

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS 2024**

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 13, 2024)

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 met with Jennifer and Lloyd Clarke, today and they have provided you with a claim form and particulars/statement of claim dated and filed on Wednesday, April 10, 2024, that was personally served on them on Friday, May 10, 2024. Below is an extract from the particulars/statement of claim:

"PARTICULARS/STATEMENT OF CLAIM

IN THE SUPREME/HIGH COURT OF [JURISDICTION]

CLAIM NO. 0000HCV0001

BETWEEN ***DIANE WALLACE*** ***CLAIMANT***
(By her mother and Next Friend Brigette Wallace)

AND ***JENNIFER CLARKE*** ***1ST DEFENDANT***

AND ***LLOYD CLARKE*** ***2ND DEFENDANT***

- 1. The Claimant, Diane Wallace, is a minor who claims by her mother and Next Friend Brigette Wallace, a teacher, both residing at 156 Leisure Avenue, Pembroke Place, Jurisdiction.*
- 2. The 1st Defendant, Jennifer Clarke, is a nurse who resides at Unit 3, 178 Dulman Apartments, Pembroke Place, Jurisdiction, and at all material times was the permitted driver of motor vehicle bearing registration number 3567LG.*
- 3. The 2nd Defendant, Lloyd Clarke, is a doctor who resides at Unit 3, 178 Dulman Apartments, Pembroke Place, Jurisdiction, and at all material*

times was the owner of the motor vehicle bearing registration number 3567LG.

- 4. On or about January 5, 2023, the Claimant was riding her bicycle from Leisure Avenue, Pembroke Place, Jurisdiction, a minor road, onto Balmain Boulevard, Pembroke Place, Jurisdiction, a major road, when the 1st Defendant drove motor vehicle bearing registration number 3567LG and collided into the rear of the Claimant's bicycle.*
- 5. The collision was caused by the negligence of the 1st Defendant in her operation of the 2nd Defendant's motor vehicle.*

PARTICULARS OF NEGLIGENCE OF THE 1st DEFENDANT

- (a) Driving too fast*
 - (b) Failing to give any or any adequate warning of her approach along the Main Road*
 - (c) Failing to keep any or any proper lookout, particularly of the Claimant, as she drove on the Main Road*
 - (d) Failing to swerve or manoeuvre the motor vehicle to avoid colliding into the Claimant's bicycle*
 - (e) Failing to properly manage, operate and/or control the motor vehicle*
- 6. As a result of the 1st Defendant's negligence the Claimant has suffered injury, sustained loss and damages and incurred expenses.*

PARTICULARS OF INJURY

The Claimant is 15 years old, born on March 12, 2009, and sustained the following injuries that are more detailed in the medical report of Dr. Justyn Bevers dated November 28, 2023, a copy of which is annexed to the Claim Form.

- (i) Fracture to right fibula (leg)*

- (ii) *Fracture to the right shoulder and right forearm*
- (iii) *Lacerations to right side of face*
- (iv) *Contusions on right leg and left leg*

PARTICULARS OF SPECIAL DAMAGES

(i)	Medical Expenses (continuing)	\$1,500,000
(ii)	Medical Report	<u>95,000</u>
	Total	\$1,595,000

7. *The Claimant claims interest on such damages as may be awarded at such rate and for such period as the Court may deem fit pursuant to the [relevant statute of your jurisdiction].*

AND THE CLAIMANT CLAIMS:

1. *Damages.*
 2. *Interest pursuant to [relevant statute of your jurisdiction].*
 3. *Costs.*
 4. *Such further and other relief the court deems fit.*
- ...”

Jennifer and Lloyd instruct you that Jennifer was in fact driving Lloyd’s motor vehicle along Balmain Boulevard at the material time, with Lloyd in the front left passenger seat. Upon approaching the intersection of Balmain Boulevard and Leisure Avenue, the traffic lights showed green for motorists travelling along Balmain Boulevard and red for motorists travelling along Leisure Avenue.

Jennifer instructs you that she proceeded to drive in a line of traffic flowing along Balmain Boulevard at about 70km per hour towards the intersection of Balmain Boulevard and Leisure Avenue. Jennifer further instructs you that just as she was driving across the intersection of Balmain Boulevard and Leisure Avenue, the Claimant, riding a bicycle, suddenly exited speedily out from Leisure Avenue onto Balmain Boulevard in front of the motor vehicle she was driving. Jennifer instructs you further that it happened so quickly that she did not have enough time to

swerve away or fully brake to avoid hitting the bicycle the Claimant was riding. Jennifer instructs you that she was not driving negligently and was driving within the speed limit of 80km per hour along Balmain Boulevard.

Lloyd instructs you that his motor vehicle ended up in the left concrete banking on Balmain Boulevard and said that it was a miracle that he and Jennifer survived the collision without injuries.

Jennifer and Lloyd further instruct you that they learnt from the police officer who had attended the scene of the accident that other motorists who were travelling along Leisure Avenue reported that they saw the Claimant riding fast along Leisure Avenue onto Balmain Boulevard, trying to get away from a male riding a bicycle that was chasing after her. The police officer had further informed them (Jennifer and Lloyd) that his investigation had revealed that Johnny Baker, with alias name 'Jahdon', was the male riding the bicycle that was chasing after the Claimant. Jahdon is 15 years old and is known by the police as a bully that lives near Leisure Avenue in the residential community of Pembroke Place. The police officer further informed them that Jahdon's mother is Keniesha Anglin, a business owner, and his father is unknown.

Both Jennifer and Lloyd have retained your firm, Laws Are Us & Associates, Attorneys-at-Law, of 15 Wise Street in your jurisdiction, to represent them in the claim.

Instructions:

- (i) Advise Jennifer and Lloyd on what procedural steps you would take in the claim on their behalf, and when and why you would take those steps.
- (ii) Draft Jennifer and Lloyd's defence to the claim.

QUESTION 2

You were recently called to the Bar of your jurisdiction and have obtained your first job as an attorney-at-law at the Office/Chambers/Ministry of the Attorney General of your jurisdiction.

Today you were introduced to your new supervisor, Donald Trumpet, attorney-at-law, who assigned you a file for you to work on with him.

The file concerns an existing Supreme/High Court claim for damages for negligence, that had been issued by Devlin McDermon, the Claimant, on October 12, 2019, against the Attorney General and Jason Magnet, the 1st and 2nd Defendants. Donald has conduct of the claim on behalf of the 1st and 2nd Defendants but had been on emergency sick leave for the last three months, having been diagnosed with a rare disease, and only returned to work today.

From the particulars/statement of claim on the file, you see that the claim concerns a shooting incident that occurred during a police training session involving the Claimant and the 2nd Defendant, both former police officers.

The file also reveals that the Office/Chambers/Ministry of the Attorney General had filed an acknowledgement of service form and a defence on behalf of both the 1st and 2nd Defendants. The Case Management Conference (CMC) had been held on February 19, 2020, and a sealed copy of the CMC order that is on file, among other things, show the date fixed to file and exchange witness statements was June 8, 2020, and the date for trial is September 18, 2024. No witness statements have been filed on behalf of the 1st and 2nd Defendants. However, there are on file two handwritten statements from two witnesses who were present at the incident, and one handwritten statement by the 2nd Defendant.

You observed that the file also had an order recently made by the Supreme/High Court on April 30, 2024, that had been properly served on the Defendants at the Office/Chamber/Ministry of the Attorney General on April 30, 2024, the terms of which are as follows:

- “1. The 1st and 2nd Defendants are to file and exchange their witness statements on or before Friday May 10, 2024, failing which the 1st and 2nd Defendants’ statement of case is struck out.*
- 2. Costs of this Application to the Claimant.*
- 3. The Claimant’s attorney-at-law is to prepare file and serve this order.”*

The order has not been complied with on behalf of the 1st and 2nd Defendants.

Instructions:

- (i) Advise your supervisor on the type of order made on April 30, 2024, and the procedural steps the Claimant may take at this time to obtain judgment in the claim against the Defendants.
- (ii) Following from the Defendants' statement of case being struck out, assume judgment was obtained by the Claimant against the Defendants. Advise your supervisor what application must be made on behalf of the Defendants to deal with the judgment, including the grounds to be satisfied and/or considerations to which the Court must have regard, and the likelihood of the application succeeding.

PART B

FAMILY

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

QUESTION 3

Anna, a 26-year-old flight attendant, and Pedro, a 48-year-old businessman, met at a nightclub on June 24, 2023. There was an instant connection, and they spent the entire night together, talking, laughing and dancing.

Over the next few weeks, Anna and Pedro's romance blossomed at a whirlwind pace. They went on lavish dates, took spontaneous weekend getaways, and spent every spare moment in each other's company. Pedro showered Anna with expensive gifts, love notes, and grand romantic gestures, sweeping her off her feet with his charm and generosity.

By mid-July 2023, Anna and Pedro declared their love for each other and Anna moved into Pedro's spacious home.

In August 2023, Anna discovered that she was pregnant. Although the pregnancy was unplanned, Anna was excited because she believed that Pedro was her soulmate and that they were destined to start a family together. Due to the physical demands of her job as a flight attendant and the potential risks associated with flying during pregnancy, Anna decided to resign from her position in September 2023, when she was about eight weeks pregnant. Pedro initially seemed supportive of her decision and promised to provide for their growing family.

However, as the months passed, Pedro's behaviour towards Anna changed dramatically. He started displaying signs of aggression and controlling tendencies, demanding to know where Anna was at all times and limiting her contact with friends and family. He would frequently yell at her, blaming her for the unplanned pregnancy and accusing her of trying to trap him to secure his wealth and assets. On several occasions he physically assaulted her, leaving bruises. He would accuse her of infidelity and threaten to harm her if she ever left him. Despite the tension and emotional abuse, Anna remained with Pedro, hoping that the arrival of their child would improve their relationship.

On March 16, 2024, Anna gave birth to a baby girl named Lola. Lola was born prematurely at approximately 32 weeks' gestation and faced numerous health challenges, including a serious congenital heart condition. After spending four weeks in the Intensive Care Unit at the hospital, baby Lola was discharged on April 13, 2024, but she requires ongoing medical care, including regular check-ups with a cardiologist, medication, and possibly future surgeries.

Following Lola's birth, Pedro's abusive behavior escalated. He became increasingly violent, often lashing out at Anna both verbally and physically. On April 15, 2024, just two days after Lola's discharge from the hospital, Pedro came home drunk and angry. He pushed Anna against the wall and slapped her across the face, causing her to fall to the ground. Terrified and in excruciating pain, Anna realized that she was in a life-threatening situation.

Terrified for her life and the safety of her newborn daughter, Anna waited until Pedro left for work the following day and packed a bag with essentials for herself and Lola. She fled to her

sister's house, where she has been staying since.

After Anna left, Pedro started calling her phone incessantly at all hours of the day and night, leaving threatening voicemails, sending abusive text messages and causing her to feel unsafe and harassed. In these messages, Pedro vehemently denies paternity of the child, claiming that Anna had been unfaithful to him and that the baby couldn't possibly be his.

Furthermore, Pedro recently discovered that Anna has been staying with her sister and has been showing up unexpectedly at her sister's home, demanding to see Anna. He has also taken to posting embarrassing information about Anna on social media and has told mutual friends that he doubted the child's paternity and that he would not support Anna or the baby.

Anna is already struggling to cover Lola's significant medical expenses on her own. Having resigned from her job earlier in her pregnancy, she has minimal savings and is currently relying on her sister for housing and financial support. Anna is uncertain when she will be able to return to a full-time job. Lola's premature birth and ongoing medical needs require Anna to provide full-time care for her daughter, making it challenging for her to return to work in the near future. Anna's doctor has recommended that she refrain from returning to work until Lola is at least six months old to prioritize her mental health and her daughter's care.

Pedro owns a small landscaping company. His income is highly variable and depends on the number of clients he can secure and the size of the projects he undertakes. In a good month, his income from his landscaping business can reach US\$5,000.

Pedro is currently paying child support for his three other children from previous relationships, which amounts to US\$900 per month in total. He also has a mortgage on his home, with monthly payments of US\$950, and he owns a work truck, which he uses for his landscaping business, with a monthly loan payment of US\$500.

Anna remains deeply concerned for her safety. She also believes Pedro should be required to provide child support to ensure that Lola receives the medical care and financial support she needs.

Instructions:

You are a junior attorney-at-law in the firm, Peachy Law. Draft a memorandum to your senior partner advising on the following:

- (i) the orders Anna may seek to protect herself from further abuse and harassment by Pedro, detailing the legal bases of any such orders and the procedural steps to achieve the remedies she seeks; and
- (ii) the likelihood of success of a claim against Pedro for maintenance for Lola, and the factors that the court would consider in arriving at its decision.

END OF PAPER