

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

454 I

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1995

CIVIL PROCEDURE AND PRACTICE I

(Friday, May 26, 1995)

Instructions to Students:

- (a) Time: 3 1/2 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 relevant territory.
- (e) It is unnecessary to transcribe the questions you attempt.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

P A R T AQUESTION 1

On Monday, February 15, 1995, Myron Parkes a building contractor of 23 Balizer Street, Freetown was driving his motor van licensed 263 BR in an easterly direction along Palm Shore Avenue, Fort Charles. He was on his way to deliver some steel sinks at the site of a housing project which was being constructed.

As Mr. Parkes reached a certain point along Palm Shore Avenue a truck licensed 452 BX owned by Sweet Tooth Confectionery Company Limited of 6 Plumrose Avenue, Fort Charles and driven by Deon Mohansingh, an employee of the company, approached from the opposite direction.

The speed limit for motor vehicles travelling on Palm Shore Avenue is 30 m.p.h., but the truck was travelling at approximately 55 m.p.h.

As the truck was approximately 30 yards from Mr. Parkes' van, the truck developed a skid, veered to the right side of the avenue and crashed into Mr. Parkes' van damaging the entire right side of the van.

Mr. Parkes sustained the following injuries -

- (i) fracture of the right femur;
- (ii) lacerations and abrasions to the right hip.

As a result of the accident Parkes was hospitalized for a period of 8 weeks. Prior to the accident Parkes earned on an average \$25,000 per week and he spent \$50,000 to repair the damage to his van.

Draft an appropriate Statement of Claim to be filed and served on behalf of Mr. Myron Parkes.

QUESTION 2

On April 25, 1995, Niro Gustav, a highly acclaimed novelist, instructs you to commence legal proceedings against Ignatius Jones, a resident and citizen of Canada.

Gustav informs you that he is the owner and operator of the Southern Moon Guest House which is situated at 16 Sun Grove, Kemford in your country.

He further informs you that Jones who came to your country on holidays stayed at the Southern Moon Guest House for two weeks during which period Jones accumulated a bill of \$20,000.

According to Gustav, Jones clandestinely left the guest house without settling his bill and he has since returned to Canada.

Upon inquiry made, it is learnt that Jones resides at 112 Brentwood Drive, Markham, Toronto, Canada.

Draft the necessary documents to initiate the first step in the commencement of civil proceedings on behalf of Niro Gustav.

QUESTION 3

Miss Jane Seymour, an attorney-at-law, issued a writ of summons on behalf of her client. After the writ of summons was served on the defendant, Miss Seymour discovered -

- (i) that she misspelt the name of the defendant on the writ of summons;
- (ii) that she omitted to include in the endorsement on the writ a claim for nuisance of which the plaintiff had told her;

On the day of the trial of the action, the plaintiff supplied Miss Seymour with additional facts which would have required her to include in the writ and Statement of Claim a new

cause of action which by that time had become statute-barred under the Limitation Act.

- (a) Outline the procedure to be adopted in making the necessary amendments to the Writ of Summons and Statement of Claim in (i) and (ii) above.
 - (b) With the assistance of case law describe the court's attitude to the granting of those amendments.
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QUESTION 4

Mr. Mickey Mouse lives at 60 John's Place, Saint Helena in your country and he obtains mail at that address.

Mr. Mouse owns an office complex at 40 Paddington Way, Saint Helena, which he lets to Mr. Wong Blackwood at a monthly rental of \$30,000.

Rent is now in arrears for the months of January, February and March 1995.

After making several unsuccessful demands for payment from his tenant Mr. Mouse has instructed you to institute legal proceeding on his behalf to recover the sum owing.

Acting on behalf of Mr. Mouse, you have filed and served on Mr. Blackwood a specially indorsed writ of summons in which the plaintiff is seeking to recover from the defendant the sum of \$90,000 being money due and owing to the plaintiff by the defendant for rental in respect of premises situated at 40 Paddington Way, Saint Helena for the months of January, February and March 1995 and costs \$5,000.

The writ of summons was served personally on Mr. Blackwood who has entered an appearance (acknowledged service) but has not yet filed a defence (given notice of intention to defend).

You now wish to apply for summary judgement. Draft only the documents with which you will make the application.

QUESTION 5

The Statement of Claim set out below was delivered to you as the attorney-at-law on record for the defendant whose instructions to you are as follows -

"My name is Thomas Hardstaff and I am a haulage contractor living at 80 Penline Street in Hudson Bay.

On Monday, January 30, 1995, I entered into a contract with Mr. Jeremiah Feurtado a hardware merchant who carries on business at 20 Union Square, Portside.

By the terms of the contract, for a haulage fee of \$55,000 I agreed to transport 25,000 bags of cement from the compound of the Atlantic Cement Company Limited which is at 40 Atlantic Way, Freetown to 20 Union Square, Portside.

As far as I am aware, all reasonable care was exercised in handling and transporting the bags of cement in question and the 25,000 bags of cement were delivered in good condition. None of the bags of cement that I delivered was damaged.

I have not breached my contract with Mr. Feurtado. I have been paid for the work that I have done and I have no further business transaction with him.

I wish to defend the action".

Draft an appropriate Defence based on your instructions.

STATEMENT OF CLAIM

(Insert usual heading)

B E T W E E N
A N DJEREMIAH FEURTADO
THOMAS HARDSTAFFPLAINTIFF
DEFENDANT

1. The Plaintiff is and was at all material times a hardware merchant operating his business at 20 Union Square, Portside.
2. The Defendant is and was at all material times a haulage contractor residing at 80 Penline Street, Hudson Bay.
3. By an oral agreement made on Monday, January 30, 1995, between the Plaintiff and the Defendant, the Defendant for a haulage fee of \$55,000 agreed to transport 30,000 bags of cement from the plant of the Atlantic Cement Company Limited at 40 Atlantic Way, Freetown to the Plaintiff's warehouse at 20 Union Quare, Portside.
4. It was an implied term of the aforesaid agreement that the Defendant would exercise reasonable/sufficient care in handling and transporting the said bags of cement so that the bags and contents would be delivered at their destination undamaged and in good condition.
5. In breach of the said agreement the Defendant failed to exercise reasonable/sufficient care in handling and transporting the said bags of cement so that 1000 bags of the cement in question were delivered at their destination in a damaged condition so that the said 1000 bags of cement were unfit to be sold.
6. By reason of the aforesaid matters the Defendant was in breach of contract and the Plaintiff by reason of the said breach has suffered damages.

Particulars of Special Damage

Purchase price of 1000 bags of cement at \$35 per bag	\$35,000
Loss of profit on 1000 bags of cement at \$10 per bag	<u>\$10,000</u>
TOTAL	\$45,000

AND THE PLAINTIFF CLAIMS -

- (1) Special Damages \$45,000.
- (2) Interest at such rate and for such time as the Honourable Court deems just.
- (3) Costs.
- (4) Such further or other relief as may be just.

Dated the 8th day of May, 1995.

Settled

Plaintiff's Attorney-at-law

Filed by Brown, Black & Company of 10 Union Square, Portside, attorneys-at-law for the Plaintiff, whose address for service is that of his said attorneys-at-law.

P A R T B

FACTS RELATING TO QUESTIONS 6, 7 AND 8

Mr. Dumby Cayless divorced his wife in the State of Florida, United States of America. There was an evidentiary hearing at which Mr. Cayless testified and as the petition for dissolution on the ground of irretrievable breakdown of the marriage was not contested, the judge entered an order for the final dissolution of the marriage at the end of the evidentiary hearing.

Mr. Cayless then came to your country as a management Consultant in December 1991. In January 1992, he met Mildred Proude, a spinster, and they were married on February 1992. He met Miss Easy Grant at a party on April 1, 1992, fell in love with her and by June 1992, Mr. Cayless had deserted his wife and was living with Miss Grant at his hotel. Mr. Cayless told Miss Grant that he had been divorced and was not anxious to rush into another marriage.

Mrs. Mildred Cayless was sales manager for the multinational "Ken-L Dog Biscuit Company", travelled overseas frequently and did not contact Mr. Cayless after he told her that he had no love for her or for her money.

In January 1993, Mrs. Mildred Cayless gave birth to twin-daughters whom she named Princess and Duchess. On the advice of her father Mrs. Mildred Cayless did not inform Mr. Dumby Cayless of the birth of the twins. Mrs. Cayless agreed with her father to take two years leave from her firm and the father would give her 75% of her salary during this period.

On January 2, 1995, Mrs. Mildred Cayless filed a Petition for dissolution of her marriage with Dumby Cayless. The Petition was heard on February 28, 1995, when the decree nisi was granted.

On March 2, 1995 Mr. Cayless and Miss Easy Grant were married at the Chapel of Truth by Pastor Goodenough. On the Marriage Certificate Mr. Dumby was described as a divorcee and the documents presented to the pastor in proof thereof was the Florida Decree.

During the last day of a three-week honeymoon at the luxurious ECSTACY HOTEL in your tourist resort area, Mr. Cayless was served by Bailiffs with a summons for Child Support filed by Mrs. Mildred Cayless. Furious at the intrusion of the Bailiffs and ignorant of the existence of the children, Mr. Cayless protested so loudly to the bailiffs that the altercation attracted Mrs. Easy Cayless' attention.

Mr. Cayless told his new wife that he had had an affair with a woman a few years back but he could not call that a marriage as he did not love the woman and they were only together briefly. He had wanted to forget all about that incident and so had not bothered to mention it. Anyway if it was money this woman wanted, he could afford it with his contract salary of \$1.5 million (in your currency) per month. Therefore, Mrs. Easy Cayless should think nothing more about it. Life, he said was just for living.

The new wife was devastated. She said she knew that she was "Easy by name and nature" but this was the last straw. This man had been deceiving her for two years and people must have been mocking her without her knowledge. She wanted to have nothing more to do with him because of his deceit. She threw down the wedding and engagement rings, packed her suitcase and left the hotel.

On April 1, 1995, Mr. Cayless was summarily dismissed from his consultancy position, although his contract had a further 12 months to run. He is negotiating for a settlement of \$10 million dollars and the indications are that he will get this money.

QUESTION 6

Mrs. Easy Cayless has consulted you and wishes to be advised if she can terminate her marriage.

If you advise legal proceedings, draft the most appropriate document to achieve this purpose for filing in the Superior Court of your country.

QUESTION 7

In an opinion of not more than 300 words explain the legal basis of your advice to Mrs. Easy Cayless.

QUESTION 8

Mrs. Mildred Cayless has withdrawn her original application for child maintenance.

Draft the affidavit only for a renewed application as of April 8, 1995.
