

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, AUGUST 2021**

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

MONDAY, AUGUST 09, 2021

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 to be used.
- (g) Where word limits have been given, the actual word counts must be included at the end of your answer. Students who have exceeded the word limits will be penalised.
- (h) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (i) 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**.
- (j) 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.

- (k) 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 AUGUST 2021 EXAMINATIONS, CIVIL PROCEDURE AND PRACTICE I DROP BOX on TWEN** by **August 10, 2021, NOT LATER THAN** 9:00 a.m. (Jamaica) 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).
- (l) 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 -1192 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box A Year I - 1100-1192”**.
 - Year I students with Examination ID numbers between 1193 -1283 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box B Year I - 1193-1283”**.
 - Year I students with Examination ID numbers between 1284 -1376 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box C Year I - 1284-1376”**.

PART A

You are an associate at the firm Law Boom & Associates, with offices located at 268 Blake Road, Jurisdiction with telephone number 000-567-8709, fax 000-987-0234 and email lawboom@law.com. In November 2020, you met with Osmond Blue for a consultation regarding a claim he wished to make.

Osmond instructed you that he is a professional disc jockey and on December 5, 2015, he agreed to play at a New Year’s Eve beach party at Lego Beach Resorts in your jurisdiction (“the Resort”). The beach party had been organized and hosted by Chance

Channing, who had agreed to pay Osmond US\$3,000 to play at the event between the hours of 9:00 p.m. - 1:00 a.m.

Osmond instructed you further, that on the day of the event, that is, December 31, 2015, he along with his protégé, Wayne Wallace, attended the Resort at 6:00 p.m. to set up his equipment for the music, on the stage that had been erected on the beach for the event. Chance was responsible for providing the stage for the event. Osmond instructed you that he had noticed that directly behind the stage and in the area, where he had discussed with Chance he would set up his equipment on stage, were two double stacked 8'x6' wooden shipping containers. Osmond explained that he had not expected to see containers behind the stage, and was not comfortable with them being there. He therefore, asked Chance whether the containers could be removed. Chance told him to speak with the manager of the Resort about it.

Osmond further instructed you that he did speak with the manager of the Resort, Kerry Small, who informed him that the containers were empty containers that belonged to the owners of the Resort, Jason and Jackson Spielberg. She could not remove them without their permission, as they had directed that the containers be placed at that location on the beach.

You are further instructed by Osmond, that the electrical outlet on the beach was located where the stage was erected, and so he had no choice but to set up his equipment on the stage in front of the containers.

Osmond instructed you that the event was well attended, so that there was a crowd surrounding the stage while he was playing the music. At a little after 12:00 midnight, a patron at the event, in celebration of ringing in the New Year, discharged his licensed fire arm with two shots in the air. Some persons in the crowd upon hearing the shots, dispersed frantically towards the stage. The stage, however, had not been properly secured in the sand and when the crowd pushed against it, the stage shifted backwards against the containers behind it. This caused the top container to fall forward on Osmond and his equipment on stage.

Osmond instructed you that he was knocked unconscious by the container and he was in a coma for 18 months. The day after the accident the local hospital rushed him by air ambulance to Macbeth Hospital in Miami, USA where he received medical treatment. When he came out of the coma he was unable to speak, to walk or to write because the impact of the container to his head had caused brain and spinal cord injuries. He further instructed you that it was only after undergoing three major brain surgeries that he regained the ability to speak and to write again. His team of doctors in the USA have advised that he may never walk again. You observed that Osmond was in a wheel chair.

Osmond instructed you that his medical expenses in the USA were significant. Further, after he was discharged from Macbeth Hospital and returned home from the USA in

January 2019, he continued speech therapy as well as physiotherapy for his upper and lower body.

Osmond instructed you further, that he was a popular disc jockey, accustomed to earning approximately US\$25,000 a year playing at various events. He instructed that a number of his contracts for events planned in 2016, were cancelled because of his injury. You are further instructed by Osmond that Wayne (his protégé) informed him that Chance did not pay for the event, even though he (Wayne) requested it from Chance on Osmond's behalf. Wayne also had informed him that his (Osmond's) equipment was destroyed from the accident.

INSTRUCTIONS:

- (i) What are the preliminary considerations and issues you would have advised Osmond about before taking any legal action on his behalf, stating your reasons.
- (ii) You issued a claim form on December 11, 2020 on Osmond's behalf in the High/Supreme Court against Chance, Jason and Jackson. On February 3, 2021 you engaged Peter Lewis, a process server, to serve the claim form, statement/particulars of claim, prescribed notes to the defendant, acknowledgement of service form and form defence ("the documents") on Chance at his last known residential address at 5 Beat Street, Jurisdiction. You provided Peter with a photograph of Chance that you had received from Osmond for the purpose of service.

Note:

Your response to (i) and (ii) above must not exceed **1,000 words**.

On February 15, 2021, Peter returns the documents to your office and reported that he visited the given residential address for Chance on February 4, 2021 at about 8:00 a.m. where he saw a man who identified himself as Bruce Channing, Chance's father. When he asked Bruce for Chance, Bruce told him that he and Chance had an argument in December 2019 and since then Chance left his house and he has not seen him since. Peter explains further that he enquired of Bruce whether he knew where Chance may now be living. Bruce told him he did not know for sure but suspected that Chance may be living with his girlfriend, Natasha Keen, at her address at 6 Drumline Parkway, Jurisdiction.

Peter informs you that he visited the girlfriend's address the following day at about 8:00 a.m. and Chance was not there. He spoke with a woman who identified herself as Natasha, who told him that Chance and her are on and off in their relationship and so he (Chance) does not always stay by her house. She explained further that Chance had stayed by her house two nights ago but she has not seen him since and does not know when next he will visit.

Peter informs you that he again went to Natasha's address on February 9, 2021 at about 7:00 a.m. and waited for an hour to see if anyone resembling Chance would enter or leave Natasha's home. No one did.

Assume that service has been effected on Chance. Discuss the options, including the procedural steps that would have been necessary to effect service on Chance.

- (iii) Assume that after you had issued the claim, Osmond further instructed you that he learnt from Wayne (his protégé) that Jason and Jackson Spielberg had migrated to Canada. You hired a private investigator to determine their whereabouts, who reported to you today that Jason and Jackson now both own a camping resort in Alberta, Canada situated at 2010, Stony Plain Road NW Edmonton, AB T5N 6Y8, which is where they reside.

Draft the application, affidavit and draft order you would file to ensure you can effect service and pursue the claim against Jason and Jackson.

PART B

(This part must be commenced on a new page and titled Part B)

Mariah Gillis-Crochet comes to see you. In the course of your consultation with her, you record the following statement:

"My husband, Timothy and I married in July 2010. Before getting married, we had decided that because we had married late in life (he was 43 and I was 47) and did not have children of our own, we would try to help children in need by becoming short-term foster parents.

We agreed that before we started to foster, we would purchase a house that allowed us to have ample space to foster at least four children at a time.

After we got married, and because we were saving towards the purchase of the house, we decided to move in with Timothy's sister, Tammy and her family. They had a small apartment at the rear of their property that suited our needs. We remained there for two and a half years, saving as much as we could from my earnings as the owner and operator of a small grocery store and from Timothy's job as the general manager of a large chain of department stores. After two years and three months, we had saved enough. The house we purchased was being sold for US\$250,000. We made a ten percent deposit and obtained a mortgage in respect of the balance of the purchase price. The house was large and had four bedrooms. It was in the country and had a lot of garden space for children to play in and for me to carry on my hobby of gardening.

The house needed some work to make it suitable for us and the children that we hoped to foster. Timothy and I agreed that he would use his savings to cover 85 percent of the deposit while I would provide the other 15 percent, retaining the balance of my savings to do the necessary renovations and furnishing of the house.

As we had agreed, after the house had been purchased, I set about making it suitable for our needs. I hired workmen who updated the bathrooms and kitchen, carried out repair work on the roof and I replaced the tiles throughout the house. When the renovations were completed, I furnished the house. Two rooms were furnished with a bunk bed each so they could be occupied by two boys or two girls, and I furnished one bedroom to suit a teenager. I also furnished the rest of the house. When it was completed it was comfortable for Timothy and me and when our first foster children arrived, they too were comfortable in the setting we had created. It cost me US\$15,000 to carry out the renovations and to purchase the necessary furniture.

Over the years that passed, Timothy and I agreed that we would share the payment of the mortgage and utilities equally, while I would provide the groceries and other household items from my grocery store. We were paid a small stipend for each child that we fostered and I would be the one to use that money to pay for whatever was needed for the household (that was not available from my store) and to pay for the household help we needed, to ensure the smooth running of the house. All went well and over the years we fostered several children for short periods of time. Timothy and I were happy with the way things were going in our marriage and in our lives.

In 2018, we were asked to foster three siblings, twins, Anderson and Allison aged 12 and two-year-old Max. We fell in love with the children and decided to adopt them and stopped fostering. All was well with our family until a year ago.

It all started when we were placed in lockdown as a result of the COVID-19 pandemic. I was advised by my doctor to remain at home because of my age and the fact that I have diabetes, and I have been managing the operations of the grocery store remotely. Timothy also remained at home.

This was the first time since our marriage that Timothy and I had spent so much time together, and this coupled with the fact that all the children were also at home with us, caused us to argue frequently. Timothy was often very angry and seemed to be dissatisfied with everything. Things came to a head four months ago, after his sister, Tammy contracted the COVID-19 virus. After several anxious weeks of her being on a ventilator, she died.

Timothy and his sister had always been very close and he was devastated by her death. After her death he became angrier, lashing out at the children and at me. At first he would shout obscenities at us or just shout. This left the children cowering in fear. The children had come to us after being in very troubling circumstances and I was concerned that they

would be further affected by Timothy's behaviour, so, I arranged for them to spend some time with my sister, Olive. I believed that it would help if Timothy and I could spend some time alone. However, nothing changed except I now became the sole target of his anger. He has shouted at me on several occasions telling me that he wished I had been the one to die and not Tammy and when I reminded him that if I had caught the virus, it is very likely he would have too, he became angrier and pushed me away from him with such force I fell over and hurt my arm. Since then, he has pushed me roughly three more times, on one occasion my arm was badly bruised.

Things got even worse last week after an old friend, Jeremy came to see me. After he left Timothy accused me of cheating on him. We argued and for the first time he hit me. He apologised after, and since then, he has stayed away from me but I am concerned about what will happen the next time he gets angry. I do not want to continue in this marriage. I told Timothy that I thought it best if we separated, and suggested he move out. He angrily refused and told me that I was free to leave whenever I liked but I would have to leave the twins behind. He seems to have no interest in Max. I, however, have no intention of leaving any of my children behind.

I told Olive about my circumstances and she offered to allow me and the children to remain with her until I sort things out with Timothy. Olive lives in a rented two-bedroom house. The children have a good relationship with their aunt and have always enjoyed spending time with her. In any case, she lives close enough to where we used to live so that there would be no need for the twins to change schools. Their school had resumed in person instructions two months ago. Max will be starting basic school in September. Timothy and I had already agreed that he should attend the school at which Olive was a teacher, Holy Grail Day Care and Basic school. Max attended the day care before the pandemic. The twins attend Mark Twain High School and are now both in grade nine.

The children have been through so much already. They have developed a close relationship with Timothy and me, and over the past year I got closer to Allison who seems to find it easier to open up to me while Anderson loves to be with his father. His father is a sports fan and Anderson is very athletic so they spend a lot of time watching televised sports. Timothy also coaches Anderson in preparation for his various sporting activities. Timothy, however, shows very little interest in Allison's interests of dancing, music and gymnastics and more often than not I attend her events alone. On the occasions when he did attend, it was after there had been much urging on my part. I have made it a priority to show up for all my children.

While Timothy and I agree on the manner in which the children should be educated we have never shared the same religious views. Timothy is agnostic and I am a Christian. I have always insisted that the children attend church with me but now that they are older, Anderson has refused to attend church. I am surprised by Anderson's refusal as he had many friends with whom he would look forward to spending time on Sundays and at

various church events. He and Allison had always been very involved in the church's youth activities. I believe his behaviour is related to his father's beliefs and influence. I also do not believe it to be a coincidence that three weeks ago, Anderson's school called home to report that he had missed several days from school. We later learnt that he had spent the days with a group of boys who were known bullies. Whenever I raised the issue of church with Timothy, he told me that I should leave Anderson to what he liked. Later, when I tried to discuss Anderson's truancy and the disciplinary steps we should take, Timothy brushed it off as, "boys being boys" and pointed to Anderson's consistent good grades to demonstrate that no harm had been done. I do not agree.

I have spoken to the twins about separating from Timothy. Allison has said she wants to be with me but Anderson has told me that he will only remain with me if I agree that he does not have to go to church.

Timothy and I had shared the financial responsibilities of the children since their adoption. I know that I can meet their basic needs on my own but I will find it difficult to cover the cost of their many extra-curricular activities. The children have always enjoyed these activities and I would wish them to continue. I also believe that their extra-curricular activities will assist with the adjustment to the changes that our broken family will create.

Timothy is in a better financial position than I am. I have very limited savings and except for the house my only other asset is a car. My earnings from the grocery store have always been limited and I have no other way of earning extra funds to provide for all our needs. However, I believe that I am entitled to an inheritance.

My father, Hugh Graham died six months ago. When I attended the funeral, I was told by my grand-aunt, Mavis Graham, to remain behind for the reading of his Will. The lawyer met with the family members and during the reading of the Will, he announced that my father had left shares in several companies, two houses, a car and money in two accounts for "his children". In the discussion, which followed the reading of the Will, a man whom I did not know declared, "That that means shared between us four" pointing at two women and a younger man. My grandaunt interjected saying that my father had five children and he had told her that I was his daughter. However, the man who had spoken and whom I have since learnt is my father's first child, Charles, indicated that he did not know me, and had never heard of me. After being told that my maiden name is Gillis, not Graham, he refused to entertain any further discussion on the matter.

I have always known Hugh Graham to be my father. We were not very close. However, he had never denied that I was his. When I was younger, he had provided for me irregularly leaving my mother to cover most of my expenses but he was always there in the background. He was the one who had introduced me to my grandaunt when I was a child. I am very close to my grandaunt and have fond memories of the time spent with her

on the few occasions I spent time with my father. If only I could claim what is mine, I believe that would enable me to meet the children's needs.

I am also concerned about my ability to provide for myself in the long term as I have developed a diabetic ulcer and my doctor has warned me that if it worsens, he may have no option but to amputate my leg. If that happens, I would have no option but to close the supermarket.”

Required:

With reference to authorities advise Mariah with respect to:

- (i) the action she may take for her personal protection, and to obtain the relief she should seek in respect of her children; and
- (ii) the steps she may take in respect of property, her father's estate and to secure financial assistance from Timothy.

Include in your answer the likelihood of success of these actions.

Note:

Your response should not exceed **2,500 Words**.

END OF PAPER