

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS 2017

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 15, 2017)

**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. Erasable pens are not allowed.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

## **PART A**

### **QUESTION 1**

You act for Appliances and More Limited, a limited liability company incorporated in your jurisdiction. Catherine Banks, the managing director, attends your office. She tells you that the company was served with a Claim Form (with Prescribed Notes/Notes to Defendant, form Acknowledgment of Service and form Defence) and a Statement/ Particulars of Claim on May 6, 2017. The Claim Form and Statement/Particulars of Claim are both dated April 25, 2017 and were issued by the Supreme/High Court of the jurisdiction on the same day. An extract of the Statement/Particulars of Claim is set out below.

#### ***“STATEMENT/PARTICULARS OF CLAIM***

***CLAIM NO: HCV 15 OF 2017***

<b><i>BETWEEN</i></b>	<b><i>ROSHENE JONES</i></b>	<b><i>CLAIMANT</i></b>
<b><i>A N D</i></b>	<b><i>APPLIANCES AND MORE LIMITED</i></b>	<b><i>DEFENDANT</i></b>

- 1. The Claimant was at all material times a nurse residing at 4 Vanity Way in the jurisdiction.*
- 2. The Defendant was at all material times a limited liability company duly incorporated under the Companies Act of the jurisdiction with registered office located at 17 Main Street in the jurisdiction.*
- 3. At all relevant times the Defendant was a company which manufactured hi-fi systems bearing the brand name Magic Box and sold them in its store on Main Street in the jurisdiction.*
- 4. On April 4, 2015 the Claimant bought a Magic Box hi-fi system from the Defendant’s store.*
- 5. The Claimant took the hi-fi system home and connected it to the electricity supply, whereupon she suffered a severe electric shock and was seriously injured.*

6. *The Claimant's injuries were caused by the negligence of the Defendant in the production of the hi-fi systems.*

**PARTICULARS OF NEGLIGENCE**

- a. *The facts speak for themselves.*
  - b. *Failing to take any or any adequate care in the design, development or manufacture of the equipment.*
  - c. *Using or permitting to be used defective and dangerous designs or materials in the development and manufacture of the equipment.*
  - d. *Failing to institute or enforce any or any adequate system of quality control, or to inspect, check or test the goods before dispatching the same.*
  - e. *Failing to warn the Claimant of the defect.*
7. *As a result of the matters stated above, the Claimant has suffered personal injuries, loss and damage and has incurred expenses.*

**PARTICULARS OF INJURIES**

*The Claimant, born on July 2, 1980, suffered the following injuries:*

- 1. *1<sup>st</sup> degree burns all over body*
- 2. *Scarring*
- 3. *Epileptic seizures*

*The Medical Report of Dr Daniel Greene, Consultant Neurologist, dated November 30, 2016 is attached.*

**SPECIAL DAMAGES**

i.	<i>Medical Expenses including medical report</i>	<i>\$1, 150,000</i>
ii.	<i>Transportation Costs</i>	<i>150,000</i>
iii.	<i>Paid Assistant</i>	<i>450,000</i>
iv.	<i>Loss of Income</i>	<u><i>600,000</i></u>
	<i>Total</i>	<i>\$2,350,000</i>

*The Claimant claims interest pursuant to the relevant Act of your jurisdiction.*

**AND THE CLAIMANT CLAIMS**

1. *General Damages*
2. *Special Damages*
3. *Loss of Future Earnings*
4. *Interest*
5. *Costs*
6. *Such further and other relief as this Honourable Court shall think fit*

**CERTIFICATE OF TRUTH**

*I certify that the information contained in this Statement/Particulars of Claim is true to the best of my knowledge, information and belief.*

*Roshene Jones  
Claimant*

*Dated the 25<sup>th</sup> day of April 2017*

**SETTLED BY  
Free and Hill**

**Per: Derek Free  
Attorneys-at-law for the Claimant**

*Filed by Free and Hill Attorneys-at-law for the Claimant whose address for service is that of her attorneys-at-law, 15 Barry Street, Jurisdiction telephone number 777-7722, facsimile 777-7785 and email address [freehill@lawyers.com](mailto:freehill@lawyers.com)"*

Catherine instructs you that before the equipment the company manufactures is put into the store for sale, it has to pass all the government tests for quality. In addition, the alleged faulty equipment was returned to the store by the Claimant's relatives on the Defendant's request when the incident was reported to it. It was then sent to the government department of your jurisdiction which is responsible for checking the quality of appliances for sale and then later to the store's engineers, which did all the checks and testing. Neither the engineers nor the government department found any defects in the equipment. If, in fact, the Claimant was

electrocuted, it must have been her own fault in not following the instructions with respect to connecting the equipment to the power source so that it short-circuited when it was plugged in. The Claimant's claim is to be defended.

Draft the defence. (The relevant form is available.)

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## **QUESTION 2**

Audrey and Rupert celebrated their 25<sup>th</sup> wedding anniversary in your jurisdiction on April 2, 2016. Their children, Michael and Mikaela, decided to throw them a paid party to celebrate the occasion.

Michael and Mikaela decided to use a band called "Tania T and the Monkey Crew Band" which they had seen play at other parties. The band is very popular. It has a worldwide following and is usually in very high demand. The band is employed to Monkey Crew Inc, a company registered in New York in the United States of America.

Michael and Mikaela signed a contract with Monkey Crew Inc to supply entertainment at the party. It was a term of the contract that the children would pay US\$3,000 at the signing of the contract and the remainder of the contract price, US\$5,000, at the conclusion of the event. These prices are heavily discounted as Michael and Tania T went to school together and are good friends.

On the day of the party the band was unable to play because the band members missed their flight owing to a snow storm in New York City, and the children were without a band at the anniversary celebrations. All the paying patrons were disappointed. They threw bottles at Michael (Mikaela had gone into hiding when the crowds began to grow rowdy), vandalized the venue and demanded repayment of their monies. Needless to say, the 25<sup>th</sup> anniversary celebrations "flopped".

Michael and Mikaela are upset and instruct you to commence proceedings against Monkey Crew Inc for breach of contract. You do so and now wish to effect service on Monkey Crew Inc outside of the jurisdiction.

Write a memorandum to your senior partner outlining in detail:

- (i) how you would proceed on behalf of your clients;
- (ii) what additional information you would need to obtain from your clients in order to support your answer in (i) above; and
- (iii) the content of any application you would have to make.

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### **QUESTION 3**

A Claim Form, along with Prescribed Notes/Notes to the Defendant, form Acknowledgment of Service and form Defence and Statement/Particulars of Claim, has been served on your client Sean Shaggy, claiming damages for injury, loss and damage as a result of an accident caused by his negligence on April 30, 2017.

Mr Shaggy instructs you that, while his car did strike the Claimant's car, it happened because another car was about to collide into the car he was driving. Owing to his efforts to avoid that collision, his car collided with the Claimant's car. Mr Shaggy's car was damaged and he sustained injuries to his neck and back.

The driver of the car with which Mr Shaggy avoided colliding, who had been speeding, had stopped after the accident. He gave his name as Stephen Lewis and provided his contact details to the police.

Mr Shaggy is of the view that he should not be held liable on the Claimant's claim.

Your senior has asked you to prepare an opinion on the appropriate steps to take on behalf of Mr Shaggy, when the steps should be taken and the possible remedy(ies) which would be available to Mr Shaggy.

Prepare the opinion, giving reasons.

#### **QUESTION 4**

You act for and on behalf of the Defendant, Bamboo Bayonets and Bridges Limited (“BBBL”), in a claim brought against it by Hughlet Jacobson for damages in respect of injuries he sustained to his eyes while operating machinery in the Defendant’s factory.

The claim went through mediation but the process was not successful and the matter proceeded to the case management conference. At the case management conference, the matter was adjourned because neither Jacobson nor his attorney was present. No explanation was given for their absence. You appeared at the case management conference on behalf of BBBL. Jonathan Coltrane, BBBL’s representative, was also present. The matter was adjourned to April 30, 2017 at 10:00 am for 30 minutes.

On April 30, 2017, when the matter came up for hearing again, neither you nor BBBL’s representative attended and the Court was given no reason for your absence or that of your client. You were not able to attend the case management conference as you had been admitted to the National Hospital the night before, suffering from complications of the Zika Virus and were not in a position to ask any of your colleagues to hold the matter on your behalf.

Coltrane later instructs you that he would have attended the case management conference on April 30, 2017 but had been arrested on his way to court. A bench warrant had been issued against him for an outstanding traffic ticket and it compelled him to appear before the Parish Judge/Magistrate on the same date as the case management conference. Coltrane has provided proof that he had in fact paid the ticket and was released from jail after 4:00 pm on the same day. He instructs you that when he was arrested, he had tried, without success, to contact you as your phone rang and went to voicemail.

Your checks at the Supreme/High Court Registry on May 1, 2017 reveal that your client’s case was struck out for failure to attend the case management conference and that judgment has been entered for the Claimant.

Prepare the appropriate notice of application/application for court orders which you will need to make on your client's behalf and draft the order the court is likely to make if your application is successful. (The relevant form is available.)

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### **QUESTION 5**

Alexandria Mayberry attends on your office. She presents you with a Claim Form and Statement/Particulars of Claim which she says were served on her on May 1, 2017. The Prescribed Notes/Notes to Defendant, form Acknowledgment of Service and form Defence were not attached to the Claim Form. The Claimant in the matter is Patrice Whitcomb. Alexandria Mayberry is named as the Defendant. The Claim Form was dated and filed on January 2, 2016 and concerns a breach of contract in which damages are being sought. The breach was said to have occurred on January 5, 2011.

Alexandria instructs you that she is the sole shareholder and director of her company, Mayberry Hayz Limited. Mayberry Hayz Limited entered into a contract with Patrice, a horse farmer, for the delivery of 700 bales of hay. The obligations under the contract were not fulfilled because there had been heavy rainfall for several months (between October 2010 to January 2011) and the grass could not be harvested for the hay to be produced.

Patrice has claimed that her loss amounts to a total of the equivalent of US\$500 in your jurisdiction.

Advise Alexandria.

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## **PART B**

### **FAMILY**

#### **THE FOLLOWING FACTS APPLY TO BOTH QUESTIONS 6 AND 7**

Betty Schuler, 35, a housewife, comes to see you. She tells you that she is the wife of Sangster Schuler, 56. Mr Schuler is a plumber. They married in 2006 and have lived since then in a two-bedroom house owned by Mr Schuler at 9 Cardamom Street, St Paul in your jurisdiction. He had acquired the property prior to the marriage. They have two children, Miriam and Constantine, aged 4 and 7, respectively.

Mrs Schuler tells you that Sangster has been very violent in recent months. He smokes marijuana and drinks excessively, and would often threaten and shout abuse at her. Last night, he beat her in the presence of the children. She shows you the bruises on her face and hands, and tells you that she also has bruises on her stomach where he had punched her. Miriam, she instructs, had cried throughout last night's incident and Constantine had wet himself. She is adamant the relationship is at an end and tells you that she now needs to do what is best for herself and her children.

Mrs Schuler instructs you that she wishes to end her marriage and wants to keep her children with her. She is considering moving back to be with her family in Lahore District in St Helena's which is two hours away. The children would be comfortable there, as her parents' home has adequate room for them all. They would be surrounded by family members and would attend the same school as their cousins. However, her husband has told her, repeatedly, that she was free to go whenever she wanted but would have to leave "his children" behind.

Mrs Schuler states further that her husband has the support of his mother, Lydia, who lives two blocks away from Mr Schuler's house. Lydia, (a seamstress who operates from home) has told Sangster, in her presence, that she is willing take to care of the children when they come home from school and he was free to leave them with her whenever he had errands to run.

Mrs Schuler concedes that the children do well in school and this is due in large part to their father. He is more learned than she, and has always made time on the weekends to assist them with school work. She attends all their school events and takes them to their extracurricular activities. Both children attend school close to home.

### **Question 6**

Advise Mrs Schuler on the application(s) and steps to be taken if she wishes to take the children with her upon separation, and the bases upon which the court would decide the matter if her application(s) were to be contested by Mr Schuler.

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### **Question 7**

Assuming that Mrs Schuler decides against returning to live with her family in Lahore District, St Helena's, advise her of the options available to protect her and the children, as well as the ancillary applications you would recommend her pursuing.

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### **Question 8**

Agatha O'Connor and Leon Wright were born in neighbouring districts in the parish of St Cecilia. Leon, a cultivator, who was born on August 10, 1945, and Agatha, a market vendor, born June 5, 1954, began a relationship in the summer of 1972. Although they lived in different places, they were seen 'walking out' most evenings, initially accompanied by Agatha's elder sister, Jane.

Six months after the birth of their first child, David, Agatha and Leon began living together in a small board house, in St Cecilia, which Leon had constructed. David was born on April 10, 1975, and because Leon was away on a farm work programme, Agatha had David's birth registered without including Leon's name or particulars. Three children followed David –

Charles born May 6, 1977 – now deceased

Gwen born February 8, 1979 – now residing in the United States

Agnes born July 14, 1981 – still residing in the old house in St Cecilia

Like David, Charles' birth certificate does not record Leon as his father, but Gwen and Agnes' certificates state under "*Father's Particulars*" the words "*Leon Orville Wright, cultivator, born August 10, 1945*".

The family lived happily together. Leon was caring but strict with the children and a good provider. In 1992, David left home and stayed with his Aunt Jane who still lives in Portsmouth near the city. Leon died on December 15, 2009 and Agatha died on March 14, 2013. Gwen is now sponsoring David and Agnes to join her in the United States, but the immigration authorities will not accept David's birth certificate as proof of their relationship.

David attends your office and takes with him his birth certificate and that of each of his siblings. He also has a copy of his registration at primary school in which the registering parent is recorded as Leon Orville Wright and his baptismal certificate which indicates both of his parents' names.

Advise David on the application that you would make in order to satisfy the immigration authorities and indicate the evidence you would rely on to establish your case, giving reasons.

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**END OF PAPER**