

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2014**

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 19, 2014)

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

You act for Samuel Brown who is the defendant in claim 2012 HCV 7867 brought against him by Anthony Morgan. Samuel attends on your office, bringing with him an attested copy of the Default Judgment as well as Notice of Assessment of Damages and other documents. The Notice of Assessment of Damages indicates that the assessment of damages is to take place on December 8, 2014.

Samuel instructs you that he was never served with the Claim Form and Particulars/Statement of Claim. He instructs you to take steps to set aside the Default Judgment.

- (i) Draft the Notice of Application which will allow you to do so.
- (ii) Prepare the Draft Order which the Judge will make if he finds in favour of your client.

(The relevant form is provided)

QUESTION 2

Franklyn Butterscup attends on your office. He instructs you that on September 15, 2010, he entered into a contract with Lumberjack Company Limited (“LCL”). It was agreed between the parties that LCL would provide Franklyn with 20 truckloads of lumber once per month for four months. Franklyn would pay the sum of \$2.5M up front for the 80 truckloads of lumber.

Franklyn paid the money as agreed. He however instructs you that LCL made one delivery of lumber on October 30, 2010 and since then no other delivery has been made. He wishes for you to file a claim on his behalf.

Your managing partner has asked you to prepare a legal opinion as to what, if any, pre-litigation issues are to be considered by the firm prior to filing a claim on behalf of Franklyn.

Prepare the opinion.

QUESTION 3

Maybelline Lipstuck is the claimant in a claim against Esmeralda Reevlon. The claim was brought under claim 2014 HCV 9812. The Claim Form and Particulars/Statement of Claim are both dated February 28, 2014. Maybelline, through her process server, sought to personally serve Esmeralda with the Claim Form (with Prescribed Notes, Acknowledgment of Service Form and Defence Form) and Particulars/Statement of Claim. Her attempts at personal service proved futile. The process server, Mikael Server, tells you that he was unable to serve Esmeralda Reevlon personally with the Claim Form and Particulars/Statement of Claim but that he served her husband Isaac Reevlon with them at his house. Service on Esmeralda was effected on April 1, 2014 at 11:40 am.

Mikael Server tells you that he has known the Reevlons for over thirty years. He knows that Esmeralda lives with her husband, Isaac, at their home in Santa Barbara in the parish/district of Saint Anns. He says when he went to the house at about 11:40 am on April 1, 2014, Isaac told him that Esmeralda had gone to the market but that she was expected to return at 2:30 pm.

Isaac also told him that when Esmeralda returned he would give the Claim Form and Particulars/Statement of Claim to her.

You are required to draft the Affidavit to prove alternative service, which would satisfy the Registrar of the Supreme/High Court that the documents were served on Esmeralda.

QUESTION 4

Sharon Barnett instructs you that she is a nurse and that she lives at 17 Palmeto Way in the jurisdiction. She further instructs you that on February 13, 2013 she was travelling with her husband, Canute Barnett, in their motor vehicle along Budapest Main Road in the jurisdiction. Canute was driving. While their vehicle was stationary at a stop light at the intersection of Garden Street and Buttercup Way, a motor vehicle bearing registration number 1987XX, which was owned and driven by Donovan Hawthorne of 45 Donut Drive, in the jurisdiction, suddenly and without warning, collided into the rear of the motor vehicle in which Sharon and her husband were travelling.

Canute sustained no injuries and does not wish to file a claim. Sharon however instructs you that she wishes to file a claim. She presents the medical report of Dr Adrian Clarke, Consultant Orthopaedic Surgeon, dated January 2, 2014. The report lists Sharon's injuries as follows:

1. Pain in neck
2. Muscle spasms in lower back
3. Contusions to right forearm
4. Whiplash injury to lumbar spine
5. Whiplash injury to cervical spine
6. PPD 4%

Sharon instructs you that since the accident she has not been able to do her gardening, as bending down to plant the flowers and till the soil aggravates the pain in her back. She is also not able to do her own housework anymore, and has to employ a helper to assist her with washing, ironing and cleaning. She pays the helper \$12,000 per month and has been doing so since March 1, 2013. The helper stopped working for Sharon on December 31, 2013. Sharon instructs you that she had to ask the helper not to return in the new year as she was unable to pay her. Medical expenses to date amount to \$35,000 and transportation costs amount to \$6,000.

You are required to prepare the Particulars/Statement of Claim which you would file on behalf of Sharon.

QUESTION 5

Ima Hogg attends on your firm. She instructs you that she was served with a Claim Form and Particulars/Statement of Claim. The Claim Form is drafted as follows:

CLAIM FORM

2010 HCV 2911

IN THE SUPREME/HIGH COURT OF JURISDICTION

BETWEEN JOHN CROW CLAIMANT

AND IMA HOGG DEFENDANT

The Claimant, John Crow of 14 Sapodilla Drive, Jurisdiction claims against the Defendant, Ima Hogg of 78 West Side Story, Jurisdiction for damages for that on or about the 14th day of June

2000, the Defendant drove her motor car along Jasper Main Road, Jurisdiction, causing it to collide head-on into the motor vehicle which the Claimant was driving. As a result, the Claimant sustained serious personal injuries, suffered loss and damage and incurred expenses.

The Claimant claims:

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

Your Managing Partner has asked you to prepare a legal opinion as to the steps he should take on behalf of Ima. In the opinion, you are required to, with the use of case law and the Civil Procedure Rules, explain why you believe your proposed steps would be successful.

PART B

FAMILY

FACTS RELATING TO QUESTIONS 6, 7 & 8

Preston and Pandora Pitts were married on May 20, 2003 at Rehoboth Tabernacle, Rosedale in the parish/district of St. Paul in your jurisdiction. This is their place of birth. The marriage produced one child Peter born on April 27, 2004. He is a grade 4 student attending Karisma Primary School.

Pandora is an Administrative Manager and Preston is a Salesman. They lived at 2 Goody Place in the parish/district of St. Richards in your jurisdiction.

Their marriage went well until Preston discovered that Pandora accessed his Facebook account and read the personal messages he sent to his “playmate”, Melda. Preston was so upset that, in his rage, he accused Pandora of being a “meddlesome reptile fit to be skinned”.

Peter witnessed Preston’s tirade and begged him to stop. Preston slapped him in the head and threatened to cut him and Pandora into small pieces, if they continued to be nuisances. Pandora telephoned the Police. Preston agreed to leave their 3-bedroom luxurious family/matrimonial home. On February 28, 2012 he moved to rented premises in Rosedale, where he began cohabiting with Melda.

The monthly mortgage payments, utility bills, and all educational and medical expenses for Peter are paid by Pandora. Preston claims that he has exorbitant expenses and can only contribute \$8,000.00 per month for the maintenance of Peter.

Pandora’s standard of living has fallen and she has been suffering from depression since Preston left. Despite this, she is a devoted mother. Her grandmother helps to care for Peter. At the last parent teachers meeting, his teacher complained that he was not focused and was involved in many fights.

On April 1, 2013, Preston informed Pandora that he needed to spend more time with Peter as only fathers can ‘guide’ their sons. Further, he told her that he is changing his life and attends weekly teachings at the ‘Freethinking Faith Society’. When Pandora refused to give him an answer, he grabbed her arms and shook her until she was dizzy.

Preston now wants to apologise. Pandora, however, refuses to meet with him, as she is fearful. Pandora has now accepted that the marriage is over. She is glad to know that Melda is anxious to make wedding plans.

QUESTION 6

Pandora visits your office and instructs you to take steps to terminate the marriage. She is concerned that she will not be able to serve the documents on Preston.

- (i) Outline the contents of the Petition that you will prepare on behalf of Pandora.
 - (ii) Advise Pandora on the steps to be taken to effect and prove service on Preston.
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QUESTION 7

Pandora also instructs you that she is afraid of Preston taking Peter away. Advise her on the following:

- (i) the procedural steps to be taken in the High/Supreme Court on applying for custody and the documents required; and
 - (ii) the matters that the court will consider and the likely outcome of her application.
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QUESTION 8

Discuss the following in relation to the domestic violence legislation in your jurisdiction:

- (i) the potential Applicant(s) and the relevant procedural steps to initiate proceedings;
- (ii) the matters that will be taken into account by the court; and
- (iii) The order(s) that the court may make in the circumstances.

END OF PAPER