

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

**LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, MAY 2021**

**CIVIL PROCEDURE AND PRACTICE I  
PARTS A and B**

**MONDAY, MAY 24, 2021**

**Instructions to Students**

- (a) Duration: **24 hours**
- (b) Students shall enter their Examination ID Number **only**, **not their names**, on the cover page, the Academic Integrity Statement and on every separate page of the examination script.
- (c) The examination should be answered on letter-sized (8.5 x 11) paper only.
- (d) The examination should be submitted in Arial font 12 line spacing 1.5.
- (e) Students should clearly indicate the names of any cases with the citation and legislative provision/s (section number and Act) on which they rely to support their arguments. Consider using italics and/or bold text to make references prominent. (For example, *Rylands v Fletcher* [1868] UK HL1; **s.69 Real Property Act**). Sufficient detail is required to allow the examiners to understand the source of law that is being cited.
- (f) Footnotes, endnotes and bibliography are not to be used.
- (g) Where word limits have been given, the actual word counts must be included at the end of your answer. Students who have exceeded the word limits will be penalised.
- (h) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (i) In answering any Part, a candidate may reply in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **but must state at the beginning of the answer the name of the relevant territory**.
- (j) Each Student **must** ensure that their Anonymous ID in TWEN is changed to their four digit Examination ID Number, prior to submitting their examination script.

- (k) The examination script, with the cover page and Academic Integrity Statement saved in **ONE PDF DOCUMENT**, must be submitted in **ELECTRONIC** format via the **Year I MAY 2021 EXAMINATIONS, CIVIL PROCEDURE AND PRACTICE I DROP BOX on TWEN** by **Tuesday, May 25, 2021** **NOT LATER THAN** 9:00 a.m. (Jamaica) 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).
- (l) To upload the examination script which has been saved as one pdf document which includes the cover page and Academic Integrity Statement, you must follow these steps:
- Go to ***www.lawschool.westlaw.com***.
  - Log in using your username and password credentials and select the **TWEN** button.
  - Click on the link for **“Assignments and Quizzes”** located on the left-hand side of the navigation screen.
  - Select the relevant examination and the examination drop box as follows:
    - Year I students with Examination ID numbers between 1100 -1192 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box A Year I - 1100-1192”**.
    - Year I students with Examination ID numbers between 1193 -1283 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box B Year I - 1193-1283”**.
    - Year I students with Examination ID numbers between 1284 -1376 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box C Year I - 1284-1376”**.

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## PART A

Dr. Claire West is a dermatologist and a sole proprietor trading as Claire’s Skin Care, a registered business with office located at 309 Luckman Street, Jurisdiction. Claire’s Skin Care provides medical skin care treatment services to patients, as well as sells retail skin care products.

Dr. West is a client of your Senior Partner, Mervette Jackson, of the firm Jacksonville Law Office of 47 Breeze Lane, Law Town, Jurisdiction, telephone 000-321-123, fax 00-456-654 and email [jville@law.com](mailto:jville@law.com). Your Senior Partner has informed you that during a recent teleconference with Dr. West, she (Dr. West) informed her that on Monday April 12, 2021 she had personally received, at her office at about 4:30 p.m., a claim form and

statement/particulars of claim (together with all required prescribed documents) in claim number 2021CL0028 filed in the High/Supreme Court of Jurisdiction on Friday April 9, 2021.

The Claimant is Mary-Jane Croswell born on October 1, 2006, who sues by her mother and Next Friend Julie Croswell, and is represented by Jason Bullock of Bullock Law Firm, Attorneys-at-Law of 84 Richland Boulevard, Jurisdiction, telephone 000-987-789; fax 000-891-0112; and email bullocklaw@justice.com.

Your Senior Partner further informs you that Dr. West informed her that the morning after she received the claim form and particulars/statement of claim, she travelled to the United Kingdom for an annual international dermatologist conference, at which she was one of the presenters. She indicated that she remained in the United Kingdom for four weeks to do research for a skin care product she wanted to develop to start her own line of skin care products. It was only upon her return to the jurisdiction that she was reminded by her secretary, Janet Bliss, about the claim form and particulars/statement of claim that she had received the day before she travelled.

Your Senior Partner further informs you that she had scheduled a meeting today for you and her to meet with Dr. West about the claim. At the meeting with Dr. West today, in addition to the claim form and particulars/statement of claim, she provided you with a sealed court document filed in the claim titled Default Judgment, which she said was personally delivered to her on Friday, May 21, 2021.

The claim is for damages for medical negligence and breach of contract. The claim alleges that when the Claimant was 10 years of age she developed acne and started a treatment regimen upon the advice and under medical supervision of Dr. West. The Claimant is now 15 years of age and the claim lists the Claimant's personal injuries to be permanent skin discoloration in the face, numbness, tremors, memory loss and irritability.

Dr. West instructs you that she wants to defend the claim. She instructs you further that Mary-Jane is her patient and a customer of the skin products that she prescribes for her treatment regimen. However, she does not believe she was negligent with the treatment regimen she prescribed for Mary-Jane nor in breach of contract as alleged in the claim.

Dr. West explained that Mary-Jane was 10 years of age when she first met with her as a patient along with her mother Julie. She noticed that Mary-Jane had severe acne and moderate skin discoloration in her face, which she (Dr. West) diagnosed as vitiligo, a disease that destroys the pigment cells of the skin causing the affected areas to turn pale and often leaving white patches. Dr. West instructs you that she informed Mary-Jane's mother (Julie) that her daughter's discoloration may worsen as she gets older as there is no known cure for vitiligo. She instructs you further that she had advised Julie that vitiligo

is usually managed or treated with chemical topical treatment and or laser procedures, aimed at evening out the skin or restoring skin colour, but the change may not be permanent.

Dr. West instructs you that Julie had informed her that Mary-Jane was very depressed because of how her face looked and she (Julie) wanted to ensure that her daughter had as normal a childhood with a face she (Mary-Jane) liked looking at daily.

You are provided by Dr. West with a copy of a written contract for services she had with Julie dated February 15, 2016, which includes as a term the scope of how treatment would be recommended for Mary-Jane from time to time. The contract further provides at clauses 8 and 9 as follows:

*“8. The patient understands and agrees that all medical treatment or procedures are provided by Claire’s Skin Care at the sole risk of the patient. Claire’s Skin Care does not guarantee the success of any treatment or procedure recommended but will always endeavour to exercise a reasonable degree of skill and care in recommending same.*

*9. The patient while undergoing medical treatment and using products prescribed for use by Claire’s Skin Care shall not use any other skin product unless approved by Claire’s Skin Care.”*

Dr. West further instructs you that earlier this morning she discovered by going onto Julie’s instagram page, that she (Julie) had been posting pictures of Mary-Jane’s journey to healthy skin, among which there was a picture posted January 3, 2021 showing Mary-Jane applying Jade Fade Cream to her face. The post read *“this product works magic...it evened out my daughter’s skin in 8 weeks”*.

Dr. West instructs you that Jade Fade Cream is one of the products sold by Claire’s Skin Care to customers but she did not include it as a part of the treatment regimen for Mary-Jane because it is a recently developed product, intended for use by customers who have never undergone facial laser procedures. She instructs you further that Mary-Jane has done several laser procedures and chemical peels since being treated by her. Jade Fade Cream is definitely not a product she would have recommended for Mary-Jane’s use. She (Dr. West) had however, recommended the Jade Fade Cream to Julie who had minor dark spots on her face caused by sun burn.

After the meeting, your Senior Partner informs you that she would prepare a draft defence to the claim and asks that you do the following:

- (i) Prepare an opinion for Dr. West. Include in your opinion the procedural steps the Firm would propose be taken on Dr. West’s behalf and the likelihood of success.

**Note:**

Your opinion must not exceed **1,000 words**.

- (ii) Prepare the application, affidavit and draft formal order the Firm would file to ensure that Dr. West can defend the claim.
- (iii) You subsequently meet with Dr. West for her to review the defence prepared by your Senior Partner and the documents you prepared at (ii) above. During that meeting Dr. West expressed that she has something further to discuss with you on the claim. She informs you that she purchased Jade Fade Cream from a company by the name of Sublime Company Limited, which is incorporated under the laws of your jurisdiction. However, it was reported a few days ago in the daily newspaper that the pharmaceutical licensing authority in the jurisdiction has issued an emergency recall of all manufactured Jade Fade Cream. The recall is on the basis that it contains high levels of mercury, which can result in mercury poisoning, the symptoms of which include but are not limited to numbness, tremors, sensitivity to light, kidney failure, fatigue.

Dr. West indicated that she believes that it is the use of Jade Fade Cream that has caused Mary-Jane's injuries as claimed. She further instructs you that she had purchased 25,000 boxes of the Jade Fade Cream from Sublime Company Limited of which she has 23,000 boxes left in inventory at a value of US\$10,000, which she cannot sell. She has instructed that she would like to recover her money from Sublime Company Limited.

Advise by memorandum to your Senior Partner, the additional procedural steps and action, if any, the Firm should propose be taken on behalf of Dr. West in the claim. Include in your memorandum why and when you propose the steps be taken and what changes, if any, would need to be made to the defence and any of the documents prepared at (ii) above.

**Note:**

Your memorandum must not exceed **1,000 words**. Scripts that exceed the word limit will be penalised.

**PART B**

**(This Part must be commenced on a new page and titled Part B)**

Aladdin Twain and Alexis Lee-Twain are the parents of two children, Scott, 24 and Katie, 14. Over the past two years, Aladdin and Alexis have been experiencing marital discord. They have been having frequent quarrels resulting in them sleeping in separate bedrooms for the past seven months. The arguments have continued and have escalated in ferocity. Neither of them wishes to move out of the house.

In January, Aladdin announced that he had a girlfriend and needed to make some life changing decisions. In the following weeks, Aladdin refused to give Alexis money towards the running of the house or Katie's care. He has insisted that he will only give Alexis money after she moves out of his house, taking "her child" with her.

Alexis who has reduced mobility as a result of a motor vehicle accident, is finding it difficult to cope financially on her own salary. After the accident, she had been forced to take a significant pay cut, as she could no longer manage her job as the Manager of Operations at a building construction company. She now earns approximately one-half of what she previously earned. That had not been an issue before as Aladdin, a businessman who operates a fleet of luxury taxis, had always assisted with covering the expenses. Since his refusal to contribute, the electricity had been disconnected on two occasions and the water and internet, once each. In addition, Alexis has had to ask her son, Scott and her elderly mother for assistance to fill prescriptions for herself and Katie. Alexis is on medication as a result of her injuries and Katie was born with a congenital heart defect.

In addition to his refusal to provide financial support, Aladdin has taken to insulting and criticising Alexis about everything she does or says. He is consistent in his attacks. He begins before he sets off to work and continues when he returns from work, daily. On three occasions he has called Alexis while at work and shouted and berated her about her failures as a woman, wife and mother. Alexis recently learnt that on each occasion Aladdin had been using the speakerphone and some employees and Aladdin's secretary (who is the girlfriend) had been listening. Since learning of this, Alexis, who was already struggling with self-confidence issues has had to be prescribed anti-depressants.

Yesterday, Aladdin returned from work and immediately started shouting at Alexis calling her names, making demeaning statements and demanding to know, once again, why she didn't take "her child" and leave his house. He sneered at her and asked if she was waiting for him to remove them bodily. Katie, hearing the argument, rushed in to her mother's aid and was sent flying by a slap to her face. Aladdin stood over her as she lay stunned on the floor and promised her that if she dared to ever interrupt him again when he was speaking, she would receive more than a slap to the face.

Alexis now wishes to make some permanent changes for her herself and her daughter. However, she is concerned about her ability to provide a place for them to live.

The house in which they now live was purchased by Aladdin two years before she had married him. He had taken a 30-year mortgage and had been the one to pay the mortgage during the marriage. They had agreed that Alexis would cover the cost of the utilities and groceries and would assist with the care of the children. However, this arrangement changed after Alexis' accident three and a half years ago. Since then, Aladdin has assumed responsibility for the cost of the utilities, leaving Alexis to use her salary for her

and Katie's personal needs, Katie's educational expenses and a portion of the grocery costs.

Ten months ago, Alexis received a significant award in respect of her injuries. She had wanted to save the money to assist with running the house. However, Aladdin had encouraged her to use 40 percent of it towards the purchase of a new luxury vehicle, and to use the balance towards a lump sum payment on the mortgage. The lump sum amounted to 15 percent of the value of the house. He had assured her that he would continue to meet his obligations to her and Katie and so there was no need for concern. Since the purchase of the vehicle, Aladdin has rarely permitted Alexis to use the vehicle and has assumed all responsibilities for its care and upkeep.

Alexis explains that things with Aladdin had not always been bad. In the early years of their marriage he had been a good father and husband, who had taken extra jobs to provide for the family. In addition to her job, she had assisted as best she could, ensuring that the house was well kept and her family's needs had been met. Further, when he had first started his business she had been the one to keep the company's books and make the annual tax returns.

Scott is the father of two year old son, Demetri. The mother of the child is Jacinth Subaran, also 24 years of age. Jacinth is also the mother of a seven year old daughter, Amera. Scott, a computer technician had met Jacinth, a store clerk when they were both 20 years of age. Their relationship ended eight months ago. Since then there have been several significant changes in their lives.

A month ago, Jacinth lost her job and announced to Scott that she was returning home to Leviathan District, St George's, Jurisdiction. There she would move back in with her parents which would be cheaper than paying rent in her current address. Her parents, both small farmers, had agreed. Scott is not comfortable with this arrangement. He has always contributed a significant sum for his child's maintenance. Further, he was used to seeing his son each day. His office provided day care services at a reduced rate to its employees and Demetri attended the day care five days a week. Scott would pick him up from Jacinth's apartment each morning and at times he would go to see his son at lunch time. Demetri had settled into this routine and had made many friends at the day care centre.

Scott loved spending time with his son. Demetri had on some occasions stayed over at Scott's apartment. He lived in a large one bedroom apartment which was located above the garage of his parents' home. Scott had arranged his furniture in such a way that Demetri had his own semi-private sleeping area. It was separated from the rest of the apartment by a large book case. The fact that he lived in close proximity to his parents had meant that he had always received assistance from his sister and mother to babysit Demetri whenever the need arose.

While Jacinth's parents' house is a large one it is in a deep rural area and Scott is concerned that his son's access to a good education would be affected. Jacinth has a high school education. His concerns are further amplified by his knowledge that his influence will be limited because of the distance between his current home and Leviathan District. It is no less than a two-hour drive in each direction.

In light of his concerns, Scott wishes Demetri to move in with him permanently. He approached Jacinth and asked that she permit Demetri to remain with him. In the course of their discussion, he promised to ensure that Jacinth would see Demetri at least once a month and for extended periods in the holidays. Jacinth has vehemently refused. She declared that she was the one to provide the best care for their son, who is epileptic. In the argument that ensued, Jacinth disclosed that she was not even sure he was Demetri's father. Scott wishes to determine the truth relating to paternity. In any event he is adamant that whatever the outcome he wishes to remain in Demetri's life.

Alexis and Scott attend on your office.

**Required:**

With reference to authorities :

- i. advise Alexis of the steps she should take to protect herself and Katie and whether she can successfully claim an interest in property; and
- ii. advise Scott of the likelihood of obtaining the remedies he seeks and the steps he should take to do so.

**Note:**

Your response to (i) and (ii) above should not exceed **2,500 words**.

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**END OF PAPER**