

CP4

NORMAN MANLEY LAW SCHOOL LIBRARY
COUNCIL OF LEGAL EDUCATION
MONA, KINGSTON, 7. JAMAICA

Copy 1

FOR REFERENCE ONLY

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1990

CIVIL PROCEDURE & PRACTICE I
(Tuesday, May 29, 1990)

Instructions to Students

- a) Time: 3½ hours
- b) Answer THREE questions from PART A and TWO questions from PART B
- c) Questions selected from PART B must be answered on a separate sheet.
- 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 relevant territory.
- e) It is unnecessary to transcribe the questions you attempt.

NORMAN MANLEY LAW SCHOOL LIBRARY
COUNCIL OF LEGAL EDUCATION
MONA, KINGSTON, 7. JAMAICA

QUESTION 1

At approximately 1:00 a.m. on Sunday, February 4, 1990, Mr. Chesty Jughead of 8 Palm Lane, Toyland, and his fiancée Miss Fay Hippie were strolling along Pimento Avenue in your country. They were returning from the cinema.

At a certain point along Pimento Avenue Mr. Jughead and Miss Hippie heard sounds of footsteps as if persons were running behind them. They then heard voices shouting "thief, thief! Hold him, hold him!"

They looked behind and saw a man about the same size, height and build as Mr. Jughead. The man passed them in a flash and disappeared in a nearby gully.

A few seconds later a police officer in uniform and a lady, both of whom seemed to have been pursuing the man who was running, caught up with Mr. Jughead and Miss Hippie. The police officer immediately held on to Mr. Jughead and started raining blows on Mr. Jughead's head, knees and shoulders. They tried to explain that a man ran past them and had disappeared into the gully, but the lady who was with the police officer pointed to Mr. Jughead and said, "Officer, he is the man who grabbed them".

The police officer then identified himself to Mr. Jughead as Corporal Roy Sharpman, and accused him of stealing the lady's gold chain and pendant. Corporal Sharpman placed Mr. Jughead in a police jeep and took him to the Pine Garden Police Station where he arrested and charged him with larceny of a gold chain and pendant, the property of Margaret Moonlighter.

Mr. Jughead was placed in a lockup at the police station. He was to have been taken before the Pine Garden Magistrate/Resident Magistrate's Court at 10:00 a.m. on Monday, February 5, 1990, to answer the said charge but at 8:00 a.m. on that day Miss Margaret Moonlighter returned to the police station and told Corporal Sharpman that she had made a mistake when she identified Mr. Jughead as the man who had stolen her gold chain and pendant.

Mr. Jughead was then released from custody and the charge against him abandoned.

During the encounter with Corporal Sharpman, Mr. Jughead's shirt was torn. He had paid \$12⁵ for it about two weeks prior to this incident. Mr. Jughead's head, right shoulder and both knees were swollen and painful.

On Mr. Jughead's release from custody he obtained medical attention for those injuries from Dr. Surain Du Pay to whom he paid a fee of \$120. He also bought medicine on the doctor's instructions for another \$135. As a result of the injuries, Mr. Jughead who is a welder, was unable to attend work for one week. He earns \$1600 per week.

The firm of attorneys-at-law of which you are an associate has filed a generally endorsed Writ of Summons on behalf of Mr. Jughead in which he claims against Corporal Roy Sharpman and the Attorney General damages for assault and false imprisonment arising from the said incident. Draft an appropriate Statement of Claim.

QUESTION 2

Mrs. Betty Straightlace resides at 20 Badlwin Circle in your country. She owns an office building at 50 Swan Way which she let to Mr. Tim Normack of 10 Cassandra Drive at a monthly rental of \$5,000. Rent is now in arrears in for the months of January, February, March and April, 1990.

After several unsuccessful demands for payment from her tenant, Mrs. Straightlace has instructed you to institute legal proceedings to recover the sum owing to her.

Consequently, you have filed and served on Mr. Normack a specially endorsed Writ of Summons in which the Plaintiff, Mrs. Straightlace is seeking to recover from the Defendant the sum of \$20,000, being money owing for rent in respect of premises No. 50 Swan Way for the months of January, February, March and April, 1990, and costs.

The Writ of Summons was personally served on Mr. Normack who has entered an appearance/acknowledged service, but has not yet filed a defence. You now wish to apply for summary judgment under Order 14 Section 79 (1) of the Judicature (Civil Procedure Code) Law.

Prepare the application and the appropriate affidavit in support.

QUESTION 3

The Plaintiff is an employee of Master Mix Manufacturing Company. On December 16, 1989, he suffered injuries to his face, chest and arms during the course of his employment when a boiler in the company's factory exploded.

In February 1990, the Plaintiff issued against his employers a Writ of Summons endorsed as follows:

"The Plaintiff claims against the Defendant to recover damages for personal injuries and \$4,500 special damages and costs".

The Writ of Summons was duly served on the Defendant who entered an appearance acknowledged service and took no step within fourteen days to challenge the validity of the writ.

The Plaintiff's attorney-at-law then filed and delivered to the Defendant, within the time allowed for him to do so, a Statement of Claim in which he alleged that the Plaintiff's injuries were caused by the negligence and/or breach of statutory duty of the Defendant.

The Defendant took out a Summons to strike out the Statement of Claim alleging that it had introduced a cause of action which was not disclosed in the endorsement on the Writ.

You have been instructed to appear on behalf of the Plaintiff and oppose the Defendant's application.

Prepare a draft of the submission which you would make on the Plaintiff's behalf in support of the validity of the Statement of Claim.

QUESTION 4

On July 28, 1989, the firm of attorneys-at-law of which you are an associate partner, issued a Writ of Summons No. C.L. 1989/M 1009 on behalf of Munair Moore against John Swinger of 15 Strawberry Lane, Skyland.

About a week later, a sealed copy of the Writ of Summons was delivered to Mr. James Strongman, a process server with instructions to serve it personally on the defendant at the given address.

On August 9, 1989, Mr. Strongman went to the home of the Defendant in pursuance of his instructions, but the Defendant was not there. However, Mr. Strongman saw and spoke with the Defendant's wife, Mary Swinger, who informed him that the Defendant was out on a fishing trip and may be away for about a week.

Mr. Strongman told Mrs. Swinger the purpose of his visit and informed her that he would return on August 21, 1989. Mr. Strongman returned on August 21, 1989 as he had promised but neither the Defendant nor his wife was at home. On that occasion Mr. Strongman spoke to the Defendant's twelve-year-old son, Thomas, who told him that the Defendant had just gone down the lane. Mr. Strongman waited for some time but eventually he left without seeing the Defendant.

Mr. Strongman again went to the Defendant's home on September 30, 1989, but again he was not there.

On October 16, 1989, Mr. Strongman returned the unserved Writ of Summons to your firm, giving full details of his unsuccessful attempts to serve it personally. You now decide to apply for leave to dispense with personal service of the Writ of Summons on the Defendant and for leave to effect substituted on him.

Draft the document(s) necessary for such an application.

QUESTION 5

In the case of *Tildesley v Harper* (1878), 10 Ch. D. 393 at pages 396-7, Bramwell L.J. said:

"Leave to amend ought to be given unless the court is satisfied that the party applying is acting mala fide, or that by his blunder he has done some injury which could not be compensated by costs or otherwise".

In light of the above quotation, discuss the principles which now guide the courts when considering applications for leave to amend pleadings. Illustrate your answer by reference to rules of the Supreme/Hugh Court and decided cases.

PART B

QUESTION 6

Mr. Adam Foule was a sports fanatic. He was a member of all the local sporting clubs: Golf, tennis, cricket, squash, hockey etc., and prior to his marriage he had accompanied all the national teams on overseas tours. He contrived to entertain club officials at his home on most weekends and not infrequently on week-nights as well. Upon his marriage to Miss Nicely Ann Nuff on April 1, 1982 at Christian Church, Garden City, Gardenia, W.I. he stipulated that they should occupy separate bedrooms as this would fit more easily into his life-style.

Mrs. Foule was enchanted with her husband's friends and associates and enjoyed the privileges offered at her husband's several clubs. She never needed to carry money while she stayed in the country's best hotels and when she travelled overseas with her husband she was given VIP treatment wherever she went.

Mrs. Foule gave birth to twin sons James and John on June 28, 1985. Her husband who was then in New Zealand with the country's Rugby team, returned home two weeks after the children's birth. Mrs. Foule was distressed that he had neglected to return home earlier. Her husband's explanation that he would have the boys for of life-time, but the prospect of his team winning the final game of the series was so momentous, that in his game-plan the twins could wait. That conversation set Mrs. Foule to begin to think about the state of her marriage, the purpose of her life and what future lay ahead for her and the children.

Mr. Foule was an Investment Consultant who had files delivered at his home at 8:00 a.m. daily and he would leave for his office at 11:00 daily. Invariably he locked the door to his bedroom and to his study before leaving and as a matter of custom no one ventured into those rooms in his absence. His return schedule depended upon his social engagements for that evening. On the last Saturday of March 1988, Mrs. Foule was restless. The twins were sleeping, the household helpers were in their rooms, rain was falling in short squalls. When she switched on her television, she found it was the middle of a boring detective story and for the first time, it occurred to her that she should look into her husband's office. She tried nearly every key in the house until one opened the door. Cowardly, she entered the room and reflected that in six years of marriage she had never entered her husband's study. Mrs. Foule opened a

battered old breifcase in which were twenty folders. On examination, each had the photograph of a young woman and a bundle of negotiated "CASH cheques" drawn by her husband. Each cheque was dated since her marriage. Fifteen of the files were marked closed, and in each of these files, the final cheque was for \$50,000.

In respect of each of the five extant files monthly cheques ranged between \$3,000 and \$15,000.

Bewildered, Mrs. Foule perused the files for what seemed to be hundreds of times, then she began to write off the details of the cheques. She did not recognize any of the women in the photographs, but planned to remove a few from the closed files for further investigation. Her husband entered the study at that very moment. In his rage he began to hit his wife with his fists, demanding to know what she was doing in his private study. As he rained blows on her, he wanted to know if she had told any of the Club Chairmen of her discovery. She fled to the sanctuary of her room, where she washed her bleeding face and put cold compresses on her rapidly swelling eyes and face.

Through the closed door, Mrs. Foule could hear her husband shouting that she was a simpleton, to believe that a man like him could be content to be the master of only one woman. He left the house on that night taking all his personal belongings. Mrs. Foule found it unbearable to continue to live in the matrimonial home or to reside in her husband's country. She has returned to her home town, where fortunately you practice as an attorney-at-law, and has consulted you.

Mrs. Foule has instructed you that she has written to her husband at the former matrimonial home and to his office address known to her, and that the letters have been returned "Address Unknown". She has written to all the Clubs of which she knew her husband to be a member, and has received no reply from the Club Secretary or Club Chairman. Her husband's attorney as well as her husband's bankers have advised her that on her husband's instructions, his address is not to be disclosed. Mrs. Foule believes that her husband has a disposable income in excess of \$800,000 annually, and estimated that when they cohabited, he spent more than \$200,000 per annum on household expenses, including entertainment. Expenses for her participation in tournaments, hotel bills and air-fares were not included.

Prior to marriage Mrs. Foule had been a telephone operator. At age 35 with two infant sons, her chances of employment are limited.

On these facts draft a Petition for Dissolution of Marriage.

QUESTION 7

The facts are as given in Question 6. It will not be possible to effect personal service upon Mr. Foule, the respondent, and the law of your country stipulates for personal service unless dispensed with by the Court.

Prepare the affidavit(s) to support an application to the Court to dispense with personal service.

QUESTION 8

The facts are as given in Question 6. Mrs. Foule has claimed maintenance.

Her husband has filed an affidavit of means in which he says he can only make an offer of Five Thousand Dollars monthly for the maintenance of the two children. He has made no offer in respect of his wife.

Prepare an affidavit in reply.
