

NOT TO BE TAKEN AWAY

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1987

CIVIL PROCEDURE & PRACTICE I

(Thursday, May 28, 1987)

1987
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 done on a separate answer 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.

P A R T A

QUESTION 1

Jason Barnes is a 17 year old apprentice cabinet maker. He is apprenticed to Mark Wright who operates and manages Wright & Wright, a firm owned by himself and his wife Linda Wright and which said firm manufactures household furniture.

Jason was serving his period of apprenticeship in the above establishment and his immediate supervisor was Tom Collins who was also the factory supervisor.

On January 15, 1987 Jason was instructed by Mr. Collins to use an electric saw in the factory to shorten some table legs that Jason had made the previous day.

This electric saw was unguarded and unfenced and while Jason was using it his right hand came into contact with the revolving blade causing the loss of his index and middle fingers and severe lacerations of the tendons of the little finger. He suffered severe pain and shock.

Prior to this incident Jason had been permitted to use that saw only once and it was guarded and fenced then.

As a result of the injuries Jason incurred medical expenses of \$1,000. He was unable to work for eight weeks. As an apprentice cabinet maker whenever he worked he was paid \$50 per week.

A writ with general endorsement claiming damages for negligence and/or breach of statutory duty has already been filed on behalf of Jason.

Draft an appropriate Statement of Claim to be filed in this action.

QUESTION 2

Mr. Dwane Speedman issued a Writ of Summons against Richard Tardy in which he sought to recover \$2500.00 for rent.

On March 5, 1987 the writ was properly served on Mr. Tardy who did not enter an appearance/acknowledge service.

On March 30, 1987 Mr. Speedman had a judgment in default of appearance entered in his favour against Mr. Tardy for the sum of \$2500.00 and costs to be taxed.

Mr. Tardy consulted you on April 30, 1987 and sought legal advice as to what steps, if any, could be taken to set aside this default judgment.

He informed you that he is a tenant of Mr. Speedman, but that he owed him no rent. Mr. Tardy produced for your inspection the receipts for rent which sufficiently covered the period for which Mr. Speedman sued.

He further informed you that he did not enter an appearance/acknowledge service as he did not know what that meant.

Advise Mr. Tardy:-

- i) What steps he should take to have the Default Judgment set aside.
 - ii) What principles ought to be applied by the Judge/Master in arriving at a decision whether or not to set aside the Default Judgment.
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QUESTION 3

- (i) Upon what grounds and at what stages in an action may a defendant apply for further and better particulars of his opponent's pleadings?
 - (ii) By what principles will the Judge/Master be guided when considering whether or not to grant an application for further and better particulars?
 - (iii) Of what value are further and better particulars to the party requesting them?
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QUESTION 4

The Plaintiff who was an employee of the Caribbean Cement Company suffered personal injuries during the course of his employment when a boiler exploded in the factory and caused him severe burns. He then issued against his employers a writ endorsed as follows:

"The Plaintiff claims against the Defendant to recover damages for personal injuries and \$2,500.00 special damages and costs".

To this the Defendant entered an unconditional appearance. The Attorney-at-Law for the Plaintiff then filed a Statement of Claim in which he alleged that the injuries were due to the Defendant's negligence and/or breach of Statutory duty.

The Defendant then took out a Summons to strike out the Statement of Claim alleging that it had introduced a cause of action not disclosed on the writ.

Advise on the chances of success of the defendant's application citing the relevant case law.

QUESTION 5

In the case of Cropper v Smith (1884) 26 Ch. D. 700 at page 710

Bowen LJ. said, inter alia:

"I know of no kind of error or mistake, which if not fraudulent or intended to over-reach, the Court ought not to correct, if it can be done without injustice to the other party.

Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy and I do not regard such amendment as a matter of favour or grace".

With the assistance of decided cases explain and illustrate to what extent the courts when considering applications for amendments of pleadings at the present time, adhere to the above principles enunciated by the learned Lord Justice.

P A R T 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, 1986 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 the 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 him cuts to the 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 a 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 has 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 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 \$300,000 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 Maggotty Falls Hotel, wooed and wed the lovely Miss Tumona 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 grounds 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].
