak to his friend who

he was passing in traffic and who was travelling in the opposite direction. It was the abrupt stop which resulted in the collision. They further state that the Claimant was not wearing his seat belt at the time of the accident and had he been wearing it, he would not have been injured.

Draft a Defence on behalf of the First and Second Defendants.

QUESTION 2

You are employed to the firm, Stone Berry and Pinkett, Attorneys-at-Law. You are the junior associate who is supervised by senior counsel, Harry Bottomlip. Mr Bottomlip tells you that one of the firm's oldest and most valuable clients, Esmeralda Parks, has instructed that she entered into a contract with a designer/contractor, Jose Oletief, to design and build a new bedroom for her cat, Pinkie. She paid Jose Oletief \$3M to design the room, purchase the material and do the actual construction of Pinkie's new bedroom. To date, the room has neither been designed nor has it been constructed and Pinkie has had to sleep on a cushion in the butler's apartment.

A Claim Form has already been filed and served on Jose Oletief, claiming damages for breach of contract. Jose Oletief has responded with a Defence which merely states that he denies that he entered into a contract with Esmeralda Parks and that he denies that Esmeralda Parks paid him \$3M. Mrs Parks however has provided you with a copy of the contract and proof that the cheque was honoured by her bank.

- (i) Harry asks you to prepare a memorandum setting out what steps he should take on Mrs Parks' behalf, when the steps should be taken and with the use of case law and the Civil Procedure Rules, why those steps are appropriate.

 - (ii) Harry also asks you to draft the application you would make on behalf of Mrs Parks. (the relevant form is available)
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QUESTION 3

On Monday, January 2, 2013, you filed a Claim Form and Statement/Particulars of Claim in the Supreme Court/High Court of your jurisdiction on behalf of Gizzelle Buttonose against Franklin Bighead, claiming damages for negligence.

On Tuesday, January 3, 2013, you gave the Claim Form and Statement/Particulars of Claim to your process server, Timothy Findem, to effect service on Franklin Bighead. You tell him that Bighead's address is 45 Somewhere Avenue in the jurisdiction.

On April 2 2013, Timothy Findem returns to your office with the Claim Form and Statement/Particulars of Claim. Findem informs you that he made several attempts to serve the documents on Bighead but all his efforts have proven futile. Findem further states that when he went to the address given, Susan Bighead, the wife of Franklin, whom he has known for several years, answered the door and told him that Franklin Bighead no longer resided at 45 Somewhere Avenue but was instead living at 67 Everlasting Blues, in the deep rural areas of the jurisdiction. He had gone there to learn the "natural ways of the Everlasting Blues people". She also told Findem that Franklin would not be returning to 45 Somewhere Avenue until July 2014

when his sojourn would end. Susan told Findem that she would be seeing Franklin in July 2013 when she plans to visit him in Everlasting Blues for two weeks.

Advise on the options available to effect service on Franklin Bighead. Your advice must include the procedural steps that you will take, the documents required and the contents thereof.

QUESTION 4

Starlet Limited, a registered company, is your client and is in the business of selling electrical components. You are consulted by the Managing Director, Jason Gordon.

Jason Gordon tells you that Daniel Reid bought a new flat screen HD television set from the company on April 20, 2012 and has filed a Claim Form and Particulars/Statement of Claim for damages. Daniel claimed that when it was first switched on, it exploded, causing a small fire.

Your client has had the television examined by an expert (Gary Gentle) and the report reveals that the problem resulted because Daniel's home had been poorly wired and some areas had 110 voltage instead of 220 voltage and this was the cause of the explosion.

Your client also says that it has a contract with the manufacturers of the TV set, BESTTV Components Limited, for an indemnity.

In addition, your client tells you that on the said date Daniel attended its shop, he brought his 12 year old son, Christian Reid, who was in the Managing Director's view hyperactive and uncontrollable. He kept running around the shop. There is a sign in the shop which says "If you break it, you have bought it". Christian knocked over a component set which was completely destroyed. The component set cost \$250,000.

Discuss the legal issues, which you would consider before responding to or taking legal action, indicating in relation to each issue the course you will adopt.

QUESTION 5

You have recently graduated from the Norman Manley Law School and are now employed to Big, Rich and Fat, Attorneys-at-Law. The law firm acts for and on behalf of Sugarplum Jones, the Claimant in an action against the Attorney General of your jurisdiction. The Claim Form (with the Prescribed Notes, and relevant forms) and Statement/Particulars of Claim were served on the Attorney General's Chambers. Service was acknowledged on October 10, 2012, but the Attorney General's Chambers has not filed a Defence to date.

Mr Big, the managing partner with whom you work, has asked you to prepare a memorandum as to the procedure you must now take on Sugarplum's behalf and the orders (if any) the Court is likely to make.

Prepare the memorandum.

PART B

FAMILY

FACTS FOR QUESTIONS 6 AND 7

Sue and Michael were married on July 4, 2000 and live in a 3-bedroomed apartment rented by Michael. Michael is an office manager and Sue, who has a business management degree, stays at home, at Michael's insistence, looking after their 2 children, Sean and Paulette.

Sean, born November 12, 2002, who is very close to his mother Sue, has diabetes and has to inject himself with insulin and is also on a special diet. He gets very anxious about his illness and sometimes reacts violently to those around him. His father taunts him and calls him "a mummy's boy" and even though Sean is supposed to receive regular counselling, Michael refuses to pay for it because he says Sean needs to toughen up.

Paulette, born October 8, 1999, is not close to Sue but has a very close relationship with Michael who is not her father. Her real father, Dave, is an engineer and is married to Jane. They have three children together. Jane resents Paulette intensely and as a result Paulette has had little contact with Dave. In fact, Dave and Paulette have met only three times in her life.

Paulette is very bright and looking forward to studying at the local university. She has just won an essay competition and the prize money – a cheque for a substantial amount – is awaiting collection. Paulette also writes for the youth segment of a national newspaper and receives a monthly stipend for her column.

Sue is very depressed because she has to stay at home. Furthermore Michael criticizes her constantly, belittles her efforts at housekeeping and has hit her a couple of times. One

afternoon Sue's friend, Denzil, gives her a ganja "spliff" to calm her nerves. Soon Denzil is supplying Sue with ganja on a regular basis which she smokes at home when the children have gone to school.

Michael, upon learning that a man is visiting the apartment regularly, arrives home unexpectedly to find Sue and Denzil sharing a "spliff". After putting Denzil out, Michael attacks Sue, and in the course of the beating, Sean walks in. Michael states, as he is leaving, that Sue must get out of the apartment by the end of the week or he will finish her off and that he will find someone sensible to look after the children.

Sue visits your office. She wishes to remain in the apartment with the children but is afraid of Michael.

QUESTION 6

Describe the procedural steps you would take including the forms you would use, if any, to ensure that:

- (i) Sue is able to live in the apartment undisturbed by Michael; and
- (ii) Sue is able to keep the children with her and that she and the children be provided for financially.

QUESTION 7

Draft submissions on the merits of **either** (i) **or** (ii) of Question 6.

QUESTION 8

With reference to the relevant forms to commence divorce proceedings, explain the procedure to serve these proceedings out of the jurisdiction and the steps to be taken after the grant of the *Decree Nisi*/Divorce Order.

END OF PAPER