

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

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

**CIVIL PROCEDURE AND PRACTICE II  
PARTS A and B**

**THURSDAY, AUGUST 05, 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 the question, 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 II AUGUST 2021 EXAMINATIONS, CIVIL PROCEDURE AND PRACTICE II DROP BOX on TWEN** by **August 06, 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 II students with Examination ID numbers between 2100-2177 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box A Year II - 2100-2177”**.
    - Year II students with Examination ID numbers between 2179-2252 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box B Year II - 2179-2252”**.
    - Year II students with Examination ID numbers between 2253-2326 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box C Year II - 2253-2326”**.

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## PART A

You are a student at the Norman Manley Law School. During your internship, you are engaged as a judicial clerk at the Supreme/High Court of Jurisdiction and you are assigned to Justice Maya Wisdom.

Justice Wisdom has been assigned a civil claim involving a four-vehicle collision that occurred in Jurisdiction. She will be presiding over all interim hearings as well as the trial.

The court file reveals the following information.

On August 15, 2019 at about 5:00 a.m., the Claimant, Dulcie Mendez, a nurse, was a passenger in a motor bus owned by Bus-In-An'-Out Limited (Bus-In), when the bus was involved in an accident. Bus-In is a limited liability company incorporated in Jurisdiction.

At the time of the accident, the bus was being driven by Martin Skillful, who was at all material times employed to Bus-In as a driver. The bus was a 24-seater. The accident occurred outside of peak traffic hours, and at the time, the bus was carrying five passengers in addition to the driver. The bus was travelling along one of the main roads in Jurisdiction when it was involved in a collision with a motor van owned by Pierce Insurance Company Limited (Pierce) and driven by Pierce's Information Technology Manager, Angus Robbins, a Mazda motor car owned and driven by businesswoman, Meredith Bailey, and a Honda rental car owned by Webber Rent-a-Car Limited (Webber) and driven by hirer, Tobias Owens.

The collision between the motor van, the Mazda motor car and the bus occurred first, with the bus thereafter colliding into the rear of the rental car.

Webber is a limited liability company incorporated in Jurisdiction and carries on the business of car rental. Mr. Owens had rented the vehicle whilst his own car was undergoing repairs in the garage.

Mrs. Mendez, Mr. Robbins, Ms. Bailey, Mr. Skillful and Mr. Owens all reside in Jurisdiction. Mrs. Mendez sustained serious injuries and suffered loss and damage. Attorneys-at-law, Eagle, Gregg & Whin (EGW), have filed a claim against the owners and drivers of all four vehicles on behalf of Mrs. Mendez.

**A.** Justice Wisdom dealt with some applications before your internship commenced and she has several others pending.

(a) Attorneys-at-Law, Miles, Sharpe, & Gotit (MSG), who were retained by Webber's insurance company, Sapphire Insurance Limited, act for Mr. Owens and for Webber. MSG made an application to strike out the claim against Webber on the basis that there were no reasonable grounds for bringing the claim against it. MSG argued that the hirer, Mr. Owens, was at all material times not the servant and/or agent of Webber, it being a rent-a-car company, and that at all material times, Mr. Owens was using the vehicle for his own purposes.

The application was strongly opposed on behalf of Mrs. Mendez. However, after hearing detailed arguments, Justice Wisdom granted the strike out order, but reserved on the question of costs.

The application was not made at a case management conference (CMC) because the matter had not yet reached the stage for the Registry to fix a CMC, as some of the other Defendants had not yet been served.

(b) Shortly after the judge made the order referred to at (a) above striking out the claim against Webber, EGW, on behalf of Mrs. Mendez, filed a Notice of

Discontinuance against the driver of Webber's Honda car, Mr. Owens.

- (c) Bus-In and Mr. Skillful, who are represented by attorneys-at-law, Rapid, Steele & Craig (RSC), have applied to the court for an extension of time for filing and serving their Defences. That application is for hearing next week. The judge is minded to grant the application.
- (d) EGW had entered judgment in default of acknowledgement of service against Ms. Bailey. There was a notice of application/application for court order to set aside the default judgment. Justice Wisdom adjourned the hearing of the application to the following week and ordered the process server to attend for cross-examination on his affidavit. Ms. Bailey, who is representing herself in the claim, states in her affidavit in support of the application to set aside, that she was not served with the Claim and Particulars/Statement of Claim and has never met the process server whose affidavit had been filed by EGW in proof of service. Ms. Bailey also in her affidavit denied any negligence on her part and blames the cause of the accident on the negligent driving of the drivers of the other motor vehicles involved in the accident. In the skeleton arguments filed on behalf of Mrs. Mendez, it is indicated that the Claimant opposes the application and maintains that Ms. Bailey was served, and that the judgment was regularly entered.

The judge asks you to prepare a Memorandum:

- (i) indicating the orders for costs that she should consider making in the circumstances set out at (a);
- (ii) as regards (b), advising whether there are any costs consequences that arise, and if so, what they are, and for whom;
- (iii) indicating the orders for costs that she should consider making in the circumstances set out at (c); and
- (iv) as regards (d), considering the costs order in the following circumstances:
  - (1) If she finds that the judgment was regularly obtained but forms the view that the judgment should be set aside because the criteria and conditions for setting aside a regularly obtained judgment have been satisfied.
  - (2) If she finds that Ms. Bailey was not in fact served with the Claim and Particulars/Statement of Claim.

You must fully explain the meaning of each order or costs consequence and the reasons that you consider it appropriate.

Draft the Memorandum to the judge.

**Note:**

The Memorandum must not exceed **1000 WORDS**.

**B.** Some months have passed and you have enjoyed the internship very much. You have sought and obtained approval to keep serving as Wisdom J's Judicial Clerk for an extended period whilst continuing your studies. The judgment against Mrs. Bailey has been set aside, and she has filed her Defence. Defences have also now been filed for all the other four remaining Defendants, i.e. Bus-In, Mr. Skillful, Pierce, and Mr. Robbins. Each Defendant has denied negligence on the part of the driver of their respective vehicle and has alleged negligence on the part of the drivers of the other vehicles. Pierce is represented by attorneys-at-law, April, May & June (AM&J). Pierce has also made an ancillary claim against its co-defendants (other than its driver, Mr. Robbins) for damage to its motor vehicle and for loss of use.

The CMC is coming up for hearing next week. Amongst the applications that have been filed are the following:

- (a) An application filed on behalf of Mrs. Mendez, seeking to have an Accident Reconstruction Specialist, Mr. Isaac Physis, appointed as an expert. The application is being opposed by the Defendants. The judge has been given the skeleton arguments filed to date, which are the arguments filed on behalf of Pierce and its driver, Mr. Robbins. The skeleton arguments indicate that these Defendants are objecting on the basis that the Court does not require assistance in order to determine how the accident happened and whose negligence was the cause, as there are witnesses capable of describing what happened.
- (b) An application by Pierce seeking to have an assessor, Mr. Kevin Avery, appointed as an expert in relation to its ancillary claim. The Claimant's skeleton arguments indicate that the application is being opposed on the basis that Mr. Avery does not meet the criteria required for appointment as an expert witness. It is asserted that he has too close a connection to Pierce. Mr. Avery is one of two assessors in Jurisdiction retained to do assessor reports in relation to vehicles in the fleet of vehicles insured by Pierce, whenever any of those vehicles is involved in an accident.

The judge asks you to prepare a Memorandum outlining:

- (i) In relation to (a), the criteria that must be established before the Court will allow reliance upon expert evidence?
- (ii) In relation to (b), the factors that should be considered in respect of Pierce's application.
- (iii) If the Court does make an order that an expert witness be appointed, the ways in which the expert's evidence may be clarified or challenged before or at trial?

**Note:**

The Memorandum must not exceed **1000 WORDS**.

- C. (a) Trial is fixed for next week. The judge has now received the judge's bundles, and she has noticed that Bus-In has filed three witness summaries in relation to passengers that were in the bus. The judge asks you to research the matter and indicate in a brief Memorandum the circumstances in which a witness summary may be used. She also asks that you advise how she should treat the witness summaries in the event those witnesses do not attend trial.

**Note:**

The Memorandum must not exceed **300 WORDS**.

- (b) Three days before the trial, the judge indicates that she has received information from the Registrar that EGW has written to the Court, copied to RSC, AMJ and to Mrs. Bailey, indicating that the parties have reached a settlement but would like to be able to easily enforce any obligations not met by any other party within the same proceedings. The letter goes on to state that the parties wish to save time and expense by simply entering a Tomlin Order administratively as a consent order pursuant to the civil procedure rules applicable to jurisdiction, without the need to attend on the trial date, and without the need for approval by a judge.

Justice Wisdom needs to instruct the Registrar how to respond to EGW's letter. The judge has asked for some assistance in researching background information before she writes to the Registrar. However, she indicates that as Tomlin Orders do not frequently cross her desk, she would like you to prepare a Memorandum advising her generally so that she can have it for future reference. The judge asks you to do the following in the Memorandum:

- (i) outline the circumstances in which a Tomlin Order is most frequently used;
- (ii) describe the documents that comprise a Tomlin Order and the types of matters/terms usually dealt with in any of them;
- (iii) prepare a draft of the terms that are usually contained in the Tomlin Order; and
- (iv) at the end, include a short section addressing specifically whether in your view, in the instant claim, a Tomlin Order can be entered administratively by consent, without the need for approval of a judge, in the manner contemplated by the parties. Give reasons for your advice.

**Note:**

Your Memorandum must not exceed **500 WORDS**.

## PART B

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

Ian Gold, trading as Gold's Auto Parts ("Gold's Auto"), is a reputable importer and wholesaler of automobile parts in your Jurisdiction. Mr. Gold is a valued client of the firm, Barrymore and Drew, to which you are employed as an Associate. Your supervising partner, Rebecca Clarkson, has handed you the following email from Mr. Gold:

*From: [igold@goldsauto.com](mailto:igold@goldsauto.com) August.... 2021 at 4:45 p.m.*

*Subject: Debt recovery and partnership plans*

*To: [rebecca.clarkson@barrymoredrew.com](mailto:rebecca.clarkson@barrymoredrew.com)*

*Dear Rebecca,*

*How have you been? We have not spoken since before the COVID 19 pandemic was upon us but I trust that you have been well.*

*Gold's Auto has a problem with an account for one of our long-standing clients - Hyperion Auto Repairs Limited ("Hyperion"). They are a local private company limited by shares. These guys used to be one of my best clients but now it seems they are in serious financial trouble and I want to move fast to recover what they owe me. It is a shame, as they were one of the best in the business. Rumour has it that the owner's son, who was put in charge at one of its branches, has been running the business into the ground.*

*Gold's Auto has been supplying Hyperion with auto parts for many years, normally on thirty days credit. Over the last few years, payments on their account have been more and more delayed until they stopped altogether in April this year, despite our repeated demands for payment.*

*I know that Hyperion owes a lot of money around town. Their owner and chairman, Jasper Kendrick, who has been known personally to me for many years, has given me a full run-down of exactly how much the company is in the hole for. Because of our relationship, I was in discussions with him, trying to come to some arrangement for Hyperion to pay off the amount they owe Gold's Auto over time but it didn't work out. Jasper actually gave me a copy of their balance sheet as well as a list of their creditors and the amounts owed to them. We were never able to agree on a payment schedule as, according to Jasper, they are having problems paying everybody. I don't know how much we will really be able to recover since we are an unsecured creditor. As it stands, the amount owed to Gold's Auto*

to date is \$10,000,000. Hyperion's balance sheet as at December 31, 2020 reveals liabilities of \$45,000,000 and assets valued at \$20,000,000.

I have discussed the issue with my accountant and financial advisor and we have decided that we should take steps to have Hyperion wound up. Please let me know what the process will look like and whether we need to send you anything to get the process going.

I am also looking to diversify my business interests and take advantage of an opportunity presented by the current economic situation. Private construction and government infrastructure projects continue to thrive despite the odds and there is a shortage of the heavy equipment needed for these activities.

I am thinking of entering into the heavy equipment leasing business and am planning to enter into a general partnership, for that purpose, with a mechanical and civil engineer I know. His name is Wellington Johnson.

I will eventually need you to draft a partnership agreement but at the moment, I am still negotiating the basic terms of the arrangement with Wellington. I want to make sure that I understand the legal implications of certain things and that certain matters can be clearly provided for in the agreement. I would appreciate your advice on the following:

- (i) I am going to need Wellington to really focus on the business. I think he will because he is a really serious guy but he does have other professional interests. While I don't want to insist that he drop them all, I am concerned that the partnership business may suffer if he gets caught up in them.
- (ii) I am putting up the lion's share of the capital needed to start the business and it is possible that I may have to advance additional sums from time to time, whether by way of capital or loans, since I have more financial resources than Wellington. I need to be sure that, in addition to profit, I will be entitled to some kind of interest on my money that compares reasonably with bank rates.
- (iii) Since I will be making a bigger contribution to capital than Wellington, I assume that I will be entitled to a greater share of the profits. Certainly, that is what I want, even though I suppose I will have to shoulder most of any loss as well.
- (iv) I have enjoyed the absence of conflict and the privacy that comes with being a sole proprietor of my current business and am really concerned about the possibility of prolonged disputes or having the



*partnership's dirty laundry being aired in public in the event of a conflict between Wellington and me.*

*(v) I need to make sure that Wellington doesn't take important decisions in relation to the business without my agreement. He is likely to be more involved in its day-to-day operations and, while I think he should have authority to take lower-level decisions, I need to be involved in the higher-level ones.*

*Can you let me have the advice I have requested by next week? I do hope you will be able to do so.*

*Best regards,*

*Ian*

*Ian Gold. Proprietor. Gold's Auto Parts*

*Email: [igold@goldsauto.com](mailto:igold@goldsauto.com) | Website: [www.goldsauto.com](http://www.goldsauto.com)*

Ms. Clarkson has asked that you draft a letter to the client for her signature:

- (a) providing a detailed outline of the process for effecting the liquidation of Hyperion Auto Repairs Limited; and
- (b) outlining the provisions you would recommend be included in the partnership agreement with Wellington Johnson, given the client's concerns and any applicable legal principles, and any further instructions which you would require from the client in order to draft those provisions.

Prepare the draft letter.

The body of the letter should be no longer than **1700 words** in total. Your advice in respect of items (a) and (b) should be no longer than **850 words each**.

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**END OF PAPER**