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NORMAN MANLEY LAW SCHOOL  
Council of Legal Education

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1989

CIVIL PROCEDURE & PRACTICE I

(Monday, August 21, 1989)

Instructions to Students

- a) Time 3½ hours
  - b) Answer THREE (3) questions from PART A and TWO (2) 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.
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QUESTION 1

The Statement of Claim set out below was served on you as the attorney-at-law on the record for the defendant who instructed you that the accident did not occur in the manner that the plaintiff alleged. He informed you that there is no pedestrian crossing in the vicinity where the incident occurred and that it was the plaintiff who rushed suddenly from a nearby store into Swansea Road into the path of his oncoming car.

He further said that on seeing the plaintiff, he tooted the horn of the car, swerved away, braked and took evasive action, but to no avail.

The defendant is of the firm view that he was in no way negligent and he blamed the rash action of the plaintiff for the accident.

Draft an appropriate defence based on your instructions.

STATEMENT OF CLAIM

(Usual heading)

BETWEEN	ANITA MIORA	PLAINTIFF
AND	STEVE ANTONIO	DEFENDANT

1. The Plaintiff is and was at all material times a cosmetologist residing at 30 Swansea Road, Stanmore.
2. The Defendant is and was at all material times the owner and driver of a red Toyota Corolla motor car licensed 0781 AA.
3. On the 25th day of February, 1989, whilst the Plaintiff was lawfully walking along the pedestrian crossing on the Swansea Road in Stanmore, the Defendant so negligently drove and or controlled and or operated his said Toyota Corolla motor car licensed 0781 AA that the said car collided violently with the Plaintiff thereby causing her injury, loss and expense.
4. The aforesaid collision was caused solely by the negligence of the Defendant.

PARTICULARS OF NEGLIGENCE

- a) Failing to keep any or any proper lookout
- b) Driving without due care and attention
- c) Failing to observe the Plaintiff as she walked along the pedestrian crossing
- d) Failing to stop at a pedestrian crossing that is being used

- e) Failing to brake, swerve or in any other way manoeuvre the said motor car so as to avoid colliding with the Plaintiff
- f) Failing to have any or any sufficient regard for other users of the road
- g) Driving at an excessive speed

PARTICULARS OF INJURIES

- (i) Fracture of the right fibula and radius
- (ii) Contusion of the right side
- (iii) One inch laceration on right side of face
- (iv) Severe pain all over the body

PARTICULARS OF SPECIAL DAMAGES

Transportation	\$ 200.00
Hospital/Medical Expenses	3,000.00
Pair of shoes damaged	250.00
Loss of earnings for 16 weeks @ \$500 per week	8,000.00
	<u>\$11,450.00</u>

AND THE PLAINTIFF CLAIMS:

1. Damages
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 20TH DAY OF MAY, 1989.

SETTLED

PER *J. R. Simpson*  
PLAINTIFF'S ATTORNEY-AT-LAW

FILED BY SHAKE, RATTLE & ROLL & CO. OF 40 PINE STREET, STANMORE,  
ATTORNEYS-AT-LAW FOR AND ON BEHALF OF THE PLAINTIFF HEREIN.

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QUESTION 2

What do you understand by the following:

- (i) pleadings must state material facts and not law;
- (ii) pleadings must state material facts but not the evidence?

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QUESTION 3

On November 10, 1988, the firm of attorneys-at-law of which you are a partner issued a Writ of Summons (C.L. 1988/W 6007) on behalf of Jerome Wellington against Dick Dyce of 45 Blaise Road, Paddington.

The following day a sealed copy of the Writ was delivered to Mr. Marc Toddler, a process server (bailiff) with instructions to serve it personally on the defendant.

On November 18, 1988, Mr. Toddler went to the home of the defendant in pursuance of his instruction, but the defendant was not at home. Mr. Toddler spoke to a lady at the house who identified herself as Mrs. Marie Dyce, the wife of the defendant. She told Mr. Toddler that her husband was at work on a construction site in another town but he would return home that afternoon.

Mr. Toddler told Mrs. Dyce the purpose of his visit and promised to return on November 30, 1988. This Mr. Toddler did, but on that occasion he found no one at the Dyce's home.

Mr. Toddler made a third visit to the Dyce's home on December 12, 1988 and a fourth on December 19, 1988, but although Mrs. Dyce was present on those occasions, the defendant was never present.

On January 5, 1989, Mr. Toddler returned the unserved Writ to your firm, giving full details of his unsuccessful attempts to serve it personally.

You now decide to apply to the Court/Judge/Master for leave to dispense with personal service of the Writ of Summons on the defendant and for leave to effect substituted service.

Draft the necessary document(s) to ground your application.

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QUESTION 4

H. Harold & Co. Ltd. operates the business of a wholesale dry goods merchant at Stowe Road, Flemmington.

By virtue of a contract H. Harold & Co. Ltd. supplies goods to Mr. Toplin Furlonge who owns and operates a retail dry goods store at 15 Penn Street, Kensington.

In compliance with an Invoice Order No. 3111 dated March 10, 1989, H. Harold & Co. Ltd. has supplied the following items to Mr. Furlonge:

- |     |  |          |
|-----|--|----------|
| (a) | 200 yards cotton fabric @ \$25 per yard                  | \$ 5,000 |
| (b) | 300 yards of blue terylene men's suiting @ \$60 per yard | 18,000   |
| (c) | 400 yards of gold polyester fabric @ \$30 per yard       | 12,000   |

On March 20, 1989, the contractual date for payment Mr. Furlonge informed H. Harold & Co. Ltd. that the goods supplied were of inferior quality to the samples that had been shown to him prior to the making of his order, that he did not want them and that the company could collect them at his store.

The goods remained unpaid for, and on April 3, 1989, H. Harold & Co. Ltd. issued and served Mr. Toplin Furlonge a Writ of Summons specially endorsed with a Statement of Claim, bearing Particulars of Claim as at paragraph three of this question and claiming the sum of \$35,000 for goods sold and delivered and costs.

After Mr. Furlonge had entered an appearance (acknowledged service) of the Writ, H. Harold & Co. Ltd. applied to the Court for Summary Judgment under Order 14 Section 79(1) of the Judicature (Civil Procedure Code) Law.

Mr. Furlonge consults you and instructs you to oppose H. Harold & Co. Ltd's application on his behalf.

- (a) Give an outline of the submission that you would present to the Court on your client's behalf;
  - (b) Draft any document in connection with this particular aspect of the case that you would file on behalf of your client.
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QUESTION 5

In the case of Tildesley v. Harper 10 Ch. D. 393 at page 396, Bramwell, L.J. said, inter alia:

"My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide or that by his blunder, he has done some injury to his opponent which could not be compensated for by costs of otherwise."

With the assistance of decided cases, consider whether or not the views expressed by Lord Justice Bramwell in the above quotation reflect the modern practice of the Court when it is considering an application for leave to amend pleadings.



PART B

QUESTION 6

Miss Ulika Princess and Mr. Pennie Pincher were each 18 years old when they got married on January 1, 1967, in the Office of the Registrar of Marriage. Ulika then a trainee dressmaker, lived and worked with her Aunt Agatha. Pennie had spent a year at a roadside garage but was making no headway as a mechanic. As Ulika was pregnant, Aunt Agatha offered them a room in her house in which to live. And so they did. Pennie borrowed \$50 from Aunt Agatha and set up as a snow cone-cum-peanut vendor. Aunt Agatha continued to provide food for both Ulika and Pennie and each night she would take from Pennie any excess he had over \$50 and this she would lodge in an account in Workers' Bank in the joint names of Pennie and Ulika.

Mrs. Pincher gave birth to twin sons, Uno and Duo, on August 31, 1967, whereupon Aunt Agatha made two other rooms in the house available to the Pinchers. They paid no rent and Aunt Agatha continued to provide meals for the entire household. Mr. Pincher was an extremely hard worker and his delight was to hand over more and more profit to Aunt Agatha in the evenings. This arrangement continued for four years.

One evening Aunt Agatha called Mr. and Mrs. Pincher together and with great pride, advised them that the savings account just passed the \$50,000 mark. Aunt Agatha said she was selling her house in Mountain Park and although it was worth much more she would sell it to them for \$40,000. Mr. and Mrs. Pincher accepted the offer with gratitude.

Carefree & Co., Attorney-at-Law, were instructed to transfer the property and upon enquiry from Mr. Pincher into whose name the title should be transferred, he said his wife had no head for business so the title should be in his name alone. This was done, and the tenants were instructed to pay rent to Mr. Pincher. He placed these rents in a separate account in his own name.

Aunt Agatha continued to care for Mr. Pincher and his family. Mrs. Pincher, now a full-fledged dressmaker, used what money she earned to purchase clothing for herself, her husband and children. Mr. Pincher and Aunt Agatha were on extremely good terms and on Mr. Pincher's birthday, Aunt Agatha gave him the bank book with the joint account saying he had proved himself to be a man, so now he could be responsible for handling his own bank book.

Mr. Pincher was still going about his trade on an old motor-cycle. His wife suggested to him that he should either purchase a new motor-cycle or buy a van. This led to the first disagreement between the couple. Where did Ulika expect him to get money from to buy a new motor-cycle or buy a van? Did she not know that those things cost money? Look how hard he had to work and she wanted him to squander his money. No, he would do no such thing. The next day Mr. Pincher went to the bank and drew out the entire balance from the joint account and placed it in his sole name. Of this he said nothing to his wife.

Aunt Agatha died leaving her entire estate to the two sons of Mr. and Mrs. Pincher with Mr. Pincher as sole executor and trustee. Mrs. Pincher suggested to her husband that since they had been married for twelve years and he was no longer a boy, he should stop riding around to schools and should open up some kind of business. She made it clear that she was not at all happy with the way he carried himself and since he could do better, this was the time to start. Mr. Pincher was so furious at his wife's strictures that he slapped her several times and punched her all over her body so that she fell to the floor. He said he had no intention of wasting any of his money and if she stayed in his house and provoked him, something really serious would happen to her. She was a good dressmaker, he said, so she should go about her business and make life for herself and leave him and his children alone. Mrs. Pincher left the house on January 1, 1989, and attended Dr. Dogood who found that she had suffered a broken nose, contusion over both eyes and bruised ribs on the right side.

Mrs. Pincher next went to the bank to check on the accounts only to find that she had nothing. She has attended on you.

Draft the appropriate affidavit to ground an application to determine her property rights.

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QUESTION 7

Based on the facts in Question 6, draft a Petition for dissolution of her marriage.

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QUESTION 8

Miss Tantal Packing had an unusual childhood. Her father Rover Packing, joined the rebel forces fighting for independence in Ruritania and was posted as missing in action. Her mother, Gaye and sister, Grit, perished in a fire which destroyed their home. Tantal, aged 6, was truly an orphan. Her adoptive parents were the wealthy Mr. & Mrs. Proudlee who showed her every kindness and exposed her to a life of luxury and gracious living. At 16 years of age, Tantal had travelled twice around the world; was an accomplished model; spoke French and German fluently; was proficient at the piano and the guitar and was junior tennis champion for her country Claydom.

Tantal did not have a single friend - male or female. She had been seen by the leading psychologists and psychiatrists in the country but nothing that they prescribed seemed to work. Mr. & Mrs. Proudlee were anxious, frustrated parents, unable to understand how a beautiful talented young teenager could survive without the friendship of her peers.

On her 17th birthday, Tantal announced that she was going to marry her tennis coach, Mr. Hardie Knutt. Mr. & Mrs. Proudlee protested. They challenged Mr. Knutt with the accusation that he had from his position as coach unduly influenced Tantal and threatened to have him dismissed from the Club and to object to his finding suitable employment anywhere in the country. Tantal encouraged Hardie to defy her parents and in the face of the joint intransigence, Mr. and Mrs. Proudlee sanctioned the marriage which took place on June 1, 1984.



Ten minutes after the couple entered the bridal suite of the same hotel the fire alarm blared throughout the hotel. A voice, as if from nowhere, boomed: "Fire on the 25th floor. Evacuate at once." Tantal fled the room in her wedding dress and ringing in her ears were the screams of her mother and sister on that fateful night so many years earlier. She tore off her wedding dress, jumped into a taxi and returned to her home. Her husband arrived shortly after and endeavoured to comfort her. She rejected his attentions and told him then and there that her destiny was to be alone and he should leave her.

Tantal would see no one except her parents for a whole month. Then as if nothing had happened she returned to her modelling activities, played tennis daily and returned home at nights. She has adamantly refused to speak to Mr. Knutt about their marriage or even to permit him to visit her home. In the view of Mr. & Mrs. Proudlee, Tantal has totally blocked out of her mind everything to do with June 1, 1984.

Mr. Knutt has consulted you concerning his marital status as it is his desire to re-marry if that were permissible. If you advise proceedings, draft the appropriate pleadings to commence those proceedings.

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