

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS 2023**

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 08, 2023)

Instructions to Students

- (a) Time: **3 ½ hours**
- (b) Answer **ALL** questions from Part A and Part B.
- (c) **Answer Part A and Part B on separate answer booklets.**
- (a) In answering any 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.**
- (d) It is unnecessary to transcribe the questions you attempt.
- (e) Answers should be written in black or dark blue ink. Erasable pens are not allowed.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

Faith Benning is a software developer who resides at 30 Mayfield Way, Jurisdiction and is your client. On February 15, 2023, you commenced a claim, on behalf of Faith, in the High/Supreme Court against Plymouth Company Limited (Plymouth) for breach of contract.

Faith had provided you with a contract, dated February 2, 2021, between Plymouth and herself. It was a term of the contract that Faith should provide Plymouth with services as a software developer for a term of six months. The price agreed for Faith's services under the contract was \$3,500,000. The schedule to the contract listed the type, purpose and quantity of software products to be developed by Faith for Plymouth, as well as the timeline within which each was to be completed.

Faith had instructed you that, in accordance with the terms of the contract, she had received a deposit from Plymouth in the sum of \$2,000,000 upon signing the contract. The balance contract price was due upon completion of all tasks in the schedule to the contract. The deposit was paid by Plymouth by direct transfer to Faith's bank account at BSG Bank Limited on February 2, 2021. Faith further instructed you that she completed developing all the software listed under the schedule to the contract and within the agreed timeline. Upon completion, however, Plymouth did not pay her the balance contract price due, even though she made several demands for it.

You were further instructed by Faith that the Chief Executive Officer of Plymouth, Larry Genus, at the end of the term of her contract, told her that, he wanted her to expand the software she had developed, for the accounting department, for use in the marketing and sales department. Faith instructed you that she told Larry that she could do so, but at an additional charge because her contract with Plymouth did not cover that additional work. She explained that Larry got very upset when she told him this and swore that so long as he was alive, she would never get to work again with Plymouth, or any other company, to provide software development services.

Faith had, however, provided you with copies of email exchanges between herself and the Financial Controller of Plymouth, Brian Reece, which concerned the demands she made for the balance contract price due to her. Brian's last email to Faith, received on January 28, 2022, contained an apology for Plymouth's delay in payment of the balance contract price and assured Faith that payment would be made by January 31, 2022. To date, Faith has not received the balance contract price due to her from Plymouth.

Service of the claim form and statement/particulars of claim has been properly effected on Plymouth. Plymouth acknowledged service, stating an intention to defend, and filed its defence within the time to do so. In its defence, Plymouth merely denied that it breached the contract with Faith.

Faith has met with you today to review and discuss the defence. She has indicated that she is about to start a doctoral degree programme in AI technology and would prefer her claim to be concluded as quickly as possible. She also expressed that the money Plymouth had for her would assist her to offset some of the costs associated with her studies.

Instructions:

- (i) Advise Faith what option(s) are available to her to obtain an early judgment and the procedural steps you would take to successfully achieve those option(s).
- (ii) Draft the application/notice of application for court orders that you would file on behalf of Faith to achieve the option(s) at (i). (You are not required to draft the affidavit or the draft order).
(The relevant form is available).

QUESTION 2

On December 11, 2022, you issued a claim for damages for negligence, in the High/Supreme Court, on behalf of Jeffrey Rocket against Lisa Jackson.

On February 2, 2023, you engaged Delisha Megan, 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 Lisa at her last known residential address at 107 Chang Street, Jurisdiction. You provided Delisha with a photograph of Lisa that you had received from Jeffrey for the purpose of service.

On February 13, 2023, Delisha returned the documents to your office and reported that she visited the given residential address for Lisa on February 3, 2023, at about 9:00 a.m. where she saw a man who identified himself as Jason Jackson, Lisa’s husband. When she asked him for Lisa, Jason told her that he and Lisa separated in December 2020 when she moved out of their home. Delisha explained that she enquired of Jason where Lisa may now be living. He told her that he did not know for sure, but suspected she may be living with her sister, Mary McKenzie, at 38 Downwind Estate, Blue Brooks, Jurisdiction.

Delisha informed you that she visited Mary’s address, on February 6, 2023 at about 7:30 a.m., and spoke with a woman who identified herself as Mary. Mary told her that, whilst Lisa stayed at her house occasionally, she also sometimes stayed at her boyfriend’s house. She also told Delisha that she does not care much for Lisa’s boyfriend who is a convicted criminal and goes by the name “Jagga”. Consequently, Mary has not asked Lisa much about “Jagga” and neither has she been to his house. Mary believed his address was 500 Lane Way, Dagggerman, Jurisdiction.

Delisha informed you that she again visited Mary’s address, on February 8, 2023 at about 7:00 a.m., and waited for two hours to see if anyone resembling Lisa from the photograph would enter or leave Mary’s house. No one resembling Lisa did. She attended the Dagggerman community the next day at about 6:00 a.m., but the entrance to Lane Way was cordoned off by the police, with crime scene tape, because of a shooting that occurred there earlier that morning.

Instructions:

Identify the option(s) available to you for effecting service on Lisa and describe the procedural steps to be taken to ensure that service has been properly effected under these option(s).

PART B

FAMILY

(This Part must be answered on a new answer booklet and titled Part B)

QUESTION 3

Journey Willis and Chance Willis have been married for over 16 years. They own a house located at 9 Marlboro Lane, Jurisdiction. The house is on land which Journey purchased a year before she got married to Chance. After purchasing the land, Journey put up a building consisting of a bedroom and bathroom and set up a makeshift kitchen on the property. It is into this building that Chance moved, in December of 2006, a week after their wedding.

Journey is a dental assistant and Chance is a chef. Both contributed to the improvement of the building after their marriage. For the first three years their progress was slow. Chance worked at a local restaurant and Journey was employed to a small dental practice. Neither made much money, and much of what they earned was spent in meeting their living expenses, however, they added a proper kitchen and constructed a wall around the property. Chance built the wall himself but they both contributed to the purchase of building materials and paying the workmen who built the kitchen.

In 2010, four years into their marriage, things changed significantly when Chance was employed as a chef on a cruise ship. His initial contract was for a five-year period. He was well paid and each month transferred half his salary into Journey's bank account. He instructed her to continue the improvement of the house. He also instructed her to hire an architect to ensure that the house was well designed. Journey did as he suggested, obtained the necessary plans and building approvals and hired a construction company. She oversaw the work and, using the money Chance sent, she made all the payments to the construction company and purchased building materials. Chance came home on leave twice per year. While at home, he examined the work that had been done on the house, but insisted that he was on holiday and preferred to rest and spend time with his family.

In 2013, Journey became pregnant. Their son, Walker, is now nine years old. Journey continued to work after her maternity leave had ended. She continued to use her income, which was deposited directly into her account, to meet her personal and household expenses and pay the property taxes. Journey and Chance shared Walker's expenses. After Walker's birth, Journey continued to do the housework but employed a nanny six days a week, while she was away at work, until Walker started school at age five.

The house was completed in 2016. It is a two-storey building, containing four bedrooms and three-and-a-half bathrooms, with a large open-plan living area and kitchen. It now has a value of US\$250,000.

Chance continued to transfer half his monthly salary to Journey's bank account.

In 2020, with his second contract at an end, Chance took a job as a private chef for a celebrity. The job required him to live in the city and be readily available and so the family moved there. They rented an apartment in the city and leased their home at Marlboro Lane for a five-year period to a tenant who deposits the rent into Journey's bank account each month.

Journey has been unable to find employment and spends her days doing housework and assisting Walker, who has been assessed as dyslexic, with his schoolwork.

Journey has come to see you. She instructs you that she separated from Chance 14 months ago after she found out that he had been communicating with a past colleague. Chance had admitted that they were having an affair. She has rented a small apartment and moved in, taking Walker with her. She instructs you that Chance deposits US\$500 into her account each month, telling her it is for Walker's care. Her requests for an additional US\$500 to cover her own expenses have been ignored.

Journey instructs you further that two days ago Chance told her, over the phone, that he was having a document prepared indicating that they had agreed to share the house in a 70:30 split, with his interest being 70% of the value.

She instructs you that she has no intention of signing the document but wishes to determine:

- (i) whether Chance is likely to succeed in his claim for a 70% interest in the house, giving reasons;
- (ii) whether she has met the legal requirements to apply for divorce, giving reasons; and
- (iii) the procedural steps she may take to apply for spousal maintenance.

Advise Journey.

END OF PAPER