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NORMAN MANLEY LAW SCHOOL
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LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1991

CIVIL PROCEDURE AND PRACTICE I

(Thursday, August 15, 1991)

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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P A R T 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 whose instructions to you are as follows:

"I am a butcher residing at Firstgate, Hillview.

Mr. Juan Pablo and I agreed orally that he would sell to me and I would buy a black and brown Holstein steer for the price \$6,000.

On June 7, 1991 I accepted delivery of the steer and on June 8, 1991 I paid to Mr. Pablo \$6,000 in full settlement of the purchase price of the steer and he gave me a receipt in respect of that sum of money.

I do not owe Mr. Pablo any more money. The agreed purchase price for the steer was \$6,000 and not \$10,000.

I am desirous of defending the action brought against me.

Signed

Petro Putino"

Draft an appropriate Defence based on your instructions.

STATEMENT OF CLAIM

[Insert usual Heading]

B E T W E E N	JUAN PABLO	PLAINTIFF
A N D	PETRO PUTINO	DEFENDANT

1. THE Plaintiff was at all material times a cattle farmer residing at Surprise Farm Limited, Hillview.

2. The Defendant was at all material times a butcher residing at Firstgate, Hillview.

3. By an oral agreement made at Surprise Farm, Hillview on the 7th day of June 1991, between the Plaintiff and the Defendant, the Plaintiff agreed to sell and deliver to the Defendant who agreed to purchase a black and brown Holstein steer for the price of \$10,000.

4. In pursuance of the aforesaid agreement, on the said 7th day of June 1991, the Plaintiff duly delivered to the Defendant who accepted delivery of the said steer at the gate of the Plaintiff's farm at Hillview.

5. On the 8th day of June, 1991, the Defendant paid to the Plaintiff \$6,000 as part payment on account of the agreed purchase price of the steer; but the said Defendant has failed /refused to pay the balance of the agreed purchase price, namely \$4,000 which is due and owing by the Defendant to the Plaintiff.

AND THE PLAINTIFF CLAIMS;

- (i) the sum of \$4,000;
- (ii) costs;
- (iii) interest on the said sum at such rate and for such time as the Honourable Court deems just.

DATED 9th DAY OF AUGUST, 1991.

Settled

Purple Hart

for PURPLE HART & Co.

PLAINTIFF'S ATTORNEY-AT-LAW.

FILED by Purple Hart & Co. of 15 Duke Street, Meadowland,
Attorneys-at-law for and on behalf of the Plaintiff.

QUESTION 2

Mr. Ossie Tombie of 25 Pine Slope Avenue Westbrook in your country is a citrus grower.

On April 1, 1988, Mr. Tombie obtained a loan of \$20,000 from the Westbrook Loan Bank Ltd. which is situated at 10 Princess Street, Westbrook.

This transaction was evidenced by a loan agreement which, inter alia, stated that interest was payable on the said loan at the rate of 25 per cent per annum and that the principal and interest should be repaid in 36 equal monthly instalments. The first such instalment being due on April 30, 1988 and thereafter at the end of each succeeding month until the loan and interest are repaid.

The loan agreement was signed by Mr. Tombie and Miss June Shapely of 40 Belle Avenue, Westbrook, the Loan Officer, who processed the loan application and disbursed the loan funds, signed on behalf of the bank.

Mr. Tombie has paid neither principal nor interest . He is not disputing the fact that he owes the money but says that he is unable to pay as successive citrus crops have failed.

On April 1, 1991, the Westbrook Loan Bank Ltd. instructed you to institute legal proceedings against Mr. Tombie to recover the unpaid loan together with interest.

Consequently, you filed and served on Mr. Tombie a specially endorsed Writ of Summons in which the Plaintiff, Westbrook Loan

Bank Ltd. is seeking to recover from the Defendant the sum of \$35,000 comprising principal of \$20,000 and interest of \$15,000 for the period April 1, 1988 to March 31, 1991 at the agreed rate of 25 per cent per annum and costs.

The Writ of Summons was personally served on Mr. Tombie 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.

Draft the application and the affidavit in support.

QUESTION 3

(a) What are the grounds on which a party may apply to the Judge/Master to strike out his opponent's pleadings in whole or in part?

(b) Describe the procedure by means of which a party applies to strike out his opponent's pleading on the ground that such pleading discloses no real triable cause of action or defence and state the principles by which the Judge/Master is guided in arriving at a decision whether or not to grant such an application.

QUESTION 4

On January 10, 1990, the Plaintiff was a passenger in a motor car owned and driven by Jasper Chigory on the Riverside main road, Chatsworth in your country. On reaching a bend in the said road the motor car got out of control and overturned causing injury to the Plaintiff.

In March 1991, the Plaintiff issued against Jasper Chigory a Writ of Summons endorsed as follows:

"The Plaintiff claims against the defendant to recover general damages for personal injuries suffered on January 10, 1991 and costs."

This Writ of Summons was duly served on the Defendant who entered an appearance/acknowledged service and took no step within fourteen days of service 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 negligent driving of the Defendant.

The Defendant then applied by summons to strike out the Statement of Claim on the ground that it had introduced the cause of action of negligence which was not mentioned in the endorsement on the Writ of Summons.

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

Prepare a draft of the submission which you would make to the Judge/Master in support of the validity of the Statement of Claim.

QUESTION 5

Is it accurate to say that a party to a civil action may be allowed at all times to amend his pleading at any stage of the case?

Illustrate your answer by adverting to the Rules of the Supreme/High Court and case law.

PART B

QUESTION 6

Opal, the 14 year old daughter of Brandy Winehead and his wife Lovington, was expelled from school on the ground of persistent fighting with other pupils. Mrs. Winehead considered the disciplinary measure appropriate whereas her husband, who was a

doting father, blamed the school authorities for resorting to action which he thought was wholly unjustified. Neither parent made any attempt to secure alternative school accommodation for Opal but each spent hours blaming the other for inactivity in that regard. There was great tension in the family.

On Sunday, January 4, 1990, former school friends of Opal visited her at home at Winehead Manor, and they played records and danced. Mrs. Winehead ordered the youngsters to turn down the music but Opal defied her mother and encouraged the others to make fun of her. Mr. Winehead who had spent the entire day having alcoholic drinks at his Club came home and heard the commotion. He was angry. He ordered his wife to stop molesting the children and indicated with the aid of abusive and most insulting language, that his wife was a selfish old cow and had no business being a mother. Mrs. Winehead pulled a framed wedding photograph from the wall and whacked Mr. Winehead over the head with it, causing cuts to his head, face and neck. Infuriated, Mr. Winehead threw his wife to the floor, ran into his room, still framed by the photograph, removed his loaded firearm from the drawer and came to the living room, daring his wife to show her face, so that he could put her in her place once and for all. Mrs. Winehead was then hiding in a closet in the guest bedroom.

The teenagers all ran away. Mr. Winehead replaced his revolver in its accustomed drawer and went to sleep. Next day he awoke quite sober and called for his wife. She did not answer and he discovered that she had left the premises taking most of her

personal belongings. Mr. Winehead soon ascertained that his wife had gone to live at the Diamond Apartments from where he received bills for rent, electricity and telephone. Mr. Winehead had apologised to his wife for his behaviour on the Sunday evening and has requested her to return home to him.

Mrs. Winehead, who has refused to return to live with her husband, seeks your advice as to the steps which she can take to put an end to her marriage and to obtain financial support for herself.

Mr. Winehead is an Insurance Broker, who operates a chain of fastfood restaurants and he is also a part-owner of a cattle farm.

Draft an appropriate petition using as the date of marriage January 1, 1970.

N.B. [It is not necessary to endorse a Notice to Appear on the petition nor are candidates required to submit an Affidavit in Verification of the Petition]

QUESTION 7

Mrs. Winehead, (the wife referred to in Question 6 above) is very bitter about what she terms "my husband's total rejection of me". She is a woman of 50 years of age and throughout her marriage had been entirely engaged in home-making. Her husband's multifarious business activities brought her into contact with his business associates whom she gladly entertained night and day. In addition, she had been required to travel extensively overseas with

her husband and to be seen with him on golf-courses all over the Caribbean. Mrs. Winehead is herself a keen golfer and a member of five principal golf-courses.

Mrs. Winehead has instructed you to seek maximum recompense for her "lost years". She estimates her husband's income to be in excess of \$600,000 per annum and his assets to exceed \$10 million dollars.

Draft an affidavit for the signature of Mrs. Winehead to ground an application for financial support.

QUESTION 8

Peter Pimple, the male hairdresser at Maggoty Falls Hotel, wooed and wed the lovely Miss Kimona Flimsy who did duty as the female life-guard on the beach, on January 1, 1980.

Peter invited his wife to assist him in his business after 6:00 p.m. each day. She was a ready pupil and before long, Mrs. Pimple had scores of clients who wanted her service even if her husband was not engaged and was anxious to help.

Mr. Pimple decided to please his clientele and so he engaged two other female hairdressers in his parlour. Soon thereafter, his wife was so busy that she suggested to her husband that she ought to resign her job on the beach and concentrate on the hairdressing. He would not hear of it, on the ground that she was the decoy which caused the male customers to patronise his business. After three

years of working night and day for six days a week, at times Mrs. Pimple, although only 25 years old, felt that she was on the verge of a nervous breakdown.

Over and over again she discussed with her husband her desire to give up one of the jobs but he was adamant that she should not do so, saying that they were on the brink of real financial success, that he was breaking his back in the endeavour as much as she was, and he saw no cause for complaint.

Mrs. Pimple had begun to neglect herself and it was noticeable that she was gaining weight rapidly. That was not the only change. Her general appearance fell from its former chic and manicured splendour to slovenliness. Customers began to whisper about Mrs. Pimple's appearance and this was followed by a dramatic fall-off in business. Mr. Pimple blamed his wife daily for their losses and threatened that if she did not improve he would cause the hotel to dismiss her from its employment and ban her from the premises.

A former client of the Pimples invited Mrs. Pimple to visit her in Canada. She left without telling her husband and has lived in Canada since July, 1983. Mrs. Pimple has regained her natural high spirits and has obtained employment in a household in Canada. She does not however have permission from the Canadian authorities to work.

Mrs. Pimple does not propose to return to live with her husband and instructs you to take steps to have her marriage dissolved. Draft the petition and in addition an appropriate affidavit to ground an application by her to give evidence on

affidavit.

N.B. [It is not necessary to endorse a Notice to Appear on the petition nor are candidates required to submit an affidavit in Verification of the petition].
