

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

**LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, JULY 2020**

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

**MONDAY, JULY 13, 2020**

**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 required.
- (g) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (h) 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.**
- (i) 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.
- (j) 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 JULY 2020 EXAMINATIONS, CIVIL PROCEDURE AND PRACTICE DROP BOX** on TWEN by **Tuesday, July**

**14, 2020, NOT LATER THAN** 9:00 a.m. (Jamaica) 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).

- (k) 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 -1176 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box A Year I - 1100-1176***”.
    - Year I students with Examination ID numbers between 1177 -1252 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box B Year I - 1177-1252***”.
    - Year I students with Examination ID numbers between 1253 -1326 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box C Year I - 1253-1326***”.

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### **PART A**

Lucy Toucan is a computer technician who resides at 5 Rochester Way in your jurisdiction and is your client. You are an associate at the firm, Wade Law, Attorneys-at-Law, of Building 687 Kalong Way in your jurisdiction, telephone no. 000-879-367 and facsimile no. 000236-987.

On February 5, 2020, you commenced, on behalf of Lucy, a claim in the High/Supreme Court of your jurisdiction against Submarine Company Limited (Submarine), a company registered under the Companies Act/Ordinance of your jurisdiction with registered office at 5 Tavern Avenue, for damages for breach of contract and defamation.

Lucy had provided you with a contract, dated February 2, 2019, between Submarine and herself. At clause 3, the contract stipulated that Lucy provide Submarine with services as a computer technician for a term of six months at a contract price of \$3,000,000. Clause 4 of the contract provided that Submarine is to pay Lucy a deposit of 10% of the contract price and the balance upon completion by Lucy of the services. The Schedule in the

contract detailed the services to be provided by Lucy, as well as the timeline within which each task is to be completed.

Lucy had instructed you that, in accordance with the contract, she received the deposit from Submarine upon signing. Submarine paid the deposit by cheque number 000034, drawn on their account at Bank Limited in the sum of \$300,000. Lucy further instructed you that she had completed all agreed tasks within the agreed timeline. Upon completion, however, Submarine did not pay her the balance contract price due, notwithstanding her demands for it.

Lucy had instructed you further that, during the period of her contract at Submarine, she got along very well with all the staff, except the Information Technology Manager, Jacques Brown. He had told her, after her first week of working there that he did not like her. She instructed you that, during that first week, Jacques had asked her to fix an issue on his personal laptop, which she did. However, she told him that she was uncomfortable doing it because she did not think it was right to use the company's resources for personal matters, and that her contract was clear that her services were for the company. Lucy instructed you that, since then, Jacques has been very disrespectful to her and would undermine her at monthly meetings they both attended with the Chief Executive Officer (CEO), John Light.

Lucy had instructed you, however, that she had a good working relationship with John. John would commend her on the tasks she completed and would tell her to ignore Jacques's attitude. Lucy instructed you that for management meetings, she would submit a report of the tasks she completed under the contract, and both Jacques and John would sign off on it and provide her with a copy. She instructed you further, that all the reports she submitted, were signed by Jacques and John as satisfactorily completed.

Lucy had further instructed you that her last day under her contract at Submarine was August 3, 2019. On that same day, John orally offered her another contract for six months but she declined the offer, because of the anxiety she experienced while working with Jacques. She further instructed you that, on August 4, 2019, she received an email from Jacques that was copied to the entire 300 staff members at Submarine, which read as follows:

*Dear Team,*

*Please be advised that Lucy Toucan is no longer a part of the IT team at Submarine because her work was below our standards in the IT department. Management is looking internally for someone to continue the tasks Lucy once performed but do not bother to apply if you intend to operate like her.*

Lucy instructed you that she immediately responded to the email, which she copied only to John, demanding that Jacques retract his email and send an apology to her, copied to all 300 members of staff at Submarine. Lucy instructed you further, that John called her

upon receipt of her email and told her he would look into the matter. To date, she has not heard from either John or Jacques on her demand.

Lucy had provided you with copies of email messages between August 7 to August 9, 2019, exchanged between herself and John, which concerned her request for the balance contract price due to her. John's email of August 8, 2019 confirmed receipt of Lucy's email of August 7, 2019 and indicated that the accounts department was investigating the balance due to her under the contract. John's email of August 9, 2019 apologized for the delay in payment of the balance and assured Lucy that payment would be made to her by August 31, 2019. Lucy had instructed you that, to date, she has not received the balance from Submarine. Further, that she found out from a staff member that John resigned on December 31, 2019.

Service of the claim form and statement/particulars of claim were properly effected on Submarine. Submarine had acknowledged service stating an intention to defend and filed its defence within the time to do so. In its defence, Submarine denies the allegation of defamation on the basis that the email had not been circulated to the public and that the content of the email is true. The defence further admits the contract between Lucy and Submarine but merely denies that Submarine breached the contract. No reason has been given in the defence as to why Submarine has not paid the balance owing to Lucy. Submarine is represented by Sean Rowe of Rowe & Associates, Attorneys-at-Law, of 6 Richmond Parkway in your jurisdiction.

You meet with Lucy today to review and discuss the defence. She has indicated that she is about to start a Master's Degree programme in computer science and would like her claim to be concluded as soon as possible. She also expressed that the monies due to her would go a far way in assisting her to pay the costs associated with her studies.

- (i) Write an opinion advising Lucy of the option(s) that are available to obtain an early judgment and the procedural steps you would take to achieve the option(s).

Your opinion must not exceed **850 WORDS**.

- (ii) Draft the application, affidavit and draft formal order that you would file on behalf of Lucy to achieve the option(s) you would recommend at (i) above.

- (iii) Assume that you filed and served the documents at (ii) above. Submarine has now served your firm with an application for court orders seeking, *inter alia*, permission to amend their defence. Both applications were heard on the same date. The Judge who heard the applications ordered that:

*The Defendant is permitted to file and serve an amended defence within 14 days from the date of this order failing which the Defendant's statement of case shall be struck out.*

The court also treated the hearing as a case management conference and made a number of case management conference orders, including that:

*Trial is fixed for one day on October 1, 2020.*

Submarine has failed to file its amended defence within the time ordered to do so. The attorney-at-law for Submarine, Sean Rowe, wrote to you 7 business days after the defence was due for filing. He explained that Submarine's amended defence was not filed due to an oversight on his part, caused by his law office moving to another location on the same date the defence was due for filing. He has indicated that he intends to file the necessary application to protect Submarine's interest.

Advise Lucy on the application you would expect Submarine's attorneys-at-law to file on its behalf. Include in your advice the likely orders that would be sought, the grounds to be satisfied, the consideration the Court must have regard to and the likelihood of the application succeeding.

Your advice must not exceed **850 words**.

## **PART B**

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

Cain Agu and Rachel Kimbro-Agu have been married for seven years. They are the parents of Athena, born on March 9, 2015. They had been residing together in a three-bedroom house at 12 Crabtree Village, Jurisdiction. The house is owned by Cain and Rachel and is valued at US\$150,000.

Cain comes to see you and takes with him a court order. The order restrains him from returning to the house and from coming within 20 feet of Rachel and Athena and requires him to attend court in two weeks. The order was granted as a result of an altercation between him and Rachel. Since that time Cain has been living at 1 Oxford Place, Jurisdiction.

Cain instructs you that two days ago, he and Rachel had got into an argument after he had learnt that she had had an affair. He admits that the argument had become heated but denied hitting or threatening Rachel in any way. He instructs you that the violence came from Rachel, who had flown at him in a rage, scratching and hitting him and forcing him to push her back to avoid her blows. Rachel, he admits, had fallen over the back of the sofa and had suffered some bruises to her back and left side in her fall. He shows you scratches on his face and neck which he instructs you were caused by Rachel. Rachel, he states, had been violent on several occasions over the years but this incident had been the worst.

Cain tells you that the day before being served with the order he had met with Rachel in the company of the pastor who had married them. In the meeting, Rachel had made it clear that the marriage was over and she wanted, "...what was hers". When he had asked her what she had meant by that, Rachel had told him that she was entitled to 60% of the house and 75% of the shares which he owned in Zoom Tesla Limited (the shares).

Cain instructs you that he had purchased the house with Rachel a year after they got married. They had decided to have a small wedding and to use their savings and any gift of money they received, towards paying a deposit on a house. The savings and gifts had not been enough for a deposit and they had worked and saved for a year to raise the additional sum. The only house they could afford was an old house which needed to be refurbished. A mortgage was obtained in their joint names in respect of the balance purchase price.

Cain indicates that, at first, the mortgage was paid by them equally. However, he admits that he was made redundant from his job as a truck driver for a bauxite company three years into the marriage. He and Rachel had agreed that he should use the lump sum he received on being made redundant to start his own taxi operation. They had agreed that Rachel, a senior teacher, would be solely responsible for the repayment of the mortgage until the taxi started to make a profit. Unfortunately, the taxi business had not been the success they had hoped, and so, Rachel had continued repaying the mortgage alone. Cain instructs you further that he had used any money he had earned from the taxi to cover utility bills and to buy food but as he often had to maintain the taxi, he admits Rachel had sometimes helped him to meet his responsibilities.

Cain instructs you that he had purchased the shares prior to meeting Rachel. However, after they got married he was involved in a motor vehicle accident and was successfully sued for a considerable amount of money. At the time, he could not afford to pay the people who had been injured in the accident. His only option had been to sell the shares. However, Rachel, believing the shares to be a good investment, had stepped in and had taken a loan of US\$15,000 to pay the debt, avoiding the need to sell. At the time the shares were worth US\$20,000. Rachel had repaid the loan through monthly salary deductions. The shares are now worth US\$25,000.

Cain instructs you that, while he had not contributed to the mortgage repayments since being made redundant, he was good with his hands and had been instrumental in maintaining the house. He had personally repaired anything that had needed to be repaired. He believes that he is entitled to an equal interest in the house and 70% of the shares.

Cain instructs you further, that his father, Tyrone, had died a year ago. Tyrone, as far as Cain knew, did not have any other children. His father owned a house and Cain believes that as his father's only child the house is his. His father's name does not appear on his birth certificate and his parents were not married. He believes that if he was able to prove

his entitlement to his father's property, he could sell it and settle any interest Rachel has in the house and shares.

**Required:**

- (i) In no more than **1750 words**, advise Cain:
  - (a) whether he has any legal bases and, if so, the steps he may take, to challenge the court order;
  - (b) whether Rachel's understanding of her interest in the property is correct; and
  - (c) what he would need to prove in order to establish a legal claim to an interest in his late father's estate.
  
- (ii) Assume Cain has instructed you to commence proceedings in respect of the property. Prepare the originating document which you intend to have served on Rachel. Include any information you deem necessary to make your draft complete.

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**END OF PAPER**