

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2011**

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 23, 2011)

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 ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTIONS 1 & 2 ARE BASED ON THE FOLLOWING FACTS.

Your client is AH & L Kiss Inc. and is duly incorporated with limited liability in Canada. The Managing Director, Arthur Barnard, tells you that on October 18, 2010, they received a cheque for the amount of Canadian \$35,000 from Slumber Beds Ltd, a company registered in your jurisdiction. The cheque was for and on account of part of the price of a foaming machine and parts, which your client sold and shipped to Slumber Beds on November 1, 2010. However, when they presented the cheque for payment in mid-November it was dishonoured and they were told that Slumber Beds had placed a stop on the cheque.

You are shown a letter from a firm of lawyers acting on behalf of Slumber Beds in which they state that their client placed the stop on the cheque because, *inter alia*, the foaming machine which had been warranted by your client to have been in an unused condition and in good condition was in a used condition, not in working order and of the wrong voltage. The machine, they said, was useless to their client in that state and they had to spend additional money purchasing parts to repair it. Therefore, in their client's view the machine was worth far less than the contractual price of Canadian \$45,000. They also indicated that if an action was brought against their client, it would be defended on the basis stated above, together with a counterclaim for damages including loss of profits during the period in which the machine was inoperable.

Mr Barnard says your client does not accept the allegations of Slumber Beds and further informs you that a representative of Slumber Beds inspected the machine prior to it being shipped to the jurisdiction. They have asked that you issue proceedings on their behalf.

QUESTION 1

Advise AH & L Kiss Inc., on the issues you would consider prior to issuing proceedings and whether or not they can commence proceedings against Slumber Beds Limited. State how any proceedings should be originated, describing the documents you would file and outlining the contents of those documents.

QUESTION 2

ANSWER BOTH (a) AND (b).

- (a) Assuming that you issued proceedings on behalf of AH & L Kiss Inc, advise whether or not there would be any option(s) available to them for securing an early judgment and the likelihood of success.

 - (b) Describe the procedure and outline the contents of the documents you would need to file to achieve your objectives in (a) above.
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QUESTION 3

The Director of the Legal Aid Clinic, who acts for the Claimant, has given you extracts of the Particulars/Statement of Claim and the Defence in a matter as set out below -

"Particulars/Statement of Claim

1. *The Claimant was at all material times the owner and driver of a Hiace motor van Registration P 7733.*

2. *By a policy of Insurance No WK/CP 5642 dated January 27, 2007 to January 26, 2008, made by the Defendant in consideration of premiums paid and to be paid by the Claimant, the Defendant insured the Claimant against loss or damage by fire as follows: Hiace motor van Registration P7733, 2001cc, Engine No 8001294A in the sum of \$5.5m.*
3. *The Claimant was the person interested in the said Hiace motor van at the time of loss and damage.*
4. *On January 23, 2008, while the Claimant was driving the vehicle along Park Road in the Parish of St Marie, the Hiace motor van was destroyed by fire which started in the engine area.*
5. *The Claimant duly notified the Defendant of the loss and damage, but wrongfully and in breach of contract, the Defendant has not paid the Claimant under the policy.*
6. *Further the Claimant claims interest pursuant to the [discretionary statute].*

And the Claimant claims

- 1) *Damages for Breach of contract*
- 2) *Interest*
- 3) *Costs*

Filed by etc.

Defence

1. *No admissions are made as to Paragraph 1 of the Particulars/ Statement of Claim.*
2. *Save that the Defendant admits that there was a policy of insurance No WK/CP 5642 made by them in favour of the*

Claimant, paragraph 2 of the Particulars/Statement of Claim is denied.

3. *Save that the Defendant admits having received notice from the Claimant of the alleged loss and damage, paragraph 4 is denied.*
4. *It was a term and condition of the policy that the insured Claimant would take all reasonable steps to safeguard the motor vehicle from loss and damage and has failed to do so.*
5. *The Claimant wrongfully attempted to defraud the Defendant in breach of the said policy of insurance.*
6. *Save as stated above each and every allegation contained in the Particulars/Statement of Claim is denied.*

Filed by etc.”

You are requested by the Director –

- (i) to write a short memo explaining the effect of each paragraph of the Defendant’s Defence; and
- (ii) to draft a letter to the Defendant’s attorney-at-law requesting further information from them pursuant to CPR Part 34.

QUESTION 4

The following is the Prayer extracted from a Particulars/Statement of Claim -

“And the Claimant Claims -

1. *Damages for wrongfully converting the Claimant’s boilers;*

2. *An injunction to restrain the Defendant from unlawfully selling, charging or in any other way disposing of the boilers other than to the Claimant;*
3. *An order requiring the Defendant to deliver the boilers to the Claimant or his agent;*
4. *Interest;*
5. *Costs”*

Assuming that the right to a judgment in default of defence is available against the Defendant –

- (i) state how the Claimant should proceed in respect of the reliefs prayed for above outlining the procedure and describing the required document(s); and
- (ii) indicate the steps you would expect the Defendant’s attorney-at-law to take in response to the Claimant’s action in (i) above, should that attorney-at-law state that the Defendant has a good defence to the claim and that the failure to file the defence occurred due to an oversight in his office.

QUESTION 5

You are acting for the Defendant in a matter in which the Claimant served an amended Particulars/Statement of Claim two weeks prior to the case management conference, which is set for July 25, 2011. The Claimant has, by the amendment, added a cause of action for occupiers liability. A claim in negligence was previously made in the Claim Form and Particulars/Statement of Claim which were issued, filed and served on May 1, 2009. The accident, which forms the basis for the claims, occurred on May 2, 2002.

Write a letter to your client explaining –

- (i) the purpose and objectives of the case management conference; and
- (ii) how you propose to respond to the Claimant's amended statements of case at the conference, stating the outcome(s) you expect.

PART B

FAMILY

QUESTION 6

Outline the procedural steps required to effect service of the petition to the satisfaction of the Court where the Respondent is –

- (i) within the jurisdiction at an unknown address; and
- (ii) outside the jurisdiction at a known address.

QUESTION 7

Titus and Cleo began living together in a two bedroom apartment in an upscale neighbourhood in the capital of your jurisdiction in April 2007. Titus, a manager, can easily afford the rent and other living expenses. He is 10 years older than Cleo. Cleo is a

ceramic artist who has put on a few exhibitions and gives private lessons in an attempt to generate a steady income. In January 2008, their child Dominic was born and the relationship deteriorated rapidly. Titus is controlling and jealous and also has other girl friends. In June 2008, Cleo could take no more and returned to her family, in a poor rural district.

The family is extensive, consisting of Cleo's mother, uncle and aunts who each live in their own humble abode on the land, and Cleo took up residence in a two bedroom board house on the land. Some of the adults work on the land, others have jobs outside, childcare is communal, and sanitary facilities are basic.

Titus has a loving relationship with Dominic whom he sees every other week. Whenever Cleo asks for maintenance for the child, Titus suggests that they have sex and has threatened that if he sees her with another man he will rearrange her facial appearance.

Cleo comes to you on May 13, 2011. She has been served with an application for custody from Titus. He alleges that Dominic's living circumstances are not up to standard, and wants the child to live with him and his newly installed wife in the apartment in the capital. Cleo wants custody of Dominic and protection from Titus' continuous advances and threats.

Advise Cleo.

QUESTION 8

In 2003, Michael, a single insurance executive in his early 50's, was finally ready to settle down. He purchased a three bedroom townhouse with the aid of a mortgage in his own

name and moved in. In September 2003, Michael met Alice, a recently qualified teacher in her early 20's, and by December she had moved into the townhouse with Michael. Their relationship flourished: Michael paid all the bills and Alice decorated the townhouse throughout. When Alice became pregnant in 2005 Michael insisted that she give up her job and look after the family. She gave birth to Nicholi on January 8, 2006, and Michael is recorded as the father on Nicholi's birth certificate.

Alice is an outgoing and vivacious young woman – she had lots of friends who Michael didn't always approve of but she referred them to him for insurance purposes and Michael's portfolio grew quite rapidly. In June 2010, Michael came home unexpectedly and found Alice in bed with her gym instructor. Alice moved out with Nicholi two days later. Within three months Alice moved in with James, a paralegal.

On April 20, 2011, Michael attended your office. He has been served with an application for division of property in which Alice is claiming a 50% share in the townhouse and she is also applying for maintenance for Nicholi. As well as disputing her entitlement to a share in the property, Michael now doubts that he is Nicholi's father.

Advise generally, considering –

- (i) the merits of the application for division of property, and
- (ii) the steps to be taken on Michael's behalf to resolve the question of Nicholi's paternity and the legal consequences whether he is found to be or not to be Nicholi's father.