

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS 2017

CIVIL PROCEDURE AND PRACTICE I

(AUGUST 00, 2017)

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. Erasable pens are not allowed.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTIONS 1 and 2 are based on the following facts:

The claimant, Chelly Jones, filed a claim against the defendant, Errol Gordon, claiming damages for breach of contract. The claimant alleged that the defendant had agreed to lend her \$35M and that he would, on her behalf, sell her house, located at 15 Chester Way in the jurisdiction, in order to recover her debt to him. The contract was entered into on February 9, 2010, and breached in October of the same year, when the house was sold for \$38M, but the defendant failed to pay her the excess of \$3M from the sale. She is trying to recover this sum.

The defendant denies the claim. His defence is that he never entered into a contract with the claimant but that the claimant entered into a contract with his company, Borrowthis Limited. He is the sole shareholder and director of Borrowthis Limited.

The defendant further states that Borrowthis Limited did, in fact, sell the property for \$38M on behalf of the claimant but that, in addition to the \$35M, owed to Borrowthis Limited by the claimant, transfer tax of \$1.9M, stamp duty of \$760,000, registration fees of \$95,000, Vendor's half cost to prepare sale agreement of \$50,000, discounted legal fees on the sale of \$185,000 and miscellaneous fees of \$10,000, payable to the vendor's attorney-at-law, had to be deducted from the sale price. There was therefore nothing remaining for Borrowthis Limited to pay back to the claimant.

The defendant provides a statement of account from the vendor's attorney-at-law on the sale and you see that his instructions are indeed correct.

The matter came up for trial on March 15, 2015, before the Honourable Mr Justice James. The claimant's attorneys-at-law sought an adjournment as they had, just before the start of the trial, disclosed certain documents to the defendant's attorney-at-law which they said they had recently received from the National Mortgage Ltd ("NML"). The documents disclosed were

merely shown to the defendant's attorney-at-law by the claimant's attorneys-at-law with promises to forward hard copies at a later date.

The documents went to the crux of the matter which the court was to consider.

A new trial date was not set, as the matter was adjourned to a date to be fixed by the registrar, this, to allow the recently disclosed documents to be served on the defendant and for other actions to be pursued. Costs were awarded against the claimant for her application to adjourn the trial.

The defendant's attorney-at-law made several requests, by emails dated March 17, 2015, April 20, 2015 and October 7, 2015, to the claimant, through her attorneys-at-law, for the hard copies of the documents from NML to be sent to her office, as promised. The claimant's attorneys-at-law in response, to each email, replied by saying, "I will send them soon." The documents were, however, never sent.

After not hearing from the claimant, the defendant's attorney-at-law, on June 1, 2016, made an application for the claimant's claim to be struck out.

The defendant's application came up for hearing before the Honourable Mrs Justice Campbell on December 10, 2016. Neither the claimant nor her attorneys-at-law attended, but word was sent to the court that the claimant's attorney-at-law, Mr Everal Palmer, who had conduct of the matter, was ill and would not be able to attend court. The matter was adjourned to May 1, 2017 at 9:00 am, for one hour before the Honourable Mrs Justice Campbell, who also ordered the defendant to serve a Notice of Adjournment on the claimant via her attorneys-at-law. The Notice of Adjournment was served on the claimant's attorneys-at-law on December 11, 2016.

On May 1, 2017, when the matter came up again for hearing before Campbell J, neither the claimant nor her attorneys-at-law was present. The judge called the claimant's office and made inquiries as to whether anyone would be attending court on behalf of the claimant, but was told that the attorney-at-law (Mr Palmer) who had conduct of the file, was not in office. No explanation was given for his non-attendance and no other attorney-at-law from the firm came

to court to hold on his behalf. At 9:30 am after hearing the submissions from counsel for the defendant on the matters raised in the defendant's Defence, Campbell J made an order in favour of the defendant's application.

The defendant served the order on the claimant's attorney-at-law on May 3, 2017.

The claimant is upset about Campbell J's order. Her attorney-at-law, Mr Palmer, by way of explanation, told her that the reason he was not able to attend the hearing of the matter on May 1, 2017 was because he was in a matter at the Court of Appeal. He has proof of same. He also indicated that Campbell J was wrong in setting a time for 9:00 am because she had no authority to set cases outside of the regular court hours, which are 10:00 am to 4:00 pm in your jurisdiction.

QUESTION 1

Mr Palmer is your senior. He asks you to:

- (i) prepare the application which you will need to make in order to put the matter back before the court; and
 - (ii) draft the order the court is likely to make, if your application is successful.
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QUESTION 2

Had you been present at the hearing of the defendant's application to strike out the claimant's claim, what legal submissions would you have made on behalf of the claimant in response to the defendant's application?

QUESTION 3

On December 1, 2016, Kevin France purchased a 2015 Porsche motor car from PTL Automotives Ltd for \$7M. He has now been served with a Claim Form and Statement/Particulars Of Claim (with attending documents) from First Class Rental Ltd, which claims to be the true owner of the vehicle. In its claim against Kevin, First Class Rental Ltd claims that the vehicle had been rented to Michael Gordon who then sold it to PTL Automotives Ltd.

It has become clear to Kevin that he did not acquire good title to the motor car when he bought it.

- (i) Advise Kevin as to the procedure he must follow if he wishes to bring a claim against PTL Automotives Limited.
 - (ii) Draft the relevant initiating document.
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QUESTIONS 4 and 5 arise from the following facts:

Hector McAdam attends on your office. He hands you a Claim Form and Statement/Particulars of Claim which he says were served on MAC ADAM SUPERMARKET LIMITED yesterday. Hector is the company's sole director. An extract from the Statement/Particulars of Claim appears below.

"CLAIM NO 2017 HCV 789

<i>BETWEEN</i>	<i>FITZROY BROWN</i>	<i>CLAIMANT</i>
<i>AND</i>	<i>MAC ADAM SUPERMARKET LIMITED</i>	<i>DEFENDANT</i>

- 1. The Claimant was at all material times a farmer residing at 14 Cashew Lane in the jurisdiction.*
- 2. The Defendant is a company registered in the jurisdiction, carrying on business as a supermarket at 10 Blessed Drive in the jurisdiction.*
- 3. On October 14, 2014 the Claimant entered MAC ADAM Supermarket and slipped on a step which was wet because the staircase was being washed by employees or agents of the Defendant.*
- 4. The incident was caused by the negligence on the part of the Defendant, its employees or agents.*

PARTICULARS OF NEGLIGENCE OF THE DEFENDANT

- (a) Allowing the Claimant to walk on the staircase when it was wet and unsafe to do so.*
- (b) Failing to direct the Claimant to make use of an alternative staircase.*
- (c) Failing to keep the Claimant away from the staircase by placing a barrier across the foot of it or by some other means.*
- (d) Failing to give the Claimant any or any adequate warning that the staircase was wet and unsafe.*

- (e) *Failing in all circumstances to take reasonable care for the Claimant's safety.*
5. *As a result of the matters set out above the Claimant suffered pain and injury and sustained loss and damage.*

PARTICULARS OF INJURY

The Claimant who was born on April 1, 1992, was treated by Dr Medgar Jenkins, Consultant Orthopaedic Surgeon. Dr Jenkins prepared a medical report dated November 1, 2015, which sets out the Claimant's injuries.

- (a) *Bruising, shock and pain*
- (b) *Damage to the spinal cord*
- (c) *Fractures to lumbar vertebrae 3, 4 and 5*

A copy of the medical report is attached hereto.

PARTICULARS OF SPECIAL DAMAGE

(i)	<i>Hospital fees (including cost of medical report)</i>	<i>\$500,000.00</i>
(ii)	<i>Pain Killers</i>	<u><i>15,000.00</i></u>
	<i>Total</i>	<i>\$515,000.00</i>

6. *The Claimant 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 statute in your jurisdiction].*

AND THE CLAIMANT CLAIMS

1. *Damages*
2. *Interest*
3. *Costs*

I certify that the facts stated in this Statement/Particulars of Claim are true to the best of my knowledge, information and belief.

.....

Claimant's signature

SETTLED BY

.....

Attorney-at-Law for the Claimant

Filed by etc"

Mr McAdam, admits that the incident did, in fact, occur on the day. However, he informs you that the cleaning of the stairway was not undertaken by his employees or agents but by an independent cleaning agency, Davis Manpower Ltd. Mr McAdam says that his investigations of the incident revealed that there were warning signs placed to notify the customers that the floors were wet and that a barrier was placed on the steps, to prevent any customer from using the staircase, while it was being cleaned. There is video footage of the claimant stepping over the barrier and heading up the stairs, albeit that the person who was cleaning the stairs cautioned the claimant against doing so.

He also states that the spelling of the company's name is incorrect on the documents and that his store is McAdam Supermarket Limited and not MAC ADAM Supermarket Limited.

QUESTION 4

Draft a Defence on behalf of the defendant in accordance with the instructions given above.

QUESTION 5

Assume that after the Defence is filed and after the case management conference had been held, the claimant's attorney-at-law has indicated an intention to amend the Claim Form and Statement/Particulars of Claim on behalf of his client as follows:

- (i) to correct your client's name to McAdam Supermarket Limited; and
 - (ii) to include a cause of action under occupier's liability against your client.
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- (a) Advise your client as to whether these amendments can be made at this stage, and the steps the claimant would need to take to achieve this.
 - (b) Would your answer be different if the limitation period had expired by the time the claimant's attorney-at-law indicated his intention to amend the initiating documents?
Give reasons for your answer.
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PART B
FAMILY

THE FOLLOWING FACTS APPLY TO BOTH QUESTIONS 6 AND 7

Tori Baker, a housewife, and Jullian Baker, a bank clerk, separated after a five-year marriage in April 2014. Jullian had moved out, leaving everything behind, after one of Tori's violent outbursts had left him with a hairline fracture. Tori had thrown a vase hitting him in the head. Jullian had moved to March Street, Jurisdiction, while Tori remains on Charles Street in the rented two-bedroom house they had once shared. Their only child, Reba, aged six, remains with her.

Mr Baker comes to see you. He instructs you that for the past two months he has tried in vain to see Reba. He further instructs you that Tori has refused to let him anywhere near Reba because he has refused to give her (Tori) any sum in respect of the 2004 Honda Accord motorcar which was bought four years ago, and which he retains.

Mr Baker also instructs that the car is registered in his name. However, they had both contributed to the purchase of the vehicle, with Tori paying \$100,000 which she had saved over the years from the housekeeping money he had given her and from gifts from her brother, Ronald who resides overseas. Mr Baker instructs that he had paid the balance of \$500,000 for the car and while they were together the vehicle had been used by him for work and as the family vehicle. He alone has been responsible for the car's upkeep and for paying its licence and registration fees and insurance premium.

Mr Baker pays \$35,000 per month to his wife towards rent, her maintenance and that of their daughter and states that his wife has not expressed dissatisfaction with that amount. He further states that she is a good mother and he has no interest in gaining custody of Reba but he wishes to have her for weekends as had been their arrangement since their separation. He also wishes to retain the motorcar, recover his furniture and formally end his marriage.

QUESTION 6

- (i) Advise Mr Baker on the legal issues to be considered in the division of property.
 - (ii) Assume Mr Baker has instructed you to seek a 90% interest in the vehicle. Draft the Order(s) you would seek.
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QUESTION 7

- (i) List the steps necessary to end the marriage.
 - (ii) Advise what step(s), if any, Mr Baker may take to ensure that his wife lives up to their agreement concerning their daughter.
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QUESTION 8

Paula Ashcroft, a single 24-year-old woman, gave birth to Malika on December 5, 2016.

Paula instructs you that Shawn Mendez, a Customs Officer, is the father of the child but that he refuses to acknowledge the child as his and to offer financial support. Paula is a second-year geology student at the Fredel Institute and she is having difficulty affording Malika's expenses.

Advise Paula on the legal steps that you propose to take to solve her problem and the matters that a court will consider in granting any order(s) being sought.

END OF PAPER