

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1989

CIVIL PROCEDURE AND PRACTICE I

(Monday, June 5, 1989)

1989
yrs. 192

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.
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PART A

QUESTION 1

At about 6.10 a.m. on January 5, 1989, Miss Bridgitte Romura, a twenty-five year old petite professional dancer of 40 Swainway Avenue, Topland, was walking along on the left sidewalk of Poinsettia Road in Topland.

Rain had fallen the previous night and the road and sidewalk were still damp. A blue Fiat Uno motorcar licensed 550 AF, owned by Concordia & Co. Ltd. with registered office at 10 Grove Street, Topland, and driven by Mr. Joe Fastman of 15 Mango Walk, St. Margaret, approached from the opposite direction.

The car was travelling at about 50 m.p.h. Just as this car was about ten yards in front of Miss Romura, a goat suddenly ran from the bank of the road into the path of the car which swerved right to avoid a collision with the goat. The car then developed a violent skid, got out of control, mounted the sidewalk and collided with Miss Romura hitting her to the ground before she could take evasive action.

Miss Romura suffered the following injuries:

- (i) fracture of her right fibula and tibia;
- (ii) fracture of her right radius;
- (iii) abrasions and swelling to her right hip and side.

She spent eight weeks in the St. Mary's Hospital where she was admitted as a result of her injuries and a further six weeks at home recuperating.

Prior to this mishap, Miss Romura was a regular member of the famous Peperoni Dance Troupe where she earned \$1,200 per week.

As a result of her injuries she employed someone to assist with her domestic chores for ten weeks at a weekly wage of \$120.

Miss Romura lost a pair of shoes and a gold chain and pendant valued \$300 and \$3,500 respectively.

She has now recovered, but as a direct result of the accident and resulting injuries, her right leg is slightly shortened causing a fifteen percent permanent disability which medical prognosis indicates will be permanent.

The firm of attorneys-at-law of which you are an associate has filed a generally endorsed Writ of Summons on behalf of Miss Romura in which she claims against Concordia & Co. Ltd. and Joe Fastman, damages for negligence resulting from the aforesaid collision.

Draft an appropriate Statement of Claim to be served on the Defendants on behalf of the Plaintiff.

QUESTION 2

In what situations may joinder of parties and joinder of causes of action be properly effected when the disputes between the litigants involve:

- (i) same plaintiff but different defendants;
 - (ii) different plaintiffs but the same defendant?
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QUESTION 3

By a contract partly oral and partly in writing made between Mr. Bumble Bee and Mr. Selvyn Swanka, Mr. Bumble Bee, a civil engineer of Georgia Pond, Claremont agreed to supervise for Mr. Swanka, the construction of a three-bedroom dwelling house to be built in accordance with certain stated plans and specifications. Mr. Swanka who is a merchant tailor of 70 Peanut Avenue, Maryland, agreed in return to pay to Mr. Bee on completion of the building, the sum of \$30,000 as Mr. Bee's fees.

Construction of the house has been completed but Mr. Swanka has refused to pay Mr. Bee's fees or any part of it.

Consequently, Mr. Bee has issued a Writ (CL.1989/B085 Bumble Bee v. Selvyn Swanka) in which the plaintiff claims to recover from the defendant the sum of \$30,000 as fees for services rendered by virtue of a contract.

The Writ was served personally on the defendant who did not enter an appearance (acknowledged service) in the time limited to do so, and on April 1, 1989, the plaintiff obtained a judgment in default of appearance against the defendant for the sum of \$30,000 and costs to be taxed or agreed.

It is now May 5, 1989, and the defendant consults you for legal advice and instructs you to take the necessary steps to re-open the case as he is contending that the house was not constructed in accordance with the plans and specifications. Particularly, the walls were poorly constructed and the windows were not symmetrical with one another and the rest of the building. He further instructs you that he wishes to defend the action as he is of the view that the fees in question were not due until the defects were corrected.

Draft the necessary documents to put into effect any application that you would make to the Court/Judge/Master on behalf of your client.

QUESTION 4

To what extent may a Statement of Claim that has been delivered subsequent to the service of a generally endorsed Writ of Summons in an action, alter, modify or extend the claim endorsed on the Writ of Summons without any actual amendment of the Writ?

QUESTION 5

(a) What are the grounds on which a party may apply to the Court/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 pleadings on the ground that such pleadings disclose no real triable cause of action or defence and state the principles by which the Court/Judge/Master is guided in arriving at a decision whether or not to grant such an application.

PART B

QUESTION 6

They met at the Paradise Club. That night the Club debated the Moot "Be it Resolved that Hetero-sexuality ought to be abolished by Law". Mr. Joe B. Wilde captivated the audience with his passionate arguments. Miss Pleasante Wee introduced herself to Mr. Wilde and invited him home for a night-cap. Their discussion was wide-ranging and continued into the early hours of the morning. Both expressed the view that it was a matter of regret that they had not met earlier and each was satisfied that there was sufficient harmony in their personalities to form a lasting relationship.

Mr. Wilde was a manufacturer and farmer in business on his own. Miss Wee was the proprietress of the School of Radiant Beauty. Each owned a house free of mortgage and both were bridge enthusiasts. After a month's torrid courtship they were married quietly by licence at Mr. Wilde's home on April 1, 1982.

With reluctance Mrs. Wilde leased her house and established the matrimonial home at Mr. Wilde's home. The couple agreed that each would maintain his/her former contacts and life-style during the working week but would spend week-ends together. The marriage was wonderfully successful for the first year and then Mrs. Wilde became pregnant. Mr. Wilde sought to change the arrangement in relation to their week-night activities. Mrs. Wilde would have none of it. An agreement, she said, must be kept, otherwise one could have no confidence in marriage.

Mrs. Wilde was nurturing a secret which she was not yet ready to share with her husband. Her doctors had diagnosed a multiple pregnancy and until she was assured of its full extent she would say nothing.

Another change had come over her. Although Mr. & Mrs. Wilde shared the same religious beliefs neither had been ardent church-goers. Now she wished to attend Sunday services and to be at church for most of the day. She paid no heed to her husband's protests that in so doing she was unilaterally changing their agreement.

A strange atmosphere descended upon the household. There was minimal communication between husband and wife during the week and almost none on week-ends as invariably Mrs. Wilde had an inescapable appointment on Saturdays. That was a day on which she attended her gynaecologist, took "hundreds" of tests and did her exercises. Mr. Wilde was effectively shut out of the progress of the triplets, in utero, to which Mrs. Wilde gave birth on August 1, 1984. All three girls were quite normal.

At the hospital all the visitors male and female seemed to have prior knowledge of the possibility of triplets. Mr. Wilde welcomed his daughters with no real pleasure as he was embarrassed with his ignorance and hated his wife for ignoring him on so important a matter.

He determined that since she wished to make the daughters her children, she would have to look after them.

Thereafter, Mr. Wilde paid scant attention to the children. He visited them in their nursery once per week for a few minutes, could not remember their names, did not remember birthdays and when he bought presents he would simply buy three similar objects. When his wife was not about her weekly business she was with her daughters or at Church. Mr. Wilde did not increase his weekly cheque of \$1,000 to his wife after the birth of the children, nor did she request more money.

They never discussed the state of their marriage, nor did they know who the other's contacts were when each went out in the evenings.

On the night of April 1, 1989, Mrs. Wilde announced to her husband that she was four months pregnant, that she had made arrangements to remove from the matrimonial home to her former home on the following day and that she would be taking the children with her. She said she proposed to live as man and wife with Juan Rambo but she would not be asking him to maintain Mr. Wilde's children. Mrs. Wilde left the matrimonial home on the following day and has not returned.

Draft a Petition for dissolution of marriage at the instance of Mr. Wilde in which he seeks custody of the children.

QUESTION 7

Based on the facts in Question 6, draft an affidavit in support of an application for custody and maintenance at the instance of Mrs. Wilde.

QUESTION 8

Based on the facts in Question 6, draft an affidavit in support of an application for custody at the instance of Mr. Wilde.
