

NORMAN MANLEY LAW SCHOOL  
COUNCIL OF LEGAL EDUCATION

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FOR REFERENCE ONLY

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1990

CIVIL PROCEDURE AND PRACTICE I

(Thursday, August 16, 1990)

Instructions to Students

- a) Time: 3 1/2 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.
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PART A

QUESTION 1

The Statement of Claim set out below was delivered to you as the attorney-at-law on the records for the defendant who instructed you that the accident was due solely or in the alternative contributed to, by the negligence of the plaintiff who was crossing the street without first ensuring that it was safe to do so. He said that the plaintiff dashed suddenly into the street without first looking to his right, for if he had looked, he would have seen the approaching bus and would have realised that it was unsafe to cross at that time. The defendant further instructed you that as soon as he saw the plaintiff, he sounded the horn of the bus, applied the brakes and swerved in an effect to avoid the plaintiff who still continued to move towards the bus. His bus was travelling about 30 m.p.h. at the time of the incident.

Draft an appropriate Defence based on your instructions.

STATEMENT OF CLAIM

(Usual heading)

BETWEEN	TINA BOLERO	PLAINTIFF
AND	JUAN ANTONIO	DEFENDANT

1. The Plaintiff is and was at all material times a nurse residing at 5 Spring Place in Parkland.
2. The Defendant is and was at all material times the owner and driver of a white Tata motor bus licensed 045 AB.
3. On the 30th day of January 1989 whilst the Plaintiff was carefully walking along Frederick Street in Parkland, the

Defendant so negligently drove, managed and/or controlled his said Tata motor bus licensed 045 AB on the said Frederick Street that the said bus collided with the Plaintiff thereby causing her injury, loss and damage.

4. The said collision was caused solely by the negligence of the Defendant.

PARTICULARS OF NEGLIGENCE

- a) Driving at an excessive speed
- b) Failing to keep any or proper look out
- c) Driving without due care and attention
- d) Failing to swerve or otherwise manoeuvre the said motor bus so as to avoid colliding with the Plaintiff
- e) Failing to have any or sufficient regard for other users of the street.

PARTICULARS OF SPECIAL DAMAGES

Transportation (visits to and from hospital)	\$ 500.00
Doctor's fees	2,500.00
Hospital expenses	3,500.00
Watch damaged	1,500.00
Loss of earnings for four (4) months at \$2,000 per month	<u>8,000.00</u>
	<u>\$16,000.00</u>

AND THE PLAINTIFF CLAIMS;

- 1. Damages
- 2. Costs

3. Interest at such rate and for such time as the Honourable Court deems just
4. Such further or other relief as may be just.

DATED 30TH DAY OF MARCH 1990

SETTLED

PAUL PURPLE

FOR PAUL PURPLE & COMPANY

PLAINTIFF'S ATTORNEYS-AT-LAW

FILED BY PAUL PURPLE & COMPANY OF 40 QUEEN STREET, PARKLAND,  
ATTORNEYS-AT-LAW FOR AND BEHALF OF THE PLAINTIFF HEREIN.

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QUESTION 2

Mr. Mark Happy issued a Writ of Summons against Mr. Richard Slowman, in which he sought to recover damages for trespass to his land, known as Red Pond, situated at Hog Hole in Westland, by entering thereon and felling a mahogany tree.

On April 2, 1990 the Writ was served personally on Mr. Slowman who did not enter an appearance/acknowledge service and file notice of intention to defend.

On April 30, 1990, judgment in default of appearance/notice of intention to defend on the claim, with damages to be assessed and costs to be taxed or agreed was entered against Mr. Slowman.

On May 7, 1990 Mr. Slowman consulted and instructed you to make an application to the Court to have the judgment set aside.

He have you a statement which contained inter alia, the following information:-

"I own a piece of land at Red Pond. The land adjoins land owned by the Plaintiff. I fell two mahogany trees on my land in March 1990.

I did not trespass on the Plaintiff's land. No one acting on my behalf trespassed on the Plaintiff's land. I want to defend the action.

I did not enter an appearance/acknowledge service and file notice of intention to defend, as I was too ill to seek legal advice at the time the Writ was served on me".

Draft the document(s) that would be necessary for Mr. Slowman's application.

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QUESTION 3

On January 30, 1984 Roy Peacock was walking along Pine Castle Avenue when he was injured by a motor car owned and driven by Pierre Parsons.

In September 1988, Mr. Peacock consulted Thomas, Tardy & Company, Attorneys-at-Law and instructed the firm, to institute legal proceedings on his behalf against Mr. Parsons.

On December 30, 1988 Messrs. Thomas, Tardy & Company, acting on behalf of Mr. Peacock, issued a Writ of Summons claiming damages in negligence for personal injuries against Mr. Parsons.

No attempt was made to serve the Writ on Mr. Parsons until sometime in April, 1989 when it was sent to the process

server with a request that he should effect personal service of the Writ on Mr. Parsons.

In November 1989 the process server returned the Writ to Thomas, Tardy & Company, with a notation that the Writ was not served as the Defendant could not be located at the given address and from information received the Defendant was not known in that community.

Nothing more transpired until March 30, 1990 when the Plaintiff's Attorney-at-Law applied to the judge/master for a renewal of the Writ.

With reference to the Rules of the Supreme Court/High Court and case law indicate what order ought to be made on this application.

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QUESTION 4

Consider the scope and limitation of:

- (a) the rule that a party should plead facts and not law;
- (b) the rule that a party should plead material facts but not the evidence on which he relies

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QUESTION 5

Simon Beckford, your client, attended at your chambers and gave the following statement relating to an incident in which fire damaged two rooms which he had let to Miss Maud Gordon:-

"My name is Simon Beckford and I am an electrical engineer residing at 10 Florence Drive, New Town.

I own a two-storey building which is located at 30 Riversdale Drive, Edenville. Maud Gordon, a tenant of mine occupied two rooms in this building. Those rooms I rented to her for the purpose of carrying on her dressmaking business.

On the night of March 24, 1990 sometime after the dressmaking shop was closed for business on that day, a fire erupted in one of the rooms which I rented to Miss Gordon. That fire caused extensive damage not only to that particular room, but to the entire floor. The fire was eventually extinguished by the Edenville Fire Service, which later prepared a report which attributed the cause of the fire to the fact that a lighted cigarette butt had been thrown into a wastebasket, containing waste paper, in one of the rooms occupied by Miss Gordon. That lighted cigarette butt was left to smoulder. A fire started in the wastebasket and quickly spread to bales of synthetic cloth that were stored in that room.

In order to restore the building, I incurred the following expenses:

a) Repairing walls of rooms	\$ 8,000.00
b) Repairing ceiling of rooms	12,000.00
c) Repainting and redecorating	5,000.00
d) New fixtures and furniture	<u>10,000.00</u>
	<u>\$35,000.00</u> "

Mr. Beckford instructed you to institute civil proceedings, on his behalf, against Miss Gordon to recover damages for the loss suffered by him as a result of the damage to his premises.

Assuming that a Writ of Summons has already been filed, draft an appropriate Statement of Claim.

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PART B

QUESTION 6

Miss Putus Bleach and Mr. Sonnie Sand were each 18 years old when they got married on January 1, 1980, in the Office of the Registrar of Marriage. Putus then a trainee dressmaker, lived and worked with her aunt, Agatha. Sonnie had spent a year at a roadside garage but was making no headway as a mechanic. As Putus was pregnant, Aunt Agatha offered them a room in her house in which to live. And so they did. Sonnie borrowed \$50 from Aunt Agatha and set up as a snow cone-cum-peanut vendor. Aunt Agatha continued to provide food for both Putus and Sonnie and each night she would take from Sonnie any excess he had over \$50 and this she would lodge in an account in Worker's Bank in the joint names of Sonnie and Putus.

Mrs. Sand gave birth to twin sons, Uno and Duo, on August 31, 1980, whereupon Aunt Agatha made two other rooms in the house available to the Sands. They paid no rent and Aunt Agatha continued to provide meals for the entire household. Mr. Sand 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. Sand together and with great pride, advised them that the savings account had just passed the \$50,000 mark . Aunt Agatha said she was seling her house in Mountain Park and although it was worth much more she would sell it to them for \$40,000. Mr. and Mrs Sand accepted the offer with gratitude.

Carefree & Co., Attorneys-at-Law, were instructed to transfer the property and upon enquiry form Mr. Sand 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. Sand. He placed these rents in a separate account in his own name.

Aunt Agatha continued to care for Mr. Sand and his family. Mrs. Sand, now a full-fledged dressmaker, used what money she earned to purchase clothing for herself, her husband and children. Mr. Sand and Aunt Agatha were on extremely good terms and on Mr. Sand'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. Sand 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 Putus 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. Sand 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. Sand with Mr. Sand as sole executor and trustee. Mrs. Sand 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 schols 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. Sand 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. Sand left the house on January 1, 1987, 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. Sand next went to the bank to check on the accounts only to find that she had nothing. She has consulted you.

Drat an appropriate affidavit to ground an application to determine her property rights.

QUESTION 7

Based on the facts in Question 6, draft a Petition for dissolution of Mrs. Sand's 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 age 16, 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

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 returned 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 had adamantly refused to speak to Mr. Knutt about their marriage or even to permit him to visit her home. In the view of Mr. and 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 possible. If you advise proceedings, draft the appropriate pleadings to commence those proceedings.