

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR EXAMINATIONS, 1998

CIVIL PROCEDURE AND PRACTICE I

(Tuesday, May 26, 1998)

Instructions to Students

- (a) Time 3 ½ 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 student 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

PART A

QUESTION 1

You are instructed by Colin Geddes. He tells you that on August 15, 1996, his son Timothy Geddes, who was born on September 28, 1984, went with a group of friends to the Brixton Amusement Arcade.

He says that the owner of the arcade, Dirty Ham, wrongfully and falsely accused Timothy of theft, just as the group was about to leave the arcade at 6:00 p.m.. Timothy, he says, was held by Dirty Ham, and locked in a room at the arcade for about 45 minutes. Dirty Ham then entered the room, forcefully pulled Timothy's jacket off, ripping it beyond repair, removed his shirt, slapped his face and beat him about his body with his fists.

Although Timothy was accused of theft, apparently at no time, did Dirty Ham call the police or conduct Timothy to a police station. Timothy was eventually allowed to leave the arcade at 7:00 p.m.

Colin Geddes tells you that as soon as he was released, Timothy who is in fact asthmatic, suffered a severe asthma attack, collapsing outside the arcade. He was rushed to the Roman Children's Hospital, where he was hospitalised for 5 days. The doctor's report says that the asthma attack, was a direct result of the trauma and beating Timothy had suffered.

Colin Geddes tells you, that the leather jacket which was damaged beyond repair cost \$15,000. A necklace he was wearing, was also broken and had to be repaired at a cost of \$2,500.

Timothy had bruising to his face and chest, which subsided in about four days. He also had a cut on his lip which healed in 10 days. He is now having counselling sessions.

A report from the child guidance clinic says that since the incident, he no longer trusts people and is now very withdrawn. He is seen twice per week, by the Child Guidance Counsellor, Betty Psycho, and has had 15 sessions to date. Each session costs \$1,500. Her report states that these sessions may need to continue at least until he completes High School. At the time of filing the writ the hospital bill amounted to \$75,000.

Draft an appropriate Statement of Claim in your Supreme / High Court

QUESTION 2

Your firm has just taken over the debt-collection portfolio for Brickhouse Bank. Formerly the Bank had a legal officer who handled these matters.

You are passed a file in which the Bank has already issued proceedings against Rupert Davis on a personal guarantee for a debt. From the file you can see that the borrower, Bob Hall, is now in prison on certain criminal charges, no civil proceedings had been issued against him. Your instructions are to continue proceedings against Davis only.

The loan amount is \$900,000 and no payments have been made on the principal, or on the agreed interest.

On perusing the file you can see that Davis has filed an appearance, but no defence has yet been filed. He has however written a letter to the Bank which states vaguely that the guarantee was obtained by undue influence and also states that there was a promise by the loan officer, William Ackroyd that the guarantee would never be enforced. In a report prepared by Ackroyd in response to Davis' letter, Ackroyd denies these allegations.

Advise the Bank on the appropriate application to be made, describing the contents of the documents, and the order which is likely to be made.

QUESTION 3

Trevor Palmer works at Cable Alumuni Plant. On June 10 1990, he was severely injured in the course of his employment when a fellow worker, Dennis Black negligently caused caustic soda to spill on him.

On May 5, 1996, Trevor Palmer filed a writ of summons claiming damages against Cable Alumuni Plant as a result of the incident. The writ of summons is indorsed as follows -

"The Plaintiff claims against the Defendant to recover general damages, \$320,000 special damages and costs."

The writ is served on Cable Alumuni Plant on the same day, and they enter an unconditional appearance / acknowledged service and gave notice of intention to defend.

A statement of claim is served on the Defendant within the time limited to do so by the Rules of the Supreme / High Court, which contained the following paragraph -

"The Plaintiff claims against the Defendant to recover damages for negligence for that on June 1990, Dennis Black whilst acting in the course of his employment as a servant or agent of the Defendant, negligently caused or allowed caustic soda to be spilt on the Plaintiff causing him to suffer burns to his right arm and leg"

. Particulars of the injury were then given.

Trevor Palmer has now instructed you in place of his former attorney-at-law to oppose the application of Cable Alumuni Plant.

Before the defence is served you realise that the indorsement of claim on the writ is defective. However, you are served with a summons seeking an order that the above paragraph in the statement of claim be struck out.

Either -

- (a) describe the strategy and procedure you will adopt to correct the defect in the writ and meet the challenge of Cable Alumuni Plant;
 - or
 - (b) prepare a written submission for the court at the hearing of the application.
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QUESTION 4

Joe Richmand, a flying enthusiast, contracted with Turbojets Associates to purchase a single engine Airlift aeroplane for his use as soon as he received his pilot's license in April of 1994. Turbojets was the local agent and distributor for Breakwing Airlines International, the manufacturer of Airlift aeroplanes with its head office at 105 Dristen Blouvard, London, WC 1 U2. Shortly after taking delivery of the aircraft from Turbojets, Joe was taxiing down the runway when the right wing of the aircraft broke off.

On complaint to Turbojets, Bob Sly, the sole owner and manager told Joe that it was a manufacturer's defect and Turbojets was not responsible. Joe was so upset with this and with other strains from his business that he became ill. After recovery in June of 1995, he had to reorganise his business and it was not until recently that he has had the time to renew his interest in flying and to try and recover the loss he sustained as a result of the damage to the aircraft.

However, when he instructs you he tells you that Turbojets is out of business, but that he has seen Bob Sly driving around a spanking new Mercedes Benz and featuring prominently in the monthly newsletter of the Country Club as a major benefactor to that institution and regularly attends meetings there every week. You are instructed to take legal action against Bob Sly and Breakwing Airlines and serve your documents.

- (i) Outline the procedure you would follow.
 - (ii) Describe the contents of the documents which you would file
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QUESTION 5

During the Carnival season, Frank, Jerry and Jasmine form a group called Fetelovers Associates to host several fetes. Jasmine is in charge of public relations for the group. She is also well-known in her own right as being a highly successful business woman. On February 1st, during one of their fetes, the stage collapsed injuring several people amongst whom were Tom a 17 year old, his mother Beulah, and Jim. Jim received a blow to his head and has lost all memory. He has been diagnosed with other mental problems which requires him to be constantly supervised by his father Harold.

Tom, Beulah and Jim have brought an action against Jasmine for damages for negligence. Jasmine was served with the writ of summons and statement of claim on May 1st and consults you.

She instructs you that Frank and Jerry were partners with her in this venture and that Mad Bull Productions Ltd. was the band on stage that night when it collapsed. She instructs you that it is a feature of all Mad Bull Productions Ltd. performance contracts that they build the stage on which they are to perform and that Fetelovers Associates had consequently insisted on an indemnity from Mad Bull Productions Ltd. for any injury, loss or damage which might be occasioned by their activities.

- (1) Outline the procedural issues involved in representing Jasmine and describe the contents of the documents that you will need.
 - (2) As Jasmine is most interested in any relief she may have against Mad Bull Productions Ltd., you are required to draft the necessary documents to make them a party to the proceedings.
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PART BFacts relating to questions 6 & 7

Mrs. Juliet Capulet of Dallas, Texas arrived in St. Thomas on the SS Independence on August 1, 1992. As she stepped ashore, she heard the rich bass voice of Studalong Swift sing out, "Mind your step please". They smiled at each other and Mrs. Capulet, after a refreshing drink in the hotel, left in a minibus for a half-day tour to Pleasant Resort in the highlands of St. Thomas. Mr. Swift was the tour guide. He regaled the tourists with tales of Old St. Thomas and so impressed Mrs. Capulet that she invited Mr. Swift to join her in her cabin that evening. They chatted until the early hours of the morning.

Mrs. Capulet disclosed that she and her husband were in the midst of divorce proceedings and she would be happy to come to stay in St. Thomas if Mr. Swift, some 8 years her junior, would agree to marry her. She told him finance was no problem as she had a healthy trust fund, with an income sufficient to maintain herself, her four year old daughter Nicole and Mr. Swift. If Mr. Swift was amenable to her suggestion, he could set about immediately to purchase the lovely cottage "Satisfaction", which he had pointed out during the tour. Notwithstanding his previous efforts, Mr. Swift had never had such an attractive offer before. He was quite charmed by Mrs. Capulet's beauty, freshness and generosity. He accepted the proposal, provided she then and there would give him US \$20,000. This she was happy to do. They enjoyed the time together, until the SS Independence departed on August 3rd.

The marriage of Mr + Mrs Swift was celebrated in the garden of Satisfaction Oct - 5, 1992. Two girls were born to them on July 20, 1993 named
 (1) ~~Winter~~ - ~~Swift~~

Twin girls were again born to them on
April 30, 1994 named Sky and Rainbow.

That event heralded a series of unpleasant occurrences in the formerly tranquil, if erotic Swift household. Mrs. Swift was most unhappy at the succession of twin girls, she accused Mr. Swift of taking fertility drugs, and "tying her down". The arguments were endless. Mrs. Swift was not a doting mother, and began attending parties, night and day in the tourist resorts.

Mr. Swift who had shown no inclination to return to work since his marriage, decided to return to the hospitality business and this he did.

Just as the family was in deepest turmoil, Mr. Capulet, who had never visited or written to his former wife and daughter turned up ostensibly to visit his daughter Nicole, in June 1994. He was permitted to live in the Swift household. Tension surfaced on every side, tinged with jealousy and suspicion. Mr. Capulet used every opportunity to make snide remarks about Mr. Swift whom he always referred to as "Mr. Stud".

On two occasions, Mr. Swift saw Mr. Capulet with "white stuff" in his hand, when he asked Mrs. Swift about it, she nonchalantly told him, that both herself and Mr. Capulet dabbled in the occasional snort of "cocaine", and there was nothing wrong with it. After a stay of 3 weeks Mr. Capulet left the home.

Shortly thereafter, Mrs. Swift informed Mr. Swift that she was pregnant and a son called Damian, wholly dissimilar to the two sets of twins, and looking very much like Nicole was born to Mrs. Swift in February 1995.

When they visited the doctor later that month, Mr. Swift asked for blood tests on himself, his wife and baby Damian. The doctor has reported that it is unlikely from the blood tests that Mr. Swift is the father of Damian. Mrs. Swift has confessed to Mr. Swift in the presence of the doctor that she believes the child is

Mr. Capulet's child, but adds that it doesn't really matter, because Mr. Capulet told her in June that he discovered that they were not in fact divorced. He had apparently applied for the decree absolute before the expiry of 6 weeks from the decree nisi, and the application had been refused. He was planning to renew the application, but, when he visited in June 1994, he fell in love with her again and she with him. She has, she said, decided to go back to Texas to be with him, as her life with him was far more exciting. She tells Mr. Swift that she and the children are booked on a flight in three days time and that her mother who lives in Texas, will take care of the six children.

Mr. Swift now has considerable savings of his own, and the house at "Satisfaction" is in his name.

QUESTION 6

Mr. Swift consults you the day before Mrs. Swift's departure.

Draft the necessary petition and statement of arrangements. List the documents which will accompany them.

QUESTION 7

Assuming Mr. Swift consulted you two days before Mrs. Swift's departure. Draft an affidavit in support of his application for custody of his daughters.

QUESTION 8

You are consulted by Miss Mae Littleboy aged 24. She is 8 months pregnant. She tells you that last October, she was a games activity organiser at the Rutlins Winter Camp, She says she is quite unable to explain how it happened, but she became involved with a 17 year old young man staying at the Camp, and he is the father of her unborn child. She tells you that she is quite sure he is the father, and tells you she has not been involved with anyone else. Several people can vouch for her. She tells you she wants something official to show he is the father, and she wants to claim maintenance for the child. She has written to him, and advised him of her condition, and she shows you the following reply from him -

" January 10, 1998

Dear Miss Littleboy,

Oh boy! I was shocked to receive your letter. Both times that we made love in October last year, I asked you if everything would be alright and you said yes. I can't bring myself to tell my mother what has happened she would die. I have told my father, he says I am to send you \$10,000 and not to write to you again. He says you will milk me dry, and no doubt you deliberately became pregnant, because I told you about the large sums I have inherited from my grandfather. In any event, I am going abroad to school. I will leave in August. There is no point in trying to find me after that,

Signed,

Like Biglady. "

Advise Miss Mae Littleboy by letter, the action that you can initiate on her behalf, outlining the relevant procedure, and any order which the court is likely to make.
