

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2011

CIVIL PROCEDURE AND PRACTICE I

(THURSDAY, AUGUST 4, 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

FACTS FOR QUESTIONS 1, 2 AND 3

You are instructed by Mr Royston Woodland on behalf of his daughter Annie Maya Woodland who was born on February 24, 1996. Mr Woodland resides at 15 Cunningham Close, New Kingston in your jurisdiction.

Mr Woodland wishes to issue proceedings on behalf of his daughter as a result of personal injuries she suffered on August 23, 2006. The incident occurred while she was having swimming lessons. The pool at which the incident occurred is owned by GPS Ltd, a company registered in the jurisdiction with registered office at 11 Gordon Town Highway, Basildon. The company offers private swimming lessons. The lessons were being given by Paula Barber. Ms Barber is a certified swimming instructor. David Nest was on duty as a life guard. Both are employees of GPS Ltd.

Mr Woodland tells you that there were about 10 students in the pool. The class was divided into groups reflecting their swimming ability. Annie was one of the better swimmers. She was swimming her first length of the pool with others in the group when she got into difficulty. Although he says it is difficult to say precisely what happened, it is believed that Annie had a muscular contraction in her leg. She was seen to be in distress by fellow pupils. Annie was vertical but submerged under the water.

Her fellow pupils have provided statements which say that Ms Barber and Mr Nest were busy talking and laughing with each other and did not notice when Annie first got into difficulty. They say the pool was generally noisy in any event and efforts to alert Ms Barber and Mr Nest proved unsuccessful because they were conversing and distracted. Eventually after about two or so minutes, they say, they were able to alert Mr Nest. He jumped into the pool and pulled Annie to the side of the pool. They state that both Mr

Nest and Ms Barber tried to resuscitate Annie as there were shouts that she was not breathing. She was eventually resuscitated and taken to the hospital. Tragically Annie suffered a hypoxic brain injury and she has been left with severe learning disabilities.

Mr Woodland has promised to bring the report of a Consultant Neurologist (Jonathan Day) which confirms that Annie suffered hypoxic brain injury as a result of near drowning on August 23, 2006 and that the severity of her disabilities, suggest that her brain was deprived of oxygen for a period exceeding one minute. The report notes that she will be unable to live independently and will have a substantial handicap on the labour market.

Mr Woodland tells you that he is divorced from Annie's mother. Annie lives with her mother at 18 Hargwyne Street, Basildon in the jurisdiction. He has come to see you at this stage because he had left the matter up to Mrs Woodland who has custody of Annie. He says that he is surprised to have recently discovered that Mrs Woodland has not contacted an attorney-at law. Mrs Woodland has told him that she has been in contact with GPS Ltd and they have offered a sum of \$2M in settlement without any admission as to liability. Mrs Woodland told him that, "I can't be bothered with lawyers because I believe they will take most of the money and I just want to get it over and done with." She therefore wishes to accept the settlement offered by GPS Ltd. Mr Woodland however does not agree that this amount is sufficient given the extent of Annie's injuries. Your own research shows that \$2M would not be an adequate amount in the circumstances.

QUESTION 1

Advise Mr Woodland as to the pre-litigation issues you could consider prior to commencing proceedings.

QUESTION 2

Answer both (a) and (b).

- (a) Assume there is no settlement of the matter and that Mr Woodlands has now instructed you to commence proceedings on behalf of Annie. Draft the claim form required to do so.

(The relevant form is available.)

- (b) List the documents which would accompany the claim form outlining their contents.
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QUESTION 3

Answer both (i) and (ii).

- (i) Assume that proceedings are served upon GPS Ltd and that an acknowledgment of service form is returned by them. To the question on the form: "Do you intend to defend the proceedings?" the company indicates that it does not. Describe the steps you would now take on behalf of your client, outlining the contents of the document(s) you would prepare.
- (ii) Would it make any difference to your answer in (i) above, if shortly before you take the steps you describe in (i) you receive a letter from GPS Ltd which states *inter alia* the following:-

"With immediate effect GPS Ltd retracts in full any act or statement that could be construed as any form of concession."?

Give reasons for your answer.

QUESTION 4

On January 29, 2007, Sweet Fruits Ltd brought proceedings against Good Fruits Ltd for breach of contract for the sale of goods valued at \$350,000. On February 1, 2008, the claim form with attendant documents had been served on Good Fruits Ltd. On February 19, 2008, default judgment was entered against Good Fruits Ltd for failure to file an acknowledgment of service form.

On July 26, 2008, Good Fruits Ltd, by notice of application for court orders, sought to set aside the judgment.

The following was stated as the grounds on which the application was based:-

“While an acknowledgment of service form was not filed on behalf of the Defendant, the Defendant did file its Defence on February 19, 2008, well within the time for filing of the Defence. In filing its Defence the Defendant has notified the Court and the Claimant of its receipt of the Claim form herein and of its intention to defend the matter, thereby satisfying the purpose of the Acknowledgment of Service form.”

You are the judicial clerk to the judge who will hear the application to set aside the judgment in default tomorrow. She has asked that you write an opinion on the relevant issues for her consideration at the hearing. Prepare the opinion.

QUESTION 5

Your client is Mr Justin Brown. Mr Brown tells you that he signed as a co-guarantor for a business associate, Mr Vin Hodges, in respect of a loan facility of \$15.3 million, relating to a 7 storey commercial office and retail building development. The other guarantor was Mr Paul Smith, who is also a business associate of Mr Hodges. The loan was advanced by WestBank Ltd.

The development has failed and there is still a residual debt of \$8M outstanding. WestBank has brought proceedings against Mr Hodges. Mr Brown tells you that he saw Mr Hodges last week who asked him whether he had yet been served with the proceedings. Mr Hodges, who had been served, told Mr Brown that he had made a copy of the claim form for him. He then gave Mr Brown a copy of a claim form which had been issued in the Supreme/High court of your jurisdiction.

Mr Brown noted that his (Mr Brown's) name appears on the claim form as second defendant. He also noted that there was no mention of Mr Smith as a defendant on the claim form. He enquired of Mr Hodges whether the Bank intended to bring proceedings against Mr Smith. To that question Mr Hodges remarked, "I believe Paul is out of it, because his brother is now the Bank Manager."

Mr Brown is adamant that he is not willing to assume liability for the entire balance due to the Bank. Mr Hodges, he believes, is unlikely to be in a position to satisfy the debt because his funds are tied up in the failed venture. Mr Brown has come to see you with the claim form which was photocopied for him by Mr Hodges.

Advise Mr Brown.

PART B

FAMILY

QUESTION 6

With reference to the relevant forms, what are the procedural steps to be taken after a Respondent has been served, for a Petitioner to have a marriage annulled?

QUESTION 7

Alex and Daisy Hunte were married in May 2002. The marriage produced two children Zara born on January 25, 2003 and Jason born on June 14, 2004. Alex is the owner of a very successful construction company and he has a net income of \$25M per year.

Daisy is a qualified corporate secretary but Alex asks her to remain at home following the birth of their second child in 2004, to take care of the children. At that time, Daisy was earning \$5M per year and was fully able to maintain herself.

Alex and his family enjoyed a very high standard of living having purchased a very large home at 12 Millennium Heights in the parish of Saint Mary in 2005 for the sum of \$40M. The property was purchased in the names Alex and Daisy but Daisy made no monetary contribution to the purchase. In addition, the family went on holidays every year at

Alex's expense. The children attend St. Crispin's Academy which is a very costly private school.

In 2007 Alex became so engrossed in his work that he started to neglect Daisy. Daisy became very depressed and as a result started to neglect the children. She would forget the children at school and also forget to take them to their extra-curricular activities.

Daisy was so upset about her situation that she decided to move out of the matrimonial home and into her mother's home at West Lane in the parish of St. Thomas in February 2010. Daisy took the children with her but they were extremely uncomfortable as her mother's home is very small and occupied by Daisy's grown siblings and their own children. Daisy has to share her mother's room with her mother, Zara and Jason. They all sleep on a double bed. As a result Zara and Jason are not performing very well in school. They are unable to do their homework because of the noise in the house and they do not rest well at night.

Daisy visits your office and instructs you that she wishes to apply for custody of the children –

- (i) Advise Daisy on the following –
 - (a) the procedural steps to be taken in the High Court/Supreme Court on applying for custody and the documents required; and
 - (b) what matters will guide the court in making the orders.
- (ii) Draft the orders that you would seek in the relevant application.

QUESTION 8

Janet met Paul in May 2010. At the time she was living separately from her husband Norris. Janet tells you that she left him because she no longer found him exciting.

Janet became pregnant. In January of this year, a daughter Suzi was born.

Paul refused to attend to register the birth of Suzi with Janet and his name does not appear on Suzi's birth certificate. He has told Janet that he does not believe that Suzi is his child and has made no payments for maintenance since Suzi was born.

Norris issued divorce proceedings the day after Suzi was born making no reference whatsoever to her in the petition. The decree nisi will be heard later this month.

Advise Janet, who wishes to obtain maintenance for Suzi.
