**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE**

**FIRST YEAR EXAMINATIONS 2018**

**CIVIL PROCEDURE AND PRACTICE I**

**(MONDAY, MAY 14, 2018)**

# Instructions to Students

 (a) Time: **3 ½ hours**

1. Answer **THREE** questions from Part A and **TWO** from Part B.
2. **Answer Part A and Part B on separate answer booklets.**
3. 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**.
4. It is unnecessary to transcribe the questions you attempt.
5. Answers should be written in black or dark blue ink. Erasable pens are not allowed.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

**PART A**

**QUESTION 1**

Henny Penny and Billy Goat come to your office. They hand you a Claim Form with Prescribed Notes to Defendant, form Acknowledgment of Service and form Defence, as well as a Statement/Particulars of Claim, an extract of which is set out below:

**“STATEMENT/*PARTICULARS OF CLAIM***

*[HEADING IS GIVEN AS PER YOUR JURISDICTION AND THE CLAIM NUMBER IS 8976 OF 2018]*

*BETWEEN JOHN CROW CLAIMANT*

*A N D HENNY PENNY FIRST DEFENDANT*

*A N D BILLY GOAT SECOND DEFENDANT*

1. *The Claimant was at all material times a dentist residing at 14 Cinderella Boulevard in the parish of St Johns.*
2. *The First Defendant was at all material times the owner of a trailer bearing registration number 78908.*
3. *The Second Defendant was at all material times the servant and/or agent of the First Defendant and the driver of the First Defendant’s trailer.*
4. *On or about January 4, 2017 the Claimant was lawfully walking along BadWolf main road in the vicinity of The Three Little Pigs Restaurant by means of a pedestrian crossing when the Second Defendant in the course of his employment drove the First Defendant’s trailer so that it collided into the Claimant as he crossed the roadway.*
5. *The collision was caused as a result of the negligence of the Second Defendant in his operation of a trailer.*

***PARTICULARS OF NEGLIGENCE***

1. *Driving too fast*
2. *Failing to keep a proper look out*
3. *Failing to heed the Claimant’s presence on the pedestrian crossing*
4. *Failing to apply his brakes in time or at all or to so steer or control the trailer so as to avoid striking the Claimant*
5. *Failing to accord precedence to the Claimant who was on the pedestrian crossing before any part of the Defendant’s trailer had come on to it*
6. *Failing to stop, slow down or swerve so as to avoid the collision*
7. *By reason of the matters set out above, the Claimant suffered injury, loss and damage and incurred expense.*

***PARTICULARS OF INJURIES***

*The Claimant born on June 5, 1990 sustained the following injuries*

1. *Broken hip*
2. *Broken collar bone*

*The medical report of Dr Leopold Johnson is annexed hereto.*

***PARTICULARS OF SPECIAL DAMAGES***

1. *Medical expenses $450,000.00*
2. *Transportation $ 10,000.00*

*Total $460,000.00*

1. *The Claimant claims interest pursuant to [the relevant Act]*

*Dated the day of 2018*

*I certify that the facts stated herein are true to the best of my knowledge, information and belief.*

*……………………………………………………………..*

*John Crow*

*Settled by*

*Carol White*

*Attorney-at-law for the Claimant*

*Filed by ….”*

Henny Penny and Billy Goat instruct you that an accident, which involved the Claimant, did in fact happen on January 4, 2017. They deny any negligence on their part and say, instead, that the accident was caused by the negligence of the Claimant, who ran suddenly from the sidewalk, on to the pedestrian crossing and into the path of the First Defendant’s motor vehicle. The Second Defendant was driving at 30kph and was not able to stop immediately to prevent the accident. The Second Defendant instructs you that he was about five feet from the pedestrian crossing, when the Claimant ran from the sidewalk and on to the pedestrian crossing. The Second Defendant had swerved to avoid hitting the Claimant but did not have sufficient time to be successful in doing so.

You are asked to defend the claim on behalf of the Defendants.

Draft the defence.

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**QUESTION 2**

On September 23, 2011, Fitzroy Pink, a valuer engaged by Jurisdiction Bank Limited, completed a valuation of a property at 14 Love Lane in your jurisdiction. The report stated that the property, which was a 4-bedroom house in a good location close to the seafront, was in good condition for its age and valued at $20,000,000. The report was addressed to Jurisdiction Bank Limited.

Jurisdiction Bank Limited lent $18,000,000 to Sophia Brown pursuant to the terms of a mortgage agreement. Sophia Brown defaulted on the loan, and the property was subsequently sold by Jurisdiction Bank Limited on March 14, 2012 for $10,000,000.

On September 16, 2017, a Claim Form was issued by the firm in which you are working. It named Jurisdiction Bank and Services Limited as the Claimant and Fitzroy Pink as the Defendant. Jurisdiction Bank and Services Limited is a subsidiary of Jurisdiction Bank Limited. The Claim Form was endorsed as follows:

*“The Claimant, Jurisdiction Bank and Services Limited, claims damages and interest for breach of contract and negligence arising out of the Claimant’s reliance on the mortgage valuation on September 23, 2011 (“the valuation”) in respect of property located at 14 Love Lane in the jurisdiction (“the property”) for the purpose of a mortgage loan of $18,000,000 made by the Claimant on September 26, 2011 to Sophia Brown (“the borrower”). The property formed the Claimant’s security for the mortgage. The valuation by the Defendant was negligent in that it overvalued the property. The borrower defaulted on the mortgage and the property was sold. The Claimant has suffered loss on the sale of the property”.*

Your senior has asked you to write a memorandum setting out whether or not it is possible to amend the Claim Form and Statement/Particulars of Claim to substitute Jurisdiction Bank Limited for Jurisdiction Bank and Services Limited as the Claimant. You should also outline the documents required to make such an application and their contents.

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**QUESTION 3**

Sajonie Whippersnapple instructs you that he is the sole director of Belgian Sparkies Company Limited (“the Company”), a company incorporated in your jurisdiction. On February 17, 2007, the Company entered into a contract with Vera Adams. Pursuant to the terms of the contract, it was agreed that the Company would lend Adams the sum of US$1,000,000 and that the sum would be repaid in equal monthly instalments over the course of five years. The parties have also agreed that no interest is to be charged.

Sajonie further instructs you that Adams had made 15 payments, but that thereafter she had become delinquent.

Despite Sajonie’s best efforts, he has not been able to recover the amount due from Adams.

On March 14, 2017, Sajonie, on behalf of the Company, wrote a letter to Adams reminding her of the outstanding debt. Adams responds in a letter addressed to the Company dated June 1, 2017 saying:

*“I am really sorry, old Chum. I know I owe you the sum but I have been a bad way off. Can you please give me some more time?”*

Sajonie does not respond to the letter. He instructs you that he needs to recover the money and he wants you to assist him in doing so.

Discuss the litigation issues you should consider.

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**Question 4**

You act for the Defendant, Caribbean Blocks Limited (“CBL”), in a claim brought against it by Hughlet Jacobson for damages in respect of injuries he sustained to his eyes while operating machinery in the Defendant’s factory.

The claim went through mediation, but the process was not successful and the matter proceeded to the case management conference. At the case management conference, the matter was adjourned because neither Jacobson nor his attorney-at-law was present. No explanation was given for their absence. You appeared at the case management conference on behalf of CBL. Jonathan James, CBL’s CEO, was also present. The matter was adjourned to April 30, 2018 at 11:30 am for 30 minutes.

On April 30, 2018, when the matter came up for hearing again, neither you nor James attended, and the Court was not given a reason for your absence nor that of your client. You were not able to attend the case management conference as you were hospitalized, having suffered a minor heart attack, and were not in a position to contact anyone to hold the matter on your behalf.

James later instructs you that he had attended court on the day in question but was waiting outside court room 4. He had tried, without success, to contact you, but your phone rang and went to voicemail. After waiting for three hours at court room 4, and not having heard his name being called, he made inquiries of the clerk. The clerk checked the court’s list and informed him that he was at the wrong place and that he ought to have been at chambers 4 and not court room 4. When he got to chambers 4 at 3:30 pm, the clerk told him he was late and the matter had already been dealt with.

When you returned to office on June 1, 2018, you made inquiries at the Supreme/High Court concerning the matter. Your checks with the Supreme/High Court Registry reveal that your client’s case was struck out for failure to attend the case management conference, and that judgment has been entered for the Claimant.

Prepare:

1. the appropriate notice of application/application for court orders which you will need to make on your client’s behalf; and
2. a draft of the order the Court is likely to make if your application is successful.

 **(The relevant form is available.)**

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**QUESTION 5**

You act for and on behalf of Peter Jones and Roy Jones who have instructed you that on January 3, 2018 they were each served with a Claim Form and Statement/Particulars of Claim. They acknowledged service on January 10, 2018 but the time has passed for them to file a defence. On May 7, 2018 they were served with Default Judgment, Notice of Intention to Tender Documents, List of Documents, Listing Questionnaire and Notice of Assessment of Damages. The assessment of damages hearing is scheduled for June 16, 2018. Based on the Defendants’ instructions, you believe that they have a real prospect of successfully defending the claim.

Their instructions are that, on August 10, 2015, the Second Defendant was driving the motor vehicle owned by the First Defendant along the Franklin Bailey Main Road. On reaching the entrance to Angels Plaza, which is located along the Franklin Bailey Main Road, he stopped and indicated that he was going to make a right turn on to the premises of Angels Plaza. The motorists on the other side of the road stopped to allow him to make the turn, as did the vehicles which were travelling behind him. While the Second Defendant was in the process of making the turn, the Claimant rode his motor cycle along the roadway, overtook all the vehicles which were stationary behind the Second Defendant and rode directly into the path of the Second Defendant.

The Defendants agree that they were served with the Claim Form and Statement/Particulars of Claim.

The Defendants present you with the Claim Form and Statement/Particulars of Claim which they agree they had received from as far back as January 3, 2018. They, however, instruct you that they were not able to give instructions to their attorneys-at-law with respect to the preparation and filing of their Defence within time as their sister, Veronica, died from cancer on January 17, 2018. The family had been in mourning, and the two men had had to travel to Canada in order to deal with Veronica’s funeral arrangements, close up her house, administer her estate and make decisions as to where her two young children, Simone and Sasha, aged five and two respectively, should live. Simone and Sasha had been adopted by Veronica as a single woman, and there was no one else who could have taken charge of them immediately after their mother’s death.

An extract of the Statement/Particulars of Claim, which was filed and served on the Defendants, appears below:

***“STATEMENT/PARTICULARS OF CLAIM***

*IN THE SUPREME/HIGH COURT OF JURISDICTION*

*CLAIM NO 2017 HCV 12345*

*BETWEEN JOHN DOE CLAIMANT*

*AND PETER JONES FIRST DEFENDANT*

*AND ROY JONES SECOND DEFENDANT*

1. *The Claimant was at all material times the driver of Honda motor cycle bearing licence number 5565G, and a lawful user of the roadway.*
2. *The First Defendant was at all material times the owner of Nissan Almera motor car bearing licence number 8266DD.*
3. *The Second Defendant was at all material times the driver of the Nissan Almera motor car bearing licence number 8266DD and the servant and/or agent of the First Defendant.*
4. *On or about August 10, 2015, the Claimant was lawfully travelling along Franklyn Bailey Main Road when on reaching the vicinity of Angels Plaza the Second Defendant drove, managed and/or controlled the First Defendant’s motor vehicle along the said roadway and collided into the Claimant’s motor cycle.*
5. *The collision was caused by the negligence of the Second Defendant.*

***PARTICULARS OF NEGLIGENCE OF THE SECOND DEFENDANT***

1. *Drove at an excessive and/or improper speed in the circumstances.*
2. *Failed to keep any or any proper lookout.*
3. *Drove without any or any sufficient consideration for other users of the road.*
4. *Failed to maintain sufficient control over the said motor vehicle.*
5. *Failed to apply his brakes within sufficient time or at all so as to prevent the collision from occurring.*
6. *Failed to stop, slow down or swerve so as to avoid the collision.*
7. *As a result of the collision the Claimant suffered injuries, sustained loss and damage and incurred expense.*

***PARTICULARS OF INJURIES***

1. *Acute right shoulder strain.*
2. *Soft tissue injury to left hand*
3. *Sub-concussive blunt head injury.*

*The Claimant relies on the medical report of Dr Zeb Countryboy dated March 15, 2017, copy of which is attached hereto.*

***PARTICULARS OF SPECIAL DAMAGES***

1. *Medical expenses (including medical report) and continuing $250,000.00*
2. *Cost of Police Report 1,000.00*
3. *Transportation costs to doctor; 7 trips @ $1,000 per round trip 7,000.00*

 *Total $258,000.00*

1. *The Claimant claims interest pursuant to the relevant Act on the amount found to be due to the Claimant at such rate and for such period as the Court shall think fit.*

*Etc”*

The Defendants have asked you to take steps on their behalf. Draft the Affidavit which you would prepare to support any application you would make on their behalf.

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**PART B**

**FAMILY**

**QUESTION 6**

Nate James, a computer programmer, and Joy James, an administrative assistant, have been married for ten years. They are the parents of two girls, Special and Hope, aged seven and five years respectively. They reside, rent-free, in a 2-bedroom house which is owned by Joy’s parents.

Nate and Joy purchased two small apartments three years after getting married. They both contributed to the deposits with Nate providing 70%. Both apartments are registered in their joint names. Nate alone qualified for the mortgage used to purchase the apartments as Joy, who was pregnant at the time, had lost her job. The apartments were rented after they were purchased. However, the rental income proved insufficient to cover the monthly mortgage payments, and the small balance was paid by Nate.

Joy remained at home, caring for the children, until a year after the birth of their second child. Since then, she has been working and has been contributing to the mortgage payments and the day-to-day cost of running the household.

Nate has come to see you. He tells you that he is separated from his wife. She had given birth to a third child, Dane, four months ago, and two months later, had confessed that she had had an affair with a co-worker around the time of the child’s conception. However, she insists that he, Nate, is Dane’s father, as biology is immaterial and her co-worker was out of their lives for good. He gives you documents, received a day earlier, which show that Joy is claiming maintenance for all three children. He indicates that his main concerns are to determine whether he is truly Dane’s father and whether he may claim more than a 50% interest in the apartments. The apartments have a combined value of US$200,000.

Advise Nate.

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**Question 7**

Liza Irons, aged 53, comes to see you. She instructs you that her husband of eight years, Jerod Irons, aged 55, has been abusing her for the past six months, and she has had enough. She further instructs you that, last night, things escalated and he hit her so hard that she had fallen back and hit her head against a wall. She shows you the bruise on her left cheek which she has tried, unsuccessfully, to hide with make-up. She also shows you the lump on the back of her head.

Mrs Irons is a housewife and tells you that the house that she shares with her husband is rented. Mr Irons is a carpenter and, over the course of their marriage, he has been the sole breadwinner. Mrs Irons is in fear for her safety. She wishes to move on with her life without her husband but is unsure about her ability to do so in light of her lack of income.

Advise Mrs Irons on:

1. the options available for her protection and to meet her financial needs; and
2. the procedure to be employed in securing the remedies she seeks.

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**Question 8**

Mathew Hayes is the father of Julia Hayes. Julia is now nine years old. Mathew has become concerned about his daughter’s well-being as he has learnt that his estranged wife, Melanie, is going overseas for work and intends to leave Julia with her elderly mother.

Mathew and Melanie separated almost four years ago. Mathew wishes to end his marriage and believes his daughter would be better off residing with him.

1. Assuming Melanie will not contest the dissolution of the marriage, detail the steps Mathew will need to take to bring his marriage to an end and obtain custody of his daughter. Include in your answer documents and time requirements related to their filing.
2. Advise Mathew of the steps he will be required to take to effect service of the documents on Melanie should she leave the jurisdiction.

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**END OF PAPER**