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COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2000

CIVIL PROCEDURE AND PRACTICE I

(Monday, May 22, 2000)

Instructions to Students

- (a) Time: 3½ hours.
- (b) Answer **THREE** questions from Part A and **TWO** from Part B.
- (c) **Questions selected from Part B must be answered on a separate answer booklet.**
- (d) In answering any question a candidate may reply by reference to the law of any Commonwealth Caribbean territory, **but must state at the beginning of the answer the name of the territory.**
- (e) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

Question 1

You are an attorney-at-law with Watkins & Co., You are assigned to work on the file of Mary Busy Body. The following statement has already been taken from her:-

I Mary Busy Body of 22 Greengables Avenue, Oldcastle, will say as follows:-

1. I am a member of the Leisure Ladies Club which meets one day in each month at a member's home.
2. The meeting in December 1999, was scheduled to be held at the home of Tom and Nita Bent at 10:30 a.m.
3. Nita's husband, Tom, is an excellent mechanic and carries on his business from their home at 20 Greengables Avenue.
4. I admit that I wasn't very happy when Tom established the business a year ago, as I felt it would diminish the value of the properties in the neighbourhood. However, Tom has been very helpful to me when I have had difficulties with my car, so I haven't really complained.
5. Nita has told me that she does not like the cars being on the front lawn but it has always been Tom's dream to establish his own business. She said, she has decided to tolerate it for about two years, until Tom is sufficiently established to move the business to separate premises.
6. The business is flourishing and Tom has many customers.
7. At about 10:30 a.m., on the morning of December 20, 1999, I set off to go to the monthly meeting. I was pleased the meeting was close by as I had

not completed my Christmas shopping, and so I hoped we would have completed our business by lunch time.

8. As I was walking up the driveway of Tom and Nita's home, I slipped and fell. Tom was out working on the lawn and ran over to me saying "I am so sorry Mary, that was oil from a customer's car and I meant to clean it up, but I forgot." Even though I was in a great deal of pain, I remember Nita giving Tom a hard angry stare.
9. They both tried to lift me, but the pain was excruciating, and we all realised that I should not be moved until the ambulance came.
10. The ambulance came and transported me to Gore Hospital, where it was discovered that I was suffering from multiple fractures of the hip, right leg and right ankle.
11. I remained in hospital for four days and was then discharged as an outpatient on Christmas Eve. I had to undergo intensive physiotherapy from December 28, 1999 to April 1, 2000.
12. I was born on December 19, 1958, and up until the time of the fall enjoyed good health and was extremely fit for my age. I worked part-time as a dental hygienist. I played badminton most days, and find now that I can no longer play as the doctors say I suffered an entrapped nerve when I fell. I have been unable to drive and I have to take taxis everywhere.
13. As a result of the accident I have incurred the following expenses:-

Loss of earnings

4 half days for eight weeks - December 21, 1999 to February 13, 2000. \$54,000.

Travelling expenses - December 28, 1999 to present - \$15,000 and continuing.

Medical expenses:

Physiotherapy fees	\$185,000
Ambulance fees	6,000
Hospital fees	65,000
Prescription fees	25,000

Assume that a generally endorsed Writ is on the file and has already been filed and issued. You are now instructed to draft the Statement of Claim on behalf of Mrs. Busy Body.

Question 2

In the same firm as in Question 1 above, you are also assigned to work on the file of C.I.B. Investments Ltd. On the file there is a Writ of Summons issued by C.I.B. Investments Ltd., in your High/Supreme Court, as Plaintiff against Mad Stockbrokers Ltd. The general endorsement reads as follows:-

"The Plaintiff's claim is against the Defendant for Detinue for the Defendant has wrongfully detained and still detains from the Plaintiff, the Plaintiff's Share Certificates for shares in Teleworks of Aruba Ltd., Aruba

Producers Ltd., Cement Company of Arubas and has wrongfully refused to deliver up the same to the Plaintiff after being requested so to do.

And that as a result of the Defendant's action, the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

1. Delivery up of the said Share Certificates
2. Damages for Detinue
3. Costs.

The Writ is dated March 5, 2000. There is also a Statement of Claim in the matter on the file, and an Affidavit of Service which is sworn by Barry Johnson, a process server, employed in your firm. He states in the affidavit that on March 8, 2000, the Writ of Summons accompanied by the Statement of Claim was served on Mad Stockbrokers Ltd., by leaving the said Writ of Summons and Statement of Claims, at the Defendant's registered office. No appearance/acknowledgment of service giving notice of intention to defend is on the file.

Advise on:-

- (i). The step(s) you should now take given the stage at which the proceedings have reached.
 - (ii) How (if at all) would your advice be different if the Writ was also endorsed with a claim for an injunction against Mad Stockbrokers Ltd.
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Question 3

You are instructed by Carl Bell who is a director of Bell Estate Agents & Co. of 11 Graduate Road, in your jurisdiction.

The company wishes to issue proceedings against Dave Drew. The following statement is taken from Carl Bell:-

1. In April 1999, Dave Drew came to see me and advised me that he was leaving to live in England, having been offered a job in a telecommunications operation in London. He indicated that although he wanted to sell his house, he wanted to wait and see whether he liked living in London.
2. He asked me whether Bell Estate Agents & Co. would manage and lease the house on his behalf for a year. I told him we would be happy to.
3. The terms of a management and lease agreement were agreed in writing.
4. In April 2000, Dave Drew returned to the jurisdiction, and on behalf of the Company, I provided him with an account of the rents paid and deductions made for management expenses and necessary repairs.
5. I remember that Dave Drew appeared to be unhappy with the accounts and queried a sum which had been spent on roof repairs. I explained this to him. He did not say very much after my explanation and accepted the cheque due to him on the accounts.
6. He then told me that he did like London and would be staying there permanently and so we should put the house on the market for sale.

7. Margy Hill, who had rented the house for the last year, had already indicated her desire to purchase it when it became available. A sale was negotiated very quickly. Dave Drew agreed that Bell Estate Agents & Co. were entitled to \$350,000 being the commission due on the sale price.
8. The sale was completed on April 30, 2000, and we expected to receive our fees representing the commission due shortly after. I spoke to Dave Drew's attorney-at-Law, who had carriage of the sale and I was told that Dave Drew had now left for London and had given instructions that the commission to the Company should not be paid as he believed himself to be entitled to about \$150,000 from the company. He apparently believed the amount the company claimed they had spent on repairs during the year of rental was grossly exaggerated.

Advise Carl Bell on :-

- (i) the necessary step(s) you would need to take in order to commence proceedings on behalf of the Bell Estate Agents & Co., outlining any relevant documents and their contents;
and
- (ii) any defence and or counterclaim you believe that Dave Drew might have and the effect of such if successful at trial.

Question 4

You are instructed by Don Guest. He tells you that he is the sole proprietor of a tailor's shop. He informs you that on or about March 1, 2000, he

received a telephone enquiry from a Diana Dawes, the managing director of Fashion High Street Ladies Stores Ltd., (F.H.S. Ltd.) for a quantity of jeans.

They agreed that he would complete an order for a quantity of "straight legged ladies jeans". They agreed on a total cost of \$360,000, and that as soon as the order was placed 50% of the amount, would be paid. The balance being due within seven days of the jeans being delivered.

Don Guest received a letter from F.H.S. Ltd., which confirmed the telephone enquiry and placed the order with an enclosed company cheque dated March 20, 2000, for the amount of \$180,000.

The jeans were delivered to F.H.S. Ltd., on April 5, 2000. On April 6, 2000, Don Guest is informed by his bank that the cheque for \$180,000 has been dishonoured.

Don Guest tells you he wrote to F.H.S. Ltd., on April 8, 2000, giving them notice of the dishonoured cheque. In addition, he has sent a letter to F.H.S. Ltd., dated April 15, 2000, requesting payment of the balance due on the contract.

On May 1, 2000, he says he telephoned F.H.S. Ltd., and asked to speak to the manager. He tells you that Diana Dawes to whom he had previously spoken came on the telephone and that as soon as he announced himself she shouted - "don't you know things are slow in the retail sector, nearly all the jeans are still here looking at me, so is the stock I brought in from Miami. The zips on the jeans are not up to much either". She then hung up the telephone. He says, that he has tried repeatedly to speak to Diana Dawes again, but she is always busy when he calls. To date, none of the jeans have been returned to him.

Today, May 22, 2000, Don Guest comes to your office. He explains that his operation is very small, he employs two other tailors plus himself. He says, he cannot afford to be kept out of that amount of money for long.

Advise him on the procedural steps to be taken by you to enable legal proceedings to be instituted and concluded in the most expeditious manner.

Question 5

Oliver Twist comes to see you. He was on Friday, May 20, 2000, served with a Writ of Summons, issued against him by Jeremy Blok.

When you look at the Writ of Summons, you see that it is indorsed with a claim against Oliver Twist, alleging negligence arising from a road accident in Trelawny, on May 1, 1993, in which Jeremy Blok's motor vehicle was damaged. The Writ of Summons was issued on April 30, 1999. Oliver Twist was also served with an Order which was made *ex parte* on May 10, 2000, granting leave to renew the Writ of Summons until October 30, 2000.

Oliver Twist is very angry, he said he thought this matter was long behind him, and cannot believe that after so many years, he would have to go to Court. He says, he now has a very hazy recollection of the accident.

He tells you that as soon as he was served, he telephoned the attorney-at-law named on the Writ of Summons as acting on behalf of Jeremy Blok to ask them why proceedings had not been taken before, but he was unable to speak to the attorney-at-law. He was however told, that he could visit their office to

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collect a copy of the affidavit, which was sworn in support of the application to renew the Writ. He shows you a copy.

The affidavit is sworn to by David Domb, an attorney-at-law. The material parts of the affidavit read as follows:-

3. I am informed by Mr. Lee Bed, a process serve, that he went to the Defendant's home address as stated in the Writ of Summons on May 8, and May 10, 1999, and there is now shown to me marked "DT1" a copy of his letter dated May 15, 1999, to my firm outlining the efforts to serve the defendant.

4. As is apparent from the letter exhibited at "DT1" it appeared that the Defendant, Oliver Twist, was employed as a security guard and worked on shift hours, and that there was no way of knowing when he would be at home.

5. The file was then unfortunately misplaced in my office for some months after Mr. Lee Bed had returned the Writ of Summons to us in mid May, 1999. We eventually found it in December 1999.

6. On January 8, 2000, I wrote a letter to the Defendant's insurers. They responded to my letter by a telephone call from Miss June Biggs, of the Claims Department, who told me that they would be sending me a letter shortly as soon as they had contacted their insured. She also indicated their willingness to negotiate on their insured's behalf.

7. As a result of that positive contact with the insurer's, I did not take any further steps as I hoped that I would shortly hear from the insurance company and the matter would be settled without the need to carry on with the proceedings.

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8. However, it has been several months now, and I have not heard from them, and therefore it seems that the proceedings will have to continue.

9. I therefore humbly request that the Court will grant an Order renewing the Writ for a period of one year.

Oliver agrees that he works on a shift system as a security guard, and that it would be difficult unless you know his roster precisely to know when to find him at home. However, he says that he believes that the same person who informed the process server about his employment, would have told him to which company he was employed and in any event, he cannot believe that they are allowed to issue a Writ of Summons now.

Advise Oliver Twist on the steps you will take on his behalf, and the likely outcome of any application.

PART B

Facts relating to Questions 6, 7 and 8.

Today is Monday, May 22, 2000.

A new client, Shirley Domino, comes to see you following incidents of violence at her home this morning. Shirley tells you that she was married to her husband, Alberto Domino, on August 11, 1994. She met him in Venice, whilst she was there on holiday in July 1994. He came to visit her in your jurisdiction in August of the same year and they were married at the University Chapel by Rev. Doit.

The property in which they live is in Alberto's sole name. Shirley tells you that this is because Alberto is twenty years younger than her and she always felt she would predecease him and she wanted him to have financial security. She is now 50, she was born on February 12, 1950, and Alberto was born on January 1, 1970. However, she tells you that she did contribute to the purchase of the matrimonial home which is a three bed roomed town house.

The matrimonial home was bought in 1998 for \$2,500,000. Shirley says that she contributed \$500,000, which she inherited from her sister, Lorraine, who died in December 1997. Alberto also contributed his savings of \$300,000. They obtained a mortgage for the balance, and this is paid directly from Alberto's salary, as he is either entitled to accommodation at the hotel or to a housing concession of 30% of his salary. This concession has always been used to pay the mortgage.

They have one child Tammy, aged 5, who was born on November 27, 1995. Shirley's niece, Ann Brown, who was born on December 17, 1986, also lives with them. She is Lorraine's child. Both Shirley and Alberto promised Lorraine that they would take care of Ann.

Alberto is employed at the Pegree Hotel as their Chief Chef. Shirley says that shortly after their marriage, she realised that Alberto was easily provoked and prone to violence. In particular, he had several incidents at work with colleagues, but Shirley put this down to his "latin temperament" and did not believe that he would ever be physically violent to any of the family.

However, on March 10, 1999, they attended a friend's wedding which was held at the Pegree Hotel. They had a quarrel because Shirley described the chicken prepared by Alberto for the wedding as "too Italian for her taste".

Alberto threw a glass of red wine he was drinking in Shirley's face and punched Shirley in the face causing bruising and a nose bleed.

Shirley tells you that she had to be taken from the reception room by a friend and had to be taken home immediately. She states that she was at her wit's end and absolutely embarrassed and devastated. She definitely decided that the marriage had to end, because as she told you, "I am not prepared for any man, much less this man 20 years younger, to hit me."

That night Shirley says, she took all her clothes out of the bedroom she shared with Alberto, and moved into Tammy's room. She says, when Alberto came in looking very apologetic, she told him straight away she was no longer willing to live with him as his wife, and she was only staying in the house because she had no where to go and besides it would be too traumatic for the children, if she moved out, especially Ann, who had been so devastated since she lost her mother.

Since last March, Shirley says she has stuck to these arrangements. She says, at first Alberto tried to talk her into resuming the marriage but she was adamant that the marriage itself was a dreadful mistake.

Alberto, who has always brought home dinner from the hotel continues to do so, and Shirley says there is a helper at the house who continues to clean and attend to the laundry needs of the members of the household.

Since the beginning of this year, Alberto has been spending time away from the home at night. Shirley shows you a letter she found last night. It is addressed to Alberto and is from a woman named Roberta. The letter thanks Alberto for his sexual abilities and regrets that the relationship can go no further since he is like a "married bachelor."

This morning, Shirley went into the kitchen, where Alberto was making coffee. He tasted the coffee and proclaimed that it was too strong and then without provocation or warning he flew into a complete rage. He told her that he had had enough of this "stupid separation and of being a married bachelor", and that she should come to bed with him right now. When Shirley resisted, Alberto dragged her by her hair, pushed her face on the kitchen counter and threw the pot of coffee all over her hair.

Tammy and Ann who were upstairs getting dressed for school ran downstairs on hearing the commotion. They both witnessed the attack on Shirley.

Ann, in fact, tried to pull Alberto away from Shirley. He pushed Ann so hard, she fell and hit her head against the kitchen sink and has a slight bump on her forehead.

Tammy in the meantime ran hysterically from the house screaming for their neighbour, Dr. Phillips, to come and help Mummy. Dr. Phillips came into the house and managed to pull Alberto away from Shirley. Alberto immediately left the house. Dr. Phillips attended to Shirley's wounds, including giving her pain killers, and suggested she go to see an attorney-at-law straight away.

Shirley tells you that she believes Alberto has gone to work, and that he could obtain accommodation at work if necessary.

She tells you that she has no where to go, as all her relatives live in Miami. She tells you that since Tammy was born, she has had a part-time job as a receptionist at a factory. She has no particulars of Alberto's income. She however, gives you the following details of her own income:

Income

Wages (net) 28,000 per month

Less monthly outgoings

Electricity	1,500 per month
Telephone	700
Water rates	400
Mortgage	10,000
Food	7,000
Helper	5,000
School fees	8,000

Question 6

Draft a petition on behalf of Shirley for the dissolution of her marriage.
State the documents which will accompany the petition (**do not draft them**).

Question 7

(a) Advise Shirley on how she can obtain protection from violence, outlining the documents which will be necessary to make the application;

or

- (b) Describe the procedure by which Shirley can obtain maintenance for herself and the children and draft the required affidavit.
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Question 8

Write a letter to Shirley explaining to her the procedure for dealing with any application regarding the matrimonial home and giving full reasons, explain what orders the Court is likely to make.
