

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2015

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 18, 2015)

Instructions to Students

- (a) Time: 3 ½ hours
- a. Answer **THREE** questions from Part A and **TWO** from Part B.
- a. **Answer Part A and Part B on separate answer booklets.**
- a. 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.**
- a. It is unnecessary to transcribe the questions you attempt.
- a. Answers should be written in black or dark blue ink.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **PART A**

### **QUESTION 1**

Jacob Johnson attends your office. He instructs you that he was born on April 6, 1970 and that he was injured in a motor vehicle collision which took place along Top Road in your jurisdiction and that he wishes for you to initiate proceedings on his behalf.

Jacob instructs you that he was travelling in a mini-bus on Top Road heading to Appleridge Road in the jurisdiction. Jacob says that the driver of the mini-bus was driving within the speed limit, however as he approached the intersection of Top Road and Benin Avenue a motor car suddenly and without warning drove from the minor road, Jacob sets out the expenses he has incurred to date:

- Cost of Medical reports      \$ 70,000.00
- Hospital stay                      \$ 150,000.00
- Physiotherapist                  \$ 120,000.00
- Transportation Costs          \$ 50,000.00
- Paid Assistant                  \$ 100,000.00
- Loss of Income                  \$3,000,000.00

You are required to draft a Particulars/Statement of Claim on behalf of Jacob.

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### **QUESTION 2**

You act for Michelle Jackson of 17 Jackson Heights, Jurisdiction. Michelle is the defendant in claim 2013 HCV 8765 brought against her by Samuel Brown. Michelle attends your office, bringing with her the Attested Default Judgment dated 17 June 2014, Notice of Assessment of Damages, Notice of Intention to Tender Documents, Listing Questionnaire and Witness Statement.

Michelle instructs you that she was never served with the Claim Form and Particulars/Statement of Claim. She instructs you to take steps to set aside the Default Judgment.

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

**(The relevant form is provided)**

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### **QUESTION 3**

You are an associate in the firm of Hump, Bump and Pump. Franklyn Green comes to see you. He instructs you that on September 15, 2013, he entered into a contract with Firewood Company Limited ("FCL"). It was agreed between the parties that FCL would provide Franklyn with 20 truckloads of firewood once per month for four months. Franklyn would pay the sum of \$3.0M up front for the 80 truckloads of firewood.

Franklyn paid the money as agreed. He however instructs you that FCL made two deliveries on October 10, 2013 and November 10, 2013 but since then no other deliveries have been made. He therefore wishes you to file a claim on his behalf.

You decide to consult with your senior partner who suggests that you begin by preparing 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.

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#### **QUESTION 4**

Jessica Brown attends on your firm. She instructs you that she was served with a Claim Form and Particulars/Statement of Claim. The Claim Form is set out below.

CLAIM FORM

2012 HCV 3456

IN THE SUPREME COURT/HIGH COURT OF JURISDICTION

BETWEEN                      NORMAN PEART                      CLAIMANT

AND                              JESSICA BROWN                      DEFENDANT

The Claimant, Norman Peart of 14 Sapodilla Drive, Jurisdiction, claims against the Defendant, Jessica Brown of 78 West Side Story, Jurisdiction, for damages for that on the 14 September 2002, the Defendant drove her motor car along Kencot Main Road, Jurisdiction, causing it to collide into the rear of the motor vehicle in which the Claimant was travelling. As a result, the Claimant sustained serious personal injuries, suffered loss and damage and incurred expenses.

The Claimant claims:

- Damages
- Interest
- Costs

- 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 Jessica. In the opinion, you are required to, with the use of case law and the Civil Procedure Rules, explain why you recommend these steps and whether or not they are likely to be successful.

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### **QUESTION 5**

Your firm, Stewart, James and Ferguson, filed a Claim Form and Particulars/Statement of Claim in the Supreme Court/High Court of your jurisdiction on behalf of Giselle Francis against David Prescott claiming damages for negligence. The Claim Form and Particulars/Statement of Claim are both dated February 28, 2015 and were issued by the Court on the same day.

On Tuesday, March 3, 2015, you gave the filed documents to your process server, Timothy Findem, to effect service on Prescott. You tell him that Prescott's address is 45 Somewhere Avenue in the jurisdiction.

On March 7, 2015, Timothy returns to your office with the Claim Form and Statement/Particulars of Claim and informs you that he made several attempts to serve the documents on Prescott personally but that his efforts proved futile.

Findem further states that the last time he went to the address given was on March 6, 2015. When he got to the address he saw Prescott's wife, Jennifer, whom he has known for several years. He told Jennifer he was looking for Prescott because he had documents to serve on him. Jennifer told him that Prescott was gone to their cabin in the deep rural areas of your jurisdiction in order to meditate and "find himself." He was expected to be away for one month and he was expected to return to his home at 45 Somewhere Avenue on May 1, 2015. The process server, Findem, informs you that upon receiving this information from Jennifer, he handed the documents to her.

Findem's address is in care of Stewart, James and Ferguson of 17 Lawleg, Jurisdiction.

Prepare the document which you must file in Court to prove service of the Claim Form (with prescribed notes to the Defendant, Acknowledgment of Service of Claim Form and Defence Form) and Particulars/Statement of Claim on Prescott.

## **PART B**

## **FAMILY**

### **QUESTION 6**

David Goodman, aged 27, and Peaches, aged 18, were married in 2007. Two months later Peaches moved out. She told David that she was too young to be married and left with Marcus whom she had met at a nightclub a week before. Two weeks later she returned home to David and begged his forgiveness. David forgave her and they continued their marriage.

Over the course of the next 3 years Peaches continued to leave periodically and David continued to reconcile with her. In summer 2010 she returned, pregnant, after a six weeks' absence. David was unsure that he was the father, however, he accepted the child as his own. She was born on February 28, 2011 and registered as Louise Goodman.

In February, 2013 Peaches left Louise with David saying that she was destined for 'bright lights and big cities'. David cared for Louise on his own except for on the occasions when his sister assisted him. They live in their four- bedroom family owned house and Louise is comfortable.

Peaches returned home in March, 2015. She apologized to David and told him that she had matured and was now ready to be his wife and Louise's mother. David refused to take her back saying, 'enough is enough'. Peaches left threatening to take David to court for custody and maintenance of Louise.

David later learnt that Peaches was employed as a teacher at a primary school in a neighbouring parish/district and resided in the staff hostel on the school grounds. David is an electrician who is forced to regularly refuse work which would take him away from Louise at times when his sister cannot assist him with her care.

David attends your office and instructs you that he is thinking of obtaining a divorce. He loves Louise dearly and wants to continue caring for her.

Advise David on the following:

- What are his chances of obtaining an Order for custody and maintenance; and
  - the legal requirements which are to be met before dissolution proceedings can be commenced.
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### **QUESTION 7**

Samson and Delilah are married. Delilah owned a two-bedroom apartment before the marriage and Samson moved in with her after the marriage. They both contributed to the household expenses. They purchased a three-bedroom dwelling house in a luxury gated community 5 years after they were married. They began residing there. Delilah used her trust money to make extensive renovations.

They later purchased a villa to be used as an investment property. Samson paid the deposit and the closing costs for this property, while Delilah sought guests, collected rent and undertook the maintenance and management of the property. Three years later Delilah filed for divorce.

Samson instructs you that he wishes to claim an interest in all 3 properties. He believes that he is entitled to sole ownership of the villa.

- What are the legal issues which are likely to arise in dividing their properties?
  - Set out the orders that are to be sought based on Samson's instructions.
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### **QUESTION 8**

Patty Noble and Aaron Worldly are living together in a rented apartment. They have two children; Grace and Ryan aged 8 and 6. Grace is Aaron's child from a previous relationship.

In recent months Aaron has reunited with an old friend and has taken to frequenting bars and gambling houses. He often returns home penniless, drunk and angry. Over the past two months he has attacked Patty on 4 occasions seriously wounding her. Aaron has never hit the children but shouts constantly causing them to 'tremble like leaves'.

Last week Aaron went into a drunken rage and began beating Patty. Grace was so disturbed after witnessing the violence that she had an asthma attack and had to be hospitalized. Before Patty took Grace to the hospital Aaron told her that, 'this is to be continued when I return'.

Patty instructs you that she wishes to protect her family and cannot continue living with Aaron.

Advise Patty of:-

- the procedural steps that can be taken to achieve the protection she seeks; and
  - the orders the Court is likely to make.
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**END OF PAPER**