

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2016**

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 16, 2016)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

You are a junior associate who commenced working for the firm, Law, Justice & Associates. The firm acts for Ever Ready Loans Limited, which is a limited liability company duly registered under the companies legislation of your jurisdiction. Its registered office is located at 21 Manley Boulevard, in the jurisdiction.

By virtue of loan contract dated March 10, 2013, Ever Ready loaned its customer, Mr. Breezy Poplar, the amount of \$3.5M at a rate of 15% per annum, totalling \$4,025,000 to be repaid over a period of 5 years by way of equal monthly payments of \$67,083.33. The monthly payments were to be made by salary deductions authorized by Mr. Poplar, who is employed to Smith's Electrical Engineering Limited.

The firm's instructions are that at the time the loan was obtained by Mr. Poplar, he submitted proof of his employment which indicated that he held the position of Engineering Manager for over a period of seven (7) years. To date Ever Ready has only received nine (9) payments by way of salary deductions. On enquiring of Smith's Electrical as to the reason the payments had stopped, the client was informed that Mr. Poplar had abandoned his job to live permanently in the United States of America with his fiancée.

On further enquiry, you are able to discover that Mr. Poplar now resides in Maryland, and his current address, with his fiancée is 1041 Cherry Blossom Parkway, Maryland, 34104 USA. You have also been advised that Mr. Poplar has started to work for the NACP in Maryland, at the address of 1410 Freedom Boulevard, Maryland, 34104 USA. The firm sent letters of demand to Mr. Poplar at both addresses in February 2014, and he responded by saying that he recently migrated with the intention of getting married. He also said that his wedding expenses were more than he had anticipated and as soon as he returned from his honeymoon in the Seychelles in June 2014, he would start to make payments for the amounts due and outstanding to your client.

However, despite letters sent to Mr. Poplar reminding him of his obligation, he has only responded with further promises and no payments.

In his last letter to Ever Ready in October 2014, Mr. Poplar boasted that his wife is pregnant with twins, and as soon as he is able to ascertain what his new budget will be, he will start to make payments to the client. No payments however, have been made and the client has instructed the firm to file a Claim against Mr. Poplar.

A Claim Form with Prescribed Notes to Defendant, Acknowledgment of Service of Claim Form and Defence form and Particulars/Statement of Claim have been filed. The Claim number is 2016 HCV 8888.

- (i) Prepare the Application/Notice of Application for service out of the jurisdiction to be effected on Mr. Breezy Poplar. **(DO NOT PREPARE THE AFFIDAVIT IN SUPPORT)**
 - (ii) Prepare a draft of the orders that you anticipate the Court will make in your favour.
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QUESTION 2

You are employed to the law office of Jacobs, Jacobs and Myer with address 15 Duncans Street in the jurisdiction. The firm's telephone and fax number is 555-5555.

Carla Brown, a grade 10 teacher of Prestige High School, attends your office. She gives you the following instructions:

"I was born on April 16, 1962. My address is 16 Pine Way in the jurisdiction. On August 6, 2012 at 7:00pm, I was on my way home in a public passenger taxi bearing registration number PP1268, which was travelling along John's Lane in the

parish/district of Saint Andrews. On reaching the vicinity of Melrose Place, the driver of the taxi I was in, overtook a line of traffic and collided head-on with a motor truck which was travelling in the opposite direction. The collision took place on the opposite side of the road. The driver of the taxi I was in was driving very fast and overtook the line of traffic on a section of the roadway which was marked with unbroken white lines as he approached the brow of a hill.

I sustained a broken right ankle and a broken right wrist. I also suffered a cervical strain to my neck and had muscle spasms in my back. I was assessed as having a 2% permanent partial disability.

Since the accident, I have been unable to do the activities I was able to do before the accident. If I sit for more than 30 minutes my back hurts and my neck gets stiff. I cannot hold my head down for too long to mark papers or to iron my clothes. If I hold my head in a fixed position for more than 30 minutes I have pain in my neck.

The medical expenses I have incurred are as follows:

- (i) pharmaceuticals amounting to \$5,000;*
- (ii) x-rays, injections and doctor's visits amounting to \$120,000; and*
- (iii) physiotherapy amounting to \$20,000.*

I did not have a helper prior to the accident but had to employ one to assist me with the ironing. She worked with me for 52 weeks (from the date of the accident). I paid her \$3,000 per week.

The name of the owner and driver of the taxi I was in, is Tyrone Brown. His address is 16 Washington Place in the jurisdiction."

Draft the Particulars/Statement of Claim on behalf of Carla.

QUESTION 3

You have recently graduated from the Norman Manley Law School and are now employed to Slim, Jim and Pim, Attorneys-at-Law. The law firm acts for and on behalf of John Black, the Claimant, in an action against the Attorney General of your jurisdiction. The Claim Form (with Prescribed Notes to Defendant, Acknowledgement of Service of Claim Form and Defence form), as well as the Statement/Particulars of Claim, was served on the Attorney General's Chambers. Service was acknowledged on October 10, 2015 but the Attorney General's Chambers has not filed a Defence to date.

Mr Slim, your supervising partner, has asked you to prepare a memorandum as to:

- (i) the steps you must now take on Black's behalf, setting out the relevant procedure and your reasons;
- (ii) the way the Attorney General's Chambers is likely to respond to those steps; and
- (iii) the orders (if any) the court is likely to make, giving reasons.

Prepare the memorandum.

QUESTION 4

Primrose Jones attends on your office. She presents you with a Claim Form and Particulars/Statement of Claim which she says were served on her on May 1, 2016. The Claimant in the matter is Doris Daye, and Primrose Jones is named as the Defendant. The Claim Form was dated and filed on January 2, 2015 and concerns a breach of contract in which damages are being sought. The breach was said to have occurred on January 5, 2010.

Primrose instructs you that she is the sole shareholder and director of her company, Jones and Stones Limited. Jones and Stones entered into a contract with Doris, a horse farmer, for the delivery of 700 bales of hay. The obligations under the contract were not fulfilled because

Cosmos Imports Limited, the company that should have supplied the hay to Jones and Stones, did not deliver it in time for Jones and Stones to make the delivery to Doris.

Anticipated damages recoverable by Doris would amount to no more than the equivalent of US\$500 in your jurisdiction.

Advise Primrose.

QUESTION 5

The firm you are employed to acts for Simplex Lynx Company Limited. Simplex Lynx Company Limited is a limited liability company, which creates and sells computer programmes to suit its clients' individual needs.

You are informed by the senior associate who supervises you that an application has been filed and served on Simplex Lynx Company Limited wherein the Claimant, in a claim against Simplecks Links Company Limited, seeks to obtain an order from the court to remove Simplecks Links Company Limited as Defendant and to substitute Simplex Lynx Company Limited in its stead. The Claimant has grounded his application on the basis that naming Simplecks Links Company Limited was a genuine mistake and it is your client, which should have been so named.

The Claimant has sued Simplecks Links Company Limited for breach of contract for failing to provide computer software to the Claimant which was to be used for inventory purposes. The Claim Form was filed on February 1, 2012 for a breach of contract that occurred on February 6, 2008.

Simplecks Links Company Limited is a company which offers entertainment services.

You are asked to prepare a legal opinion as to whether or not the Claimant's application will succeed. Write the opinion.

PART B

FAMILY

The following facts apply to both Questions 6 and 7

Kayla, 35, and Mike, 40, separated in June last year after years of trying to make their marriage work.

Mike, a high-ranking police officer, moved out and into a rented apartment in the same Mayfair Drive area. He wished to be close to Noah, the 5-year-old son he shares with Kayla, and Esther, his 9-year-old daughter from a previous relationship.

Both children remained with Kayla and Kayla's mother, Jessica, in the four-bedroom house which Mike had purchased with Kayla shortly after they were married.

Jessica had moved in when Noah was born. She cared for both children as Kayla, a flight attendant, was sometimes away from the jurisdiction for several days at a time, and Mike worked long hours. However, whenever Kayla was in the jurisdiction, she would care for the children herself and would take care of the housework personally. The children both attend the nearby Mayfair Pre-school and Primary School.

Mike comes to see you. He tells you that he and Kayla purchased the house seven years ago. The deposit had been US\$20,000 of which he had paid US\$15,000 using all his savings and Kayla had paid the balance from money she had inherited. They had taken a mortgage to cover the balance purchase price of US\$200,000 which he paid in monthly instalments of US\$1,200 up to 11 months ago. Since then, he has been paying US\$800 and Kayla has contributed US\$400 monthly.

During the marriage, they had agreed that Mike would pay the mortgage and Kayla would purchase clothes for the family and essentials for the home, whenever she travelled abroad. In addition, she would pay the household expenses and utility bills.

Mike further instructs you that he is tired of paying rent and has commissioned the services of a real estate agent to find a three-bedroom house in a neighbouring, less affluent community. He wishes to realize his interest in the Mayfair house and believes that he is entitled to at least 75% of the property.

Mike further tells you that he also needs your help in respect of his 2012 Toyota Land Cruiser motorcar which he purchased two years ago while he was away from the jurisdiction. He had instructed Kayla to access his account and carry out the purchase, consequently, the car was registered in her name alone. Since the separation, Kayla has threatened on numerous occasions to seize and sell the car and take the money. These threats have been linked to requests for increased maintenance for the children, as she often complains that the mortgage payment she now makes, leaves her unable to meet her monthly expenses.

Mike wishes to have the motorcar registered in his name.

QUESTION 6

Advise instructing counsel of Mike's chances of obtaining the remedies he seeks.

QUESTION 7

Mike instructs you that he wishes to be settled in his proposed new home in about six months and wishes to have both children move in with him. He tells you that he has broached the subject with Kayla who has flatly refused. He tells you that if he cannot have both children he intends to

take Esther alone. Esther's mother, Carla, had moved overseas when she was two years old and has had no contact with either of them since.

Mike's sister, Leanne, the children's favourite aunt, has agreed to move in with him to be at home whenever the children come home from school. Mike has no difficulty with the children spending weekends with Kayla.

Mike insists that his recent promotion has allowed him to be in office doing more administrative work for fewer hours and, although Kayla has always been a good mother, he believes that the children will be happy with him. Since the separation he has used his free time to take them swimming on a regular basis at the local pool. The children would have no need to change schools. Mike believes his mortgage on the new house will be less than he now pays, and he will therefore have no difficulty providing for the children's needs without Kayla's help.

Advise Mike on:

- (i) the matters that will guide the court in making an order; and
- (ii) the procedural steps to be taken in the High Court/Supreme Court on applying for the order(s) he seeks, including the documents required.

QUESTION 8

Jennifer Swan married Jonathan Juniper on February 14, 2008. The parties are very religious, and in fact Jonathan is a lay preacher in their church. Jonathan is unhappy with the state of his marriage and withdraws from the matrimonial room in April 2015. Jennifer is shocked by this turn of events, but considers it a temporary setback. She continues to perform all other wifely duties. However, to the world at large, the Junipers are a happily married couple, as they still attend church services and other church functions together.

In May 2016, Jennifer is served with a Petition for divorce/dissolution of marriage. A tearful Jennifer attends your office with a copy of the Petition, indicating that she doesn't want a divorce, and believes her marriage can be saved.

- (i) Advise Jennifer if her divorce/dissolution can proceed at this time and the steps that can be taken to obtain the result she desires.
- (ii) Would your answer to (i) be different if the Petition for divorce/dissolution of marriage had been served on Jennifer's mother? Give reasons.

END OF PAPER