

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS 2023**

CIVIL PROCEDURE AND PRACTICE I

(WEDNSDAY, AUGUST 02, 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.**
- (d) 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.**
- (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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

QUESTION 1

You issued a claim form on March 6, 2023, in the High/Supreme Court against Barry Morgan on behalf of your client, Elizabeth Gallagher, for negligence for personal injury. Elizabeth had sustained very serious bodily injuries on January 1, 2018, when the motor car in which she was travelling along District Mews Road, Jurisdiction, collided head-on with the truck Barry was driving in the opposite direction on the same road.

The police report of the accident stated that Barry had overtaken a line of traffic on the unbroken white line on District Mews Road, and was unable to get back in line in time, upon the approach of the motor car Elizabeth was in. The police report also revealed that Barry's truck was not insured at the time of the accident. It further stated Barry's residential address to be 67 Unlucky Lane, Jurisdiction.

The process server, whom you engaged to serve the claim form and statement/particulars of claim on Barry, had reported to you that he attended Barry's residential address at 67 Unlucky Lane twice but did not find him there. On his third visit to Barry's residential address, he met Barry's wife, Jane Morgan, who informed him that Barry migrated to Miami, USA to make a better life for her and their three children. Jane had further informed the process server that Barry was temporarily living with her brother, Jonas Blackwell, at 15670 Jakes Road, Aventura, FL 33180, USA and worked at a Walmart store that was close by the house with address at 21089 Colossus Drive, Aventura, FL 33180.

Instructions:

- (a) Advise Elizabeth of the procedural steps you would take to successfully effect service of the claim form and statement/particulars of claim on Barry, including the considerations that apply. Your advice must include the documents required and the contents thereof.
- (b) Prepare the draft order you would expect to receive from the court.

QUESTION 2

You were recently retained in an existing claim by Linda Perry (the claimant) before the High/Supreme Court. From the file inherited from the claimant's former attorney-at-law, you see that the claim is against Fridge Limited (the defendant). The statement/particulars of claim plead that Fridge Limited is a company duly incorporated under the laws of your jurisdiction with registered office at 90 Locomotive Street Way, Jurisdiction and is a local manufacturer of electrical household appliances under the brand name Fridge.

The claim concerned a fire that resulted in the total loss of a building at which a restaurant named Fried Goodies operated. The building and restaurant were owned by the claimant. The defendant had supplied three Fridge deep freezers to the claimant on November 30, 2011, for use at the restaurant. The fire occurred exactly two years after the Fridge deep freezers were supplied and in use at the restaurant. The cause of action in the claim form was negligence for faulty wiring of one of the Fridge deep freezers that had been supplied to the claimant.

The claim form and statement/particulars of claim were filed on November 1, 2019. The defendant had filed an acknowledgement of service and a defence. The case management conference had already occurred, but due to the defendant's delay in filing an expert's report, the original trial date set at the case management conference was adjourned, and trial fixed for December 2, 2023.

You have conducted a search at the companies registry in your jurisdiction to determine the corporate status of the defendant and learnt that the defendant's correct name is Fridge Man Limited with registered office at 90 Locomotive Street Way, Jurisdiction.

You further found, on the claimant's file, a written contract between Linda Perry and Fridge Man Limited dated October 12, 2011, for the purchase of the three Fridge deep freezers. The contract provides at clause 9(ii) that:

"The company warrants and guarantees that Fridge deep freezers have a life expectancy of fifteen years from start of use."

You are of the view that breach of the contract also arises on the circumstances.

Instructions:

Advise Linda on her existing claim before the Court and the procedural steps you would recommend the firm now take on her behalf, giving reasons. Include in your advice the court documents you would prepare and their content.

PART B

FAMILY

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

Letty Jones is a school teacher and is the mother of two children, Ariane, eight and Izzy, ten, whom she shares with her partner, Brent Hassal. Letty and Brent lived together for ten years, prior to separating six months ago.

Six months ago, Letty obtained a protection order against Brent, alleging that he had physically abused her multiple times. The Protection Order requires Brent to stay away from Letty and the children.

In separate proceedings, Letty also obtained an order requiring Brent to provide \$800 monthly for child maintenance.

Brent has come to see you. He instructs you that he has received counselling for domestic violence and anger management, and has not engaged in any violent behaviour since the protection order was issued. He instructs you further that he lost his job two months ago and since then he has been working odd jobs. Prior to his dismissal he earned \$3,500 monthly and has been earning an average of \$1,200 monthly since then.

Brent instructs you that Letty earns an income of \$4,000 monthly. She had submitted evidence to the court indicating that the monthly expenses for their two children included:

School fees	\$ 500
School supplies	\$ 100
Food and snacks	\$ 400
Clothing	\$ 200
Medical expenses	\$ 100
Extracurricular activities	<u>\$ 300</u>
Total monthly expenses	<u>\$1,600</u>

Brent instructs you that his monthly expenses include:

Rent	\$1,500
Utilities	\$ 200
Food	\$ 500
Transportation	<u>\$ 400</u>
Total monthly expenses	<u>\$2,600</u>

Brent instructs you further that the incidents of domestic violence arose from the fact that there had been rumours about Ariane’s paternity.

Brent instructs you that prior to the acts of domestic violence he learnt from his sister-in-law, Hannah, that Letty had been going out with her ex-husband, Corbyn, some months before they found out she was pregnant with Ariane and that Ariane was Corbyn’s child. He instructs you that he confronted Letty on several occasions with what he had heard, but she had always been evasive. She told him that Ariane was his daughter and that he should ignore the rumours.

Brent believes that what he heard is the truth and notes that Letty and the children have been spending time with Corbyn since the protection order was granted. Brent instructs you further that his daughter, Izzy, has recently complained to him that Corbyn had told both children to call him, “Daddy”.

- (a) Advise Brent of the approach you would take in addressing the question of Ariane's paternity, giving reasons. Include in your advice the procedure to be employed in making the necessary application.
- (b) Advise Brent of the legal bases on which the court will decide whether the maintenance payments can be reduced and the protection order discharged, and the likelihood of success of these applications.

END OF PAPER