

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS 2025

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 19, 2025)

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

Your firm, Love Law & Associates, represents Kimoya Spelling of 5 Rush Street, Jurisdiction in a court case that your senior partner, Jackie Love, inherited from Kimoya's previous attorney-at-law. Jackie had asked you to brief Kimoya's file obtained from her former attorney-at-law, with a view to meeting with Kimoya to advise her on the status of her matter.

From your review of the file, you saw that Kimoya had commenced a claim in the Supreme/High Court of your jurisdiction on January 25, 2023, against Jake Jobson, for damages for negligence at common law. Case Management Conference occurred on October 6, 2024, and trial was fixed for November 4 and 5, 2025.

You further saw, in reviewing the file, that Kimoya is a practical nurse who was employed by Jake on January 30, 2009, to provide 24-hour care for his mother, Betty Jobson. Betty was 80 years of age at the time Kimoya was employed. Betty lived together with Jake at 45 Coconut Estates, Jurisdiction (the property). At the time Kimoya was employed to care for Betty, she (Betty) had been diagnosed with dementia. Jake had informed Kimoya, on her first day of work, of Betty's diagnosis and told her that Betty had previously wandered off into the communities neighbouring Coconut Estates. On Thursday, January 31, 2019, Jake terminated Kimoya's employment while she was away from work on sick leave.

In the particulars/statement of claim, Kimoya claims that on Sunday, December 9, 2018, at or about 10:00 p.m., during the course of her employment, she fell into a trench on the property and sustained multiple injuries, including a broken right leg and broken right forearm.

In the defence, Jake admits that Kimoya fell into the trench in the backyard of the property where he lived but denies that Kimoya fell because of his negligence. He contends that he is not the owner of the property, and did not dig the trench in the backyard, but the owner did. The defence further attributes the extent of Kimoya's injuries, damage, losses and expenses to her own negligence in not paying attention when she went to the backyard of the property at night. On

the file you see a copy of the title to the property and the title owner registered thereon is Omari Jobson.

In Kimoya's witness statement on file, she stated that on Thursday, December 6, 2018, she had to leave work urgently to see her ailing grandmother. Betty had wandered off the property that same Thursday night because Jake had forgotten to lock the side door to the house. Betty was not found until Saturday morning of that weekend. Kimoya returned to work the Sunday night of that same weekend, and Jake started an argument with her. During the argument Jake said he would terminate Kimoya's employment. Kimoya, feeling threatened by Jake's tone, decided to leave the house by the back door. When Kimoya exited the back door, she fell into a 4-foot-deep trench in the backyard of the property.

Kimoya further stated that the trench was not in the backyard the morning she left to see her grandmother, and she was not informed by Jake during her absence nor when she returned to work, that a trench had been dug in the backyard of the property.

You see further in Kimoya's statement that while she was at home on eight weeks' sick leave prescribed by her doctor, she received a WhatsApp message from Jake, advising that her employment was terminated because he had to hire a new nurse to care for Betty.

Today you met with Kimoya to advise her on the status of her claim. At the meeting Kimoya informed you that she truly loved Betty because even though she had dementia, she treated her (Kimoya) with love and respect, unlike Jake. Kimoya further told you that she loved Betty so much that she has never taken any vacation leave in the ten years she worked for Jake and he has never paid her for vacation earned.

A copy of Kimoya's contract of employment was on the file. You see that it provides that Kimoya is to receive two weeks' vacation leave or pay in lieu of vacation leave per annum.

You asked Kimoya who Omari Jobson was. She informed you that he is the eldest son of Betty and Jake's half-brother, who lives elsewhere in the jurisdiction.

Required:

- (i) Advise Kimoya on her claim and on any necessary procedural steps you would recommend she take in order to successfully advance it, including the reasons for taking those steps, and the likelihood of success in taking them.
 - (ii) Draft the Notice of Application/Notice of Application for Court Orders only that you recommend Kimoya file, based on your advice in (i). (Draft the application in your Answer Booklet. The Prescribed Form is available for guidance.)
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QUESTION 2

A claim was issued on May 12, 2025, in the High/Supreme Court of your jurisdiction against Lorna Brown by Living Arts Limited, a company duly incorporated under the laws of your jurisdiction (the Company), for breach of contract. Lorna is your client. She is a renowned metalwork designer and sculptor in your jurisdiction with a registered business named Amazing Metals situated at Unit 57, Blind Mall, 5 Petersfield Avenue, Jurisdiction (the shop).

The contract between Lorna and the Company was entered into on April 5, 2023. The terms of the contract included Lorna providing the Company with 500 personalised metal sculptures for 500 of the Company's customers. It was a further term of the contract that Lorna would interview each of the Company's 500 customers with a view to designing and creating their personalised metal sculpture. Further, it was a term of the contract that Lorna would complete all 500 sculptures within two years from the date of the contract, and the Company would pay Lorna US\$10,000 for each personalised metal sculpture, upon delivery by Lorna to each of the Company's customers.

The Company's claim is that Lorna has failed and/or refused to interview 300 of the Company's customers to design and create their metal sculptures, in breach of the terms of the contract. The claim seeks as relief specific performance of the terms of the contract and, in the alternative, damages, together with interest thereon, pursuant to the relevant law of your jurisdiction.

Lorna scheduled a consultation with you for today. At the meeting, she instructs you that she would like to defend the claim.

Lorna instructs you that the reason she did not interview the 300 customers to create their metal sculptures was because of a very serious dispute that ensued between herself and the managing director of the Company, Mr. Zavian Brown, in December 2024. This was after she had completed sculptures for 200 customers with her signature, as usual, engraved in the piece and delivered them to those customers, who were very pleased with her work. She explained that her signature was unique and well known worldwide, so that its inclusion added much value.

On the day of the dispute, Zavian had asked for a meeting with her and when she attended the meeting, he told her that the Company did not agree with her engraving her name on the personalised sculptures she was contracted to make for the Company's customers. Lorna told you she was taken aback by the statement and responded by saying that all her pieces are her intellectual property, and as such her signature would be engraved on them. At that response Zavian called her a customer stealer and that was when she got 'smoking mad' and told Zavian to "go to hell." The meeting ended abruptly thereafter, and she has not made another personalised sculpture for the Company's customers since then. Lorna further instructs you that she has not been paid by the Company for the last 20 personalised sculptures she delivered to its customers.

You review a copy of the contract between Lorna and the Company. Therein you observed at clause 18 the governing law clause to be the law of your jurisdiction. At clause 19 the dispute resolution clause provides as follow:

"19. Any dispute arising out of or relating to this contract, including any question of its existence, validity, breach or termination, shall be finally resolved by arbitration administered by the British Virgin Islands International Arbitration Centre (BVI IAC) under the rules of BVI IAC, which rules are deemed incorporated by reference into this clause."

Required:

Advise Lorna on the necessary procedural steps you would recommend she take, and why. Your advice must identify the relevant court documents you would prepare to file on her behalf, detailing their contents.

PART B

FAMILY

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

QUESTION 3

Tabitha Younger-Tanner, a 27-year-old woman, has come to seek legal advice regarding her current situation with her husband, Kevin Tanner, a 52-year-old businessman. Tabitha and Kevin have been married for six years, during which time Kevin's behaviour towards her has escalated from verbal abuse to physical violence.

Tabitha instructs you that Kevin is a relatively successful businessman who owns and operates three companies, a fleet of buses that serves routes across the country, four supermarkets, and a restaurant. Despite his financial success, Kevin has always maintained strict control over Tabitha's access to money.

Tabitha instructs you that earlier that morning, Kevin became aggressive, after discovering that she had not packed his suitcase to his specifications and had failed to include some of his preferred shirts. He swore at her, grabbed her by the neck and slammed her against the kitchen island, injuring her left arm. He warned her that if she disappointed him again, she would regret it. Kevin has since left for an overseas business trip. He will be gone for a week, and she has taken the opportunity to come and see you.

Tabitha instructs you further that, over the past year, Kevin has physically assaulted her at least once a month. On one occasion, she ended up in the hospital when she feared that she had

suffered internal bleeding after Kevin had repeatedly kicked her in the ribs. She continues to explain that she has no independent income, as Kevin insisted she stop working early in their relationship. Before their marriage, she was employed as a receptionist at a doctor's office. He provides her with a monthly allowance of US\$1,500, which she uses for household expenses. Kevin pays for all other outgoings.

While Tabitha has managed to save some money from her allowance, much of her savings has gone towards assisting her mother, who is battling stage 3 breast cancer. Kevin refuses to contribute to her mother's medical expenses. Her savings have dwindled to US\$4,800.

Tabitha instructs you that she has concerns about her financial future. The home she shares with Kevin is rented, and she has no significant assets of her own, save and except the designer clothing items Kevin has purchased for her. The car she drives was purchased by Kevin and is registered in his name. She confides that she only has a high school education and she knows that any employment she receives will be unlikely to provide for her needs and those of her mother.

Kevin, Tabitha instructs, has two adult daughters from a previous marriage. His younger daughter, Jamie, is currently pursuing an undergraduate degree. Kevin pays half of her tuition and maintenance costs, while her mother covers the remainder. Additionally, Kevin provides financial support for his mother, Julia, by paying for her housekeeper and contributing monthly towards her necessities. His two brothers and sister, who are all gainfully employed, also assist with their mother's expenses. Despite his financial responsibilities, Kevin has always boasted about his wealth.

Tabitha instructs that she has heard rumours that one of Kevin's business ventures is struggling financially. The restaurant has faced increased competition from a newly opened Italian establishment on the same road. The restaurant has always been very important to Kevin, as it has been in his family for three generations. He inherited it from his now-deceased father, and it is named after his grandfather. Given his history of escalating abuse, Tabitha has increased concerns for her safety, if there is a risk of his losing the restaurant.

Additionally, Tabitha instructs you that she recently learned that the man her mother identified as her father, a police officer, was killed in the line of duty. She has been advised that he left behind assets, including real property, and his children would be receiving compensation from the government due to his death. However, she had no relationship with him. Her mother had pointed him out to her on two occasions.

Tabitha instructs you further that, according to her mother, when she informed the officer that she was pregnant, he adamantly denied paternity. Shortly after that conversation, he was transferred to another police station in another district. Tabitha's birth certificate does not list him as her father.

Required:

Advise Tabitha of the following:

- (i) the legal remedies available to protect her from Kevin's abuse, including the relevant legal bases, and the procedural steps that should be taken to ensure her safety;
- (ii) what claims, if any, she can make for spousal support, and the legal bases of such claims;
and
- (iii) the steps she could take to determine whether she has a rightful claim to her late father's estate and her likelihood of success.

END OF PAPER