

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS 2019

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 13, 2019)

Instructions to Students

- (a) Time: **3 ½ hours**
- (b) Answer **THREE** questions from Part A and **ALL** questions from Part B.
- (c) **Answer Part A and Part B on separate answer booklets.**
- (a) In answering any question, 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.**
- (d) It is unnecessary to transcribe the questions you attempt.
- (e) 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

QUESTION 1

Your client, Rodger Lake, has provided you with a claim form and particulars/statement of claim dated and filed on March 29, 2019 that was personally served on him on May 10, 2019. Below is an extract from the particulars/statement of claim:

“PARTICULARS/STATEMENT OF CLAIM

IN THE SUPREME COURT OF JURISDICTION

CLAIM NO. 0000HCV0001

<i>BETWEEN</i>	<i>PANSY MCDONALD</i>	<i>CLAIMANT</i>
<i>AND</i>	<i>RODGER LAKE</i>	<i>DEFENDANT</i>

- 1. The Claimant, Pansy McDonald, was at all material times a dressmaker of 14 Lay Way, Town, Jurisdiction.*
- 2. The Defendant was at all material times the owner and driver of motor vehicle bearing registration number 1356LS.*
- 3. On January 5, 2018 the Claimant was walking along Main Road, Jurisdiction when the Defendant’s vehicle bearing registration number 1356LS collided into the Claimant.*
- 4. The collision was caused by the negligence of the Defendant.*

PARTICULARS OF NEGLIGENCE OF THE DEFENDANT

- (a) Driving too fast*
- (b) Failing to give any or any adequate warning of his approach on Main Road*
- (c) Failing to keep any or any proper lookout as he drove on Main Road*
- (d) Failing to swerve or manoeuvre his motor vehicle so as to avoid colliding into the Claimant*

5. *As a result of the Defendant's negligence the Claimant has suffered injury and sustained loss and damages.*

PARTICULARS OF INJURY

The Claimant was born on June 20, 1969. She was treated by Dr. Ian Balls and a medical report dated February 28, 2018 prepared by him is annexed hereto. The Claimant's injuries are as follows:

- (i) Fracture to right fibula (leg)*
- (ii) Bruises to left and right forearms*
- (iii) Bruises to face*

PARTICULARS OF SPECIAL DAMAGES

<i>(i) Medical Expenses (continuing)</i>	<i>\$500,000.00</i>
<i>(ii) Medical Report</i>	<i>\$ 35,000.00</i>
<i>(iii) Loss of income (4 weeks at \$20,000 per week)</i>	<i><u>\$ 80,000.00</u></i>
<i>Total</i>	<i>\$615,000.00</i>

6. *The Claimant claims interest on such damages as may be awarded at such rate and for such period as the Court may deem fit pursuant to the [relevant discretionary statute of your jurisdiction].*

AND THE CLAIMANT CLAIMS:

- 1. *Damages*
- 2. *Interest*
- 3. *Costs*
- 4. *Such further and other relief the court deems fit*

Certificate of truth

FILED BY..."

Rodger instructs you that he was in fact driving on Main Road when suddenly the claimant ran out into the road directly in front of his motor vehicle. Rodger further instructs you that it

happened so quickly he was not able to swerve in time to avoid colliding into the claimant. Rodger denies that he was negligent and instructs you that he was not driving fast but at 40km per hour. The speed limit on Main Road is 50km per hour. Rodger's motor vehicle was damaged in the accident.

Rodger further instructs you that he learnt from the police officers who came to the scene of the accident that other pedestrians along Main Road said the claimant was walking on the sidewalk. They said she ran out into the road to avoid a billboard sign, erected along the curb of the sidewalk, falling on top of her. The pedestrians also said that the billboard sign had been there for many years and was tattered and worn.

The owner and person responsible for erecting the billboard sign is Grassroots Company Limited with registered address at 53 Log Way in your Jurisdiction.

- (i) What steps would you take in the proceedings on behalf of Rodger to secure his interest, and when and why would you take those steps?
- (ii) Draft the relevant defence to the claim against Rodger.

QUESTION 2

You issued a claim in the Supreme/High Court on behalf of your client, James Latchlie, claiming damages for personal injury, loss and expenses against Maynard Brown and Car Lender Limited arising out of a motor vehicle accident that occurred on Terrace Boulevard in your jurisdiction on November 30, 2018.

Car Lender Limited is a company registered in your jurisdiction and is the registered owner of the motor vehicle involved in the car accident with James. Maynard is the driver of the motor vehicle involved in the accident with James. Maynard ordinarily resides in the United States of America but was visiting your jurisdiction to attend a music festival to be held there on December 1, 2018.

On the evening of the accident Maynard was flown out of your jurisdiction by emergency ambulance back to Florida for surgery and treatment. The police report shows that Maynard at the time of the accident was driving on the opposite side of the road on Terrace Boulevard when the motor vehicle he was driving bearing registration number 3810FY collided head-on with the motor vehicle James was driving bearing registration number 3876GT.

The police report confirmed that Maynard resides at 8 Juncture Blaze, Florida, USA, 230978 and Car Lender Limited's registered office is at 6 Joy Lane in your jurisdiction.

- (i) Advise James how you intend to effect service on Maynard and the considerations that apply. Your advice must include the procedural steps you will take, the documents required and the contents thereof.
- (ii) List the order(s) that you expect to receive from the court that would enable you to effect service on Maynard.

QUESTION 3

Your law firm assumed responsibility for a matter that had previously been handled by another firm. Your senior partner has assigned the matter to you. From the file you see that the former attorneys-at-law for your client, Peter Jackson, had issued a claim on his behalf against Reads Architecture Limited with registered office at 5 Balmoral Way in your jurisdiction.

The claim concerned the collapse of the entire second floor of Peter's house ("the collapse") which had been designed by the defendant. The construction of the house was completed on November 30, 2011 by Lighthouse Construction Limited, a construction company with registered office in your jurisdiction. Peter instructs you that the defendant had referred him to Lighthouse Construction Limited to construct his house.

The collapse occurred exactly two years after the date of completion of the construction of the house. The cause of action pleaded in the claim form is negligence for faulty architectural design. The claim form and particulars/statement of claim were filed on November 1, 2015.

The defendant properly filed an acknowledgement of service and a defence denying it was negligent. The case management conference has already occurred but due to delay by the defendant in the filing of an expert report, the original trial date set at the case management conference was adjourned. The trial is now fixed for December 2, 2019.

You see on the file a written contract between Peter Jackson and Reads Architecture Limited dated January 2, 2009. The contract shows at clause 10 (2) that Reads Architecture Limited warrant that their construction designs guarantee resistance to wear and tear for 25 years. You have considered that the collapse is therefore a breach of the contract.

- (i) What advice would you give to Peter about his present claim before the Court?
- (ii) What procedural steps would you now take in the claim on behalf of Peter and why?

QUESTION 4

Mr James Right and Mrs Loli-Ann Right, husband and wife, attend your law office for a consultation meeting with you. They inform you that over the last three years their neighbour has been constantly playing loud music and having parties at his house. They said that he has been their neighbour for the last eight years, and they recently learnt that five years ago, he was made redundant from his job and decided to turn his house into a venue for events.

Mr and Mrs Right inform you that the last event occurred three weeks ago on a Saturday. It was a dance with a sound system that played all Saturday and up to 6 Sunday morning. Mrs Right informs you that she was not very well on the night of the dance because, as the music blasted, she experienced great pain in her head all night. Since then she has had a residual headache. As a result, her doctor has had to prescribe very strong pain medication to help relieve the headache, but it only numbs it as the pain does not go away.

Mrs Right informs you that she has had to do various tests, recommended by her doctor, to investigate the cause of the continuing headache. She still has more tests scheduled, as the previous ones came back inconclusive. Mrs Right is very upset and annoyed at her neighbour

and wishes immediate legal action could be taken to force her neighbour to move from the neighbourhood or stop hosting events at his house.

Mr Right is less upset but is very concerned that another event at his neighbour's house may make his wife's condition worse. Further, Mr Right instructs you that the morning after the dance he found the front part of the fence he paid to build between his house and the neighbour's house completely torn down. He does not know who at the dance did it, but he is adamant that their neighbour should be responsible for fixing it or reimbursing him.

Mr Right also informs you that since the dance, he has expended thousands of dollars to replace his windows at his house with soundproof windows. He believes the neighbour should be responsible for all of his costs or at least part of his costs to replace his windows.

Discuss, giving reasons, the pre-litigation issues you would consider before responding to or taking any legal action on behalf Mr and Mrs Right.

QUESTION 5

On January 10, 2017, Dream Bank Limited ("the bank") entered into an agreement with Rudy Boss to lend him \$2,500,000, together with interest at a rate of 6% per annum. The purpose of the loan, as stated in the loan agreement, was partly to pay off all debts owed by Rudy's bakery business and partly for the purchase of new equipment to make the business more efficient.

After the loan was disbursed, Rudy used the entire sum to pay for emergency surgery, for his wife, who at the time was very ill. Rudy admitted this to the bank, in writing, when he sought a six-month moratorium on the date to commence monthly payments. The bank manager who had approved the loan was Rudy's high school classmate, Mark Sparks. Mark also knew Rudy's wife because they all went to the same high school. Mark sympathized with Rudy and his wife's situation and approved the six-month moratorium for the commencement of the loan payment.

It has now been over two years, and Rudy has not made any payment on his loan because he went bankrupt. This was as a result of the debts owing for the business and the increasing medical expenses to care for his wife.

Mark was recently terminated by the bank and the bank has hired a new bank manager with the specific mandate of collecting and cleaning up all outstanding loans at the bank. The new bank manager has written to Rudy demanding that the loan together with interest be repaid in full. Rudy has failed to meet the bank's payment deadline.

The new bank manager has engaged you to file a claim on behalf of the bank against Rudy, which you have done. Rudy has been personally served with the claim form and particulars/statement of claim and has filed an acknowledgement of service and a defence. In his defence Rudy merely denies that he breached the loan agreement.

The new bank manager, on behalf of the bank, instructs you that he wants the claim to be disposed of as soon as practicable in favour of the bank.

- (i) Advise the new bank manager as to the option(s) available to the bank for securing an early judgment and the likelihood of success.
- (ii) Describe the procedure and outline the content of the documents you would need to achieve your objective in (i) above.

PART B

FAMILY

ANSWER BOTH QUESTIONS 6 and 7

QUESTION 6

Cherry Curry has come to see you. She instructs you that she and her two children live with her cousin, Arthur, and his elderly mother, her aunt, Willow. The house in which they live belongs to her aunt.

Cherry moved into the house three months ago and, since then, has become aware of some disturbing behaviour on the part of her cousin. She instructs you that she has witnessed Arthur beating her aunt Willow on five occasions. After each beating, Arthur dragged his mother to the cellar of the house forcing her to remain there overnight, forcing her to remain there overnight without food on two occasions. Cherry's attempts to intervene have not been successful as Arthur has threatened to throw her and her children out on the street. She has nowhere else to go and is also concerned about what would happen to her aunt in her absence.

A few days ago, as Cherry assisted her aunt Willow with her bath, she was shocked to note that she (Aunt Willow) was covered in scars along with the bruises from her recent beatings.

Her aunt Willow is 92 years old. She is arthritic and almost blind. Arthur is a market vendor and often boasts of making a good living, while commenting that he would have much more to show for it if, "...*Mama would just do what other old people did and died...*" so he could stop spending his money taking care of her.

Cherry further instructs you that her two children are Apple Carter and Blue Martin. Four years ago, she obtained a court order in the lower courts which required Apple's father to pay her maintenance, the equivalent in your jurisdiction of US\$100 per week. He has been paying, however, lately Apple's expenses have increased. Apple has started high school and she (Cherry) has been unable to cover the increased expenses. Apple is now 12 years old.

Two weeks ago, one of her (Cherry's) ex-boyfriends, Randal Seaman, accosted her on her way back from work, accusing her of lying to him and claiming he knew that he was Blue's father. Since then, he has been sending her text messages, telling her that he wants to meet "*his daughter*". Cherry admits that she too has doubts, however, her current boyfriend, Kenneth Martin, is the only father Blue knows. Kenneth has been maintaining her since birth and they are happy. Blue is two years old.

Advise Cherry:

- (i) what steps, if any, may be taken to protect her aunt;
 - (ii) whether she is able to take further action against Apple's father, giving reasons; and
 - (iii) what steps, if any, Randal Seaman could take if he wished to confirm his suspicions.
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QUESTION 7

Gail and Armstrong Ranger were married on January 14, 2004.

There are three children of the marriage namely Robert, born on July 10, 2006, Maria, born on August 17, 2007 and Stefanie, born on February 12, 2009.

Gail and Armstrong are both civil engineers and they own their own consulting firm which they established four years after they were married. They both contributed to the firm's start-up costs from their respective savings, with Gail contributing 35%. The firm is very successful with both Gail and Armstrong contributing equally to its earnings.

In March 2010, the Rangers purchased a home at Modern Haven in the parish/district of St. Mar and had lived there until recently. The property was purchased in Armstrong's name only as Gail was away on business at the time the documents were signed. The deposit on the purchase price was paid from the earnings of the consulting firm and a mortgage was obtained to complete the purchase of the property. The monthly mortgage instalments are paid from the firm's earnings.

In 2015, Armstrong won a large sum in the lottery and used the greater portion to significantly modernise the house and to extend it by adding a double garage and games room.

In July 2018, Gail discovered that Armstrong had become involved with Angelica. Gail confronted Armstrong who confessed and indicated that he had become “a little bored” with the marriage and Angelica was a “nice” distraction.

Gail moved out of the house at the end of July, taking the children with her. She continues to work at the firm and wishes the present ownership of the firm to remain as it is.

Gail visits your office and expresses concern about the fact that the title document for the house is in Armstrong’s name alone. She is of the view that she has an equal interest in the property. However, Armstrong has repeatedly denied this and has refused all her requests to have her name added to the title.

She tells you further that Armstrong adequately provides for the children but she wants to formalise the issue of custody. She would prefer to have sole custody of the children but wishes the children to maintain a relationship with their father.

- (i) Advise Gail as to any interest she may have in the property.
- (ii) Prepare the originating document to carry out Gail’s instructions.

(The relevant form is available.)

END OF PAPER