

NORMAN MANLEY LAW SCHOOL LIBRA
COUNCIL OF LEGAL EDUCATION
MONA, KINGSTON, 7. JAMAICA

1988
Yrs. 1 & 2

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1988

CIVIL PROCEDURE & PRACTICE I

(Wednesday, May 25, 1988)

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.
-

PART A

QUESTION 1

On November 20, 1986 Miss Margaret Lovely of 50 Tuna Way, Edgcombe was driving her red Honda Jazz car licenced 0444 AN along Tornado Boulevard towards Edgcombe.

As she was crossing the intersection of Allsop Highway and Tornado Boulevard with the traffic lights at the intersection showing green in her favour, a motor truck licenced CC 135 owned and driven on Allsop Highway by Mr. Careless Bounder of 20 Tours Place, Flemington, approached the right side of the Honda Jazz motor car. The truck which was travelling at a terrific speed, disobeyed the traffic lights which were showing red in that direction and drove into the right side of the motor car.

The car which was valued at \$45,000 was damaged beyond repair but the wreck was sold for \$10,000.

Miss Lovely suffered a compound fracture of her right arm, two lacerations to her right cheek and abrasions to her chest. She spent three weeks in hospital and was absent from her employment as a stenographer for fifteen weeks. Her weekly salary was \$700 and she incurred medical expenses of \$3,000. She also lost a Bulova lady's wrist watch valued at \$2,500 and a pair of shoes valued at \$250.

The firm of attorneys-at-law of which you are a partner, acting on behalf of Miss Lovely, has filed a generally endorsed Writ of Summons against Mr. Bounder claiming in respect of the injuries and loss suffered by the Plaintiff as a result of the negligent driving of the Defendant.

Draft an appropriate Statement of Claim to be filed on behalf of Miss Lovely.

QUESTION 2

Discuss fully any ONE of the following:

- (a) Counter-Claim;
- (b) Tender;
- (c) Set-Off.

QUESTION 3

Mr. Moses Mayer let a dwelling house to Mrs. Joy Loser at a monthly rental of \$3,500. Rent is now in arrears for the months of January, February and March, 1988.

After several unsuccessful demands for payment from his tenant, Mr. Mayer has instructed you to take legal action to recover the sum owing to him.

Consequently, you have filed and served on Miss Loser a specially endorsed Writ in which the Plaintiff, Mr. Mayer is seeking to recover from the Defendant the sum of \$10,500, being money owing for rent in respect of premises No. 4 Meadow Heights for the months of January, February and March, 1988 and costs.

This Writ was personally served on Miss Loser who has entered an appearance (acknowledged service) but has not yet filed a defence.

You now wish to apply for Summary Judgement under Order 14 (Section 79 (i) of the Judicature Civil Procedure Code).

Prepare:

- (a) the Summons;
 - (b) an Appropriate Affidavit in Support of the Summons to be executed by the Plaintiff.
-

QUESTION 4

"Where a civil action has been properly constituted as to parties [Plaintiff(s) and Defendant(s)] under the Rules of the Supreme Court, the question of what causes of action can be combined in that action will depend on judicial discretion".

With reference to the Rules of the Supreme Court/High Court and decided cases comment on the accuracy of the abovementioned statement.

QUESTION 5

On January 31, 1980, Mr. Roy Jordan who resides at 21 Treadways, Moreland, was riding his Suzuki motorcycle licenced 200 AB along Fern Avenue when it collided with and injured Mr. Jack Rabbit of 10 Nearby Close who was walking along that Avenue.

On April 30, 1985, Mr. Rabbit consulted a firm of attorneys-at-law who on May 20, 1985 filed on his behalf a Writ of Summons against Mr. Roy Jordan claiming damages in negligence against him for personal injuries and loss to the Plaintiff arising from the accident.

On December 1, 1985, the Writ of Summons was handed to Mr. Timothy Slowly, a Process Server with instructions to effect personal service on Mr. Jordan.

Mr. Slowly visited Mr. Jordan's home on December 20, 1985 and again on January 20, 1986 but as Mr. Jordan was not at home on those occasions, service was not effected.

On February 25, 1986, Mr. Slowly returned the unserved Writ of Summons to the attorneys-at-law and indicated that he was unable to effect personal service on the Defendant.

Nothing further transpired until May 21, 1986, when the Plaintiff's attorney-at-law applied to the Judge/Master for a renewal of the Writ.

Consider what Order should be made in the circumstances.

PART B

QUESTION 6

"Prince" Sly Mungose, a successful Reggae Singer and Record Producer deserted his wife Adora, and his four minor children by her, and has set up house with the widowed Mrs. Biggie Plenty and her four minor children.

Mrs. Biggie Plenty has changed her name by Deed Poll to "Biggie Plenty-Mungose".

Adora wishes to apply to the Supreme Court/High Court for maintenance for herself and the four children aged 17, 15, 13, 11 years, all of whom are attending Secondary schools. "Princess", the 17 year old daughter has been accepted as an undergraduate at LUBOCK, the famous Russian University. Keebo, at 15 has shown an extra-ordinary aptitude for astronomy and wishes to attend the Tibetan Institute of Astronomy, situate in Mid-China. Both children had been led by their father to believe that he would pay any school fees involved. Adora had never been employed outside the home. She had a joint account with her husband at the Million Bank and could make withdrawals as she saw fit for the running of the household.

Prior to the desertion, "Prince" Sly spent six months each year on overseas tours and he would invite Adora to meet him for week-ends in any city in the world that he was then performing. The children were driven to school in expensive limousines and were given huge sums for pocket money. In the last six months all this has ceased. "Prince" Sly has withdrawn the entire balance in the Million Bank and now gives to his wife \$5,000 per month for herself and the children. She has found this sum totally inadequate and wishes to obtain as maintenance an amount not less than \$25,000 per month as her husband's income exceeds J\$1M. per year.

Draft an application for maintenance supported by a detailed affidavit by the wife to substantiate her claim for maintenance for herself and the children.

QUESTION 7

Using such facts as may be necessary from Question 6, draft an Affidavit of Means by "Prince" Sly Mungose in which he explains that his gross earnings are approximately \$1M. per year but that his expenses including that of maintaining the household with Mrs. Biggie Plenty-Mungose and her four children aged 12, 10, 8, 6 years, respectively, and excluding the amount he is now paying to his wife exceeds the gross earnings. In fact, he has to be borrowing money to make payments to his wife.

QUESTION 8

John Expert who had his permanent home in California, U.S.A., came to your country in 1984 to advise on the re-organisation of the ground-provision industry. He encouraged Precious Farmer, a young woman of 22 years to grow ochroes for export and so successful was the business that Mr. Expert decided to enter the project as a joint-venture with Miss Precious. Their relationship blossomed and they were married on April 1, 1985 and lived in the beautiful house which Miss Farmer had built.

Precious soon realized that John had only one interest, and that was the growing of ochroes, and indeed he knew about nothing else. She was competent to manage her 20 acre farm and wished John would stop following her about. Their daughter Janette had been born December 25, 1985 and was doing well.

Precious leased a 50 acre tract of land from the Land Commissioner and placed John in charge of it. On a rainy day in March 1987, during the planting season, Precious visited the farm which John had been supervising and found John and the watchman's 17 year old daughter in bed in the watchman's cottage. Precious screamed and fainted. John turned a waterhose on to her, wetting her thoroughly. He took her car keys and handbag away from her and drove away leaving her lying on the ground outside of the cottage.

Mrs. Expert recovered consciousness and walked in the wet clothes for a mile before she was given a lift by a passing motorist. She reached home in time to see John driving away in the jeep. He telephoned her a week later from California telling her that the marriage was finished and if she did not divorce him, he would, as the marriage was a mistake from the beginning.

Draft an appropriate petition on behalf of Mrs. Expert seeking dissolution of her marriage.
