

# COUNCIL OF LEGAL EDUCATION NORMAN MANLEY LAW SCHOOL

## LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, OCTOBER 2020

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

MONDAY, OCTOBER 12, 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 OCTOBER 2020 EXAMINATIONS, CIVIL PROCEDURE AND PRACTICE I DROP BOX on TWEN** by **Tuesday, October 13, 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**

You are an associate at the law firm, Washington & Washington, Attorneys-at-Law of 22 Paintsville Road in your jurisdiction, telephone no. 000-123-456 and facsimile no. 000-789-1011. Your firm represents Rachel Price of 6 London Way in your jurisdiction in claim number 2019HC000780, issued on her behalf on March 31, 2019, in the High/Supreme Court of your jurisdiction. You and the litigation partner at your firm, Beverly Roads, are assigned to Rachel’s matter.

Rachel’s claim is against Super Grand Resorts Group Limited, a company incorporated under the Companies Act/Ordinance of your jurisdiction with registered office and head office at Blue Hole Bay in your jurisdiction, for damages for negligence, at common law and under the Occupiers Liability Act, as well as breach of contract.

Rachel had instructed you that Super Grand Resorts Group Limited is the owner and manager of five resort properties, one of which is Johnson Resort & Spa situated at 3 Paradise Way in your jurisdiction. The statement/particlars of claim described Super Grand Resorts Group Limited as Rachel’s employer and the owner of the property on which Johnson Resort & Spa operates.

Rachel instructed you that she is a certified chef, who had worked in the kitchen at all five resort properties for five years, before her employment was terminated on Friday, January 31, 2014.

Rachel instructed you that on Friday, December 15, 2013, she had received an email from the Human Resources Manager of Super Grand Resorts Group Limited, Denise Lake, informing her that she was to report to work at Johnson Resort & Spa on Monday, December 16, 2013 at 6:00 a.m. Rachel instructed you that she reported to work at Johnson Resort & Spa as directed and, while walking at the back of the property towards the main kitchen, she fell into an uncovered manhole. As a result of the fall, she suffered a serious fracture to her right forearm.

You were further instructed by Rachel that following the accident her right forearm was set in a cast and she was away from work on sick leave. Upon her return to work on January 31, 2014, she was told by the Human Resources Manager that her position was filled and her services no longer required. She, later that day, received an email from the Human Resources Manager confirming her services were no longer required, and informing her that payment of the final salary due to her, was deposited directly to her bank account on file.

Super Grand Resorts Group Limited served your firm with a defence. The defence denies that Super Grand Resorts Group Limited is the owner of the property on which Johnson Resort & Spa operates and denies any liability for the injuries, loss and damage Rachel claims she suffered. Further, Super Grand Resorts Group Limited denies being Rachel's employer and alleges that Rachel's employer was Resorts Jobs Limited, a company incorporated under the Companies Act/Ordinance of your jurisdiction with registered office at 6 Beacon Avenue in your jurisdiction. The defence alleges that Resorts Jobs Limited employs persons to provide services for hotels and resorts. The defence also refers to and annexes a copy of a document dated January 13, 2009 alleged to be a contract of employment between Resorts Jobs Limited and Rachel. Super Grand Resorts Group Limited's attorney-at-law is Juliet Justice of Justice Rules & Associate of 78 Gummy Bay in your jurisdiction, telephone no. 000-1213 and facsimile no. 000-1415.

You meet with Rachel today to review and take instructions on the defence. She instructs you that she now recalls filling out an online form for a chef position on the Resorts Jobs Limited website on January 13, 2009, to which she applied her electronic signature and paid a fee online. Rachel explained that she did not know the form was a contract between her and Resorts Jobs Limited and she did not receive a copy of the contract from Resorts Jobs Limited.

Rachel instructs you further, that it was Resorts Jobs Limited who had contacted her by email received on January 15, 2009 about attending an interview with Super Grand Resorts Group Limited. After her interview with the Human Resources Manager for Super Grand Resorts Group Limited on January 18, 2009, it was Resorts Jobs Limited who informed her by email received on January 24, 2009 that she had been offered the chef

position. The email said that, if she accepted the offer, she should report to Super Grand Resorts Group Limited's head office on January 31, 2009, which she did.

Rachel, however, instructs you that after she started working with Super Grand Resorts Group Limited, she had no further communication with Resorts Jobs Limited. She explained that during the years of working with Super Grand Resorts Group Limited all matters pertaining to her job, including annual increases in her salary, were communicated to her by the Human Resources Manager for Super Grand Resorts Group Limited either by email, by letter on Super Grand Resorts Group Limited's letterhead or orally. She indicated this is why she believed that Super Grand Resorts Group Limited was her employer.

You subsequently conducted research on Johnson Resort & Spa and learnt that Steve Johnson is the registered proprietor of the property on which that resort operates. The copy of the title to the property you obtained from your search has Steve's residential address as 26 Millicent Drive in your jurisdiction.

- (i) Prepare a memorandum to the litigation partner advising on the steps you propose the firm should take to maintain Rachel's claim, including an assessment of the likelihood of success.

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

- (ii) Draft the application, affidavit and draft formal order you would file to successfully maintain Rachel's claim.
- (iii) Assume Steve Johnson had originally been named as a co-defendant in the claim the firm filed on Rachel's behalf. On April 1, 2019, you engaged Peter Reid, a process server from the court at Canon Street in your jurisdiction, to serve Steve with the sealed claim form and statement/particulars of claim dated and filed on March 31, 2019, prescribed notes to the defendant, acknowledgement of service form and form defence ("the documents") at his residential address.

Peter reported to you that he attended at Steve's home address on April 2, 2019 at or about 8:00 a.m. and no one was there. The following morning, he again visited Steve's home address at or about 7:00 a.m. and saw a woman who identified herself as Tricia Johnson. He told Tricia that he works at the court and enquired of her if Steve resides at this address. Tricia informed him that she is Steve's ex-wife and that Steve used to live there but moved out when their divorce was finalized three months ago. He enquired of Tricia if she knew where Steve now resides. She informed him that she heard from his sister that he moved back to his family home at 3 Belhaven Meadows in your jurisdiction.

Peter further reported that he attended at 3 Belhaven Meadows on April 5, 2019 at or about 7:00 a.m and saw an older gentlemen gardening. He told the

gentleman he worked at the court and enquired if Steve Johnson resided there. The gentlemen told him (Peter) that he is Vincent Johnson and Steve is his son. Peter informed you that Vincent confirmed that Steve resides there now and that he previously resided at 26 Millicent Drive. Peter informed you that he told Vincent he had some documents for a claim filed against Steve in court and asked him to call Steve to collect them.

Peter reported further that Vincent went inside the house to call Steve. He (Peter) reported that he waited 30 minutes for Steve to come outside but Steve did not. Vincent eventually came back outside and told Peter that Steve was not feeling well and was resting. Peter informed you that he gave the documents to Vincent and asked him to give them to Steve. Peter believes that Steve was trying to avoid service.

Steve has not filed and served an acknowledgement of service or defence and the prescribed time to do so has expired.

Draft the document you would have filed in the claim to prove effective service of the documents on Steve.

## **PART B**

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

Jimmy and Marsha were married 25 years ago. They live in a house which was purchased by Jimmy one year after the marriage. The title to the house was registered in Jimmy's sole name. It was purchased using a deposit the equivalent of US\$2,000, and the remaining mortgage, the equivalent of US\$35,000, was repaid by Jimmy over the following 20 years. The house now has a value the equivalent of US\$80,000.

For the first 10 years of the marriage, Marsha used her earnings to pay all the household expenses, which Jimmy could not afford to do while he paid the monthly mortgage. Marsha stopped working after the birth of their first child and did not return to work until the last of their three children had started elementary school, which was five years ago. Since returning to work, Marsha has used her earnings to have air conditioning units installed, update the fixtures and fittings, convert the garage into a studio apartment and landscape the yard.

Six months ago, Jimmy lost a significant sum on the stock market and has become increasingly bad-tempered with Marsha and the children. He is very critical of anything Marsha does, and his methods of "disciplining" the children have become very extreme and, at times, violent. Marsha has become as adept at hiding the children's rule-breaking from her husband, as she is at dressing the wounds, which sometimes result from his latest act of "discipline". The house is tension-filled and this situation worsened three

months ago when Marsha got a promotion which made her the main breadwinner for the family.

Two nights ago, Mackenzie, their youngest, brought home a report card which showed that she had failed half of the tests she had recently taken. Concerned about Jimmy's reaction, Marsha hid the report card. However, Jimmy had seen one of Mackenzie's teachers on his way home from work and she had expressed to him her disappointment in Mackenzie's performance. Jimmy walked through his front door and went straight to MacKenzie's room. He demanded to see the report card, and as MacKenzie struggled to respond, he hit her several times swearing at her as he did so. Merrick, their oldest, rushed in to assist his sister and he was punched in the stomach by his father. When Marsha tried to intervene, Jimmy accused her of keeping things from him, and threatened to put her over his knees as was done to women who misbehaved in his grandfather's time. In the argument which ensued, Marsha told Jimmy that she had had enough. Jimmy then threatened that if she walked away from him she would leave with nothing, as he would, "exact every pound of flesh" from her that he could. Marsha and the children have nowhere else to go.

Further, Marsha had had an affair before the birth of her second child, Lara. Two weeks ago, while shopping with the children, Marsha encountered Jonathan with whom she had had the affair. As they exchanged pleasantries, she had noticed that Jonathan had looked curiously at Lara. A few days later, Marsha received a telephone call from Jonathan. He demanded to know if he was Lara's father and that a DNA test be done. Marsha had refused. She is uncertain about Lara's paternity and is concerned that Jonathan could cause an already volatile situation with Jimmy to worsen.

**Required:**

In no more than **1750 WORDS**, advise Marsha on:

- i. the options open to protect her children and herself;
- ii. what her beneficial entitlement is, if any, to the house, detailing the legal bases of your advice;
- iii. what action(s), if any, Jonathan could take to determine the truth about his suspicions, giving reasons; and
- iv. the consequences, if any, were Jonathan found to be Lara's biological father.

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**END OF PAPER**