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NORMAN MANLEY LAW SCHOOL  
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATION, 1992

CIVIL PROCEDURE AND PRACTICE I  
(Wednesday May 27, 1992)

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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Civil 1992

PART AQuestion 1

On the night of Saturday, January 7, 1992, Mr. James Lovelace, a civil engineer, residing at 5 Chatham Way, Riverton in your country and his fiancée, Miss Joy Petite, attended a fête at the Yacht Club which is situated at 27 Seaward Drive in Riverton.

The fete ended at about 3:00 o'clock the following morning and Miss Petite and Mr. Lovelace were strolling along Seaward Drive to where his car was parked.

As they reached a certain point along Seaward Drive, Mr. Lovelace and Miss Petite heard footsteps as if persons were running behind them. They then heard voices shouting, "Thief! thief! stop him, stop him!"

They looked in the direction from which the sound came and saw a man about the colour, size, height and build as Mr. Lovelace running towards them. The man passed them in a flash and soon disappeared in a nearby gully.

A few seconds later a police officer who was dressed in uniform and a lady, both of whom appeared to have been pursuing the man, caught up with Mr. Lovelace and Miss Petite.

The police officer immediately held Mr. Lovelace in the waist of his pants and started to hit him with his baton on his knees and arms.

Miss Petite and Mr. Lovelace were very frightened and astonished. They enquired of the police officer what had happened and tried to explain that a man had run past them and had

disappeared in the gully, but no one listened to them. In the meantime the lady who was with the police officer pointed to Mr. Lovelace and said, "Officer, he is the man that took my necklace."

Mr. Lovelace and Miss Petite replied that it was not true and that they were returning from a fete at the Yacht Club.

The police officer then identified himself to them as Constable Jim Vigilante of the Riverton Police Station and asked Mr. Lovelace to hand over the necklace. He then searched Mr. Lovelace's person but found no necklace.

Just then a police jeep arrived on the scene. Constable Vigilante placed Mr. Lovelace in it and took him to the Riverton Police Station where he arrested and charged him for the larceny of a gold necklace valued \$3,000, the property of Marcia Merciless.

Mr. Lovelace was placed in a lock-up at the police station where he remained until about 10:00 a.m. that same Sunday when Constable Vigilante returned. He acknowledged that he had made a mistake and ordered the release of Mr. Lovelace, telling him that he was not proceeding with the charge against him.

During the encounter with Constable Vigilante, Mr. Lovelace's shirt was badly torn. He had paid \$250 for it about a week prior to the incident. His right arm and both knees were swollen and painful as a result of the blows he received.

On Mr. Lovelace's release from custody he obtained medical attention for his injuries from Dr. Doo Goode to whom he paid a fee of \$300. He also bought medicine and ointment prescribed by the doctor at a cost of \$450.

Mr. Lovelace has heard nothing more about the matter. He feels outraged and incensed about the entire affair.

He has consulted and instructed you to institute legal proceedings on his behalf. Consequently, you have filed on his behalf a generally endorsed Writ of Summons against Constable Jim Vigilante and the Attorney General in which the Plaintiff is seeking to recover damages for assault and battery and for false imprisonment.

Draft an appropriate Statement of Claim to be filed in the matter.

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Question 2

Mr. Slim Jim lives at 50 Monterey Drive, Saint Marks in your country and he obtains mail at this address.

He owns a dwelling house at 30 Ferdinand Close, Christ Church which he lets to Mrs. Joyce Paynote at a monthly rental of \$5,000. Rent is now in arrears for the months of February, March and April, 1992.

After making several unsuccessful demands for payment from his tenant, Mr. Jim has consulted and instructed you to institute legal proceeding to recover the amount.

You have filed and served on Miss Paynote a specially endorsed

Writ of Summons in which the Plaintiff, Slim Jim, is seeking to recover from the defendant Joyce Paynote the sum of \$15,000 being money due and owing for rental in respect of premises at 30 Ferdinand Close, Christ Church for the months of February, March and April, 1992 and costs \$800.

This Writ of Summons was personally served on Mrs. Paynote who has entered an appearance (acknowledged service) but has not yet filed a defence (given notice of intention to defend).

You now wish to apply for summary judgment under Order 14 [Section 79 (1) of the Judicature (Civil Procedure Code) Law].

Prepare the necessary document(s) for your application.

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### Question 3

On March 30, 1984, Mr. Fred Sportman who resides at 60 Palm Crescent, Retreat, was riding his motor cycle licensed 300 AR along Trent Avenue, Retreat, when as a result of his negligence the motor cycle collided with and injured Mr. Peter Rabbit who was walking along that avenue.

On June 30, 1989, Mr. Rabbit consulted a firm of attorneys-at-law who on July 20, 1989, filed on his behalf a Writ of Summons against Fred Sportman claiming damages for personal injuries as a result of his negligence.

On October 1, 1989, the Writ of Summons was handed to Mr.

Prince Slowly, a process server with instructions to effect personal service on Mr. Sportman.

Mr. Slowly visited Mr. Sportman's home on December 20, 1989 and again on January 19, 1990, but was unable to effect service as Mr. Sportman was not at home.

On January 20, 1990, 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 in the matter until September 21, 1990 when the plaintiff's attorneys-at-law applied to and obtained from the Judge/Master-in-Chambers an order renewing the Writ of Summons for a period of six months from the date of the order.

The renewed Writ of Summons was promptly served on Mr. Sportman who has consulted and instructed you to apply to the Judge/Master-in-Chambers to set aside the order for renewal of the Writ of Summon and its service.

Prepare a draft of the submission which you would make on your client's behalf.

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Question 4

Southern Furnishing Company Limited situated at 14 Peckham Avenue, Sweetland, through its attorney-at-law, issued against Mrs.

Charmaine Shopper, a housewife residing at 17 Marborough Road, Sweetland, a Writ of Summons (C.L. 1992/S007 Southern Furnishing Company Limited v Charmaine Shopper) in which the plaintiff claims to recover from the defendant the sum of \$25,000 for goods sold and delivered and costs \$1,000.

The Writ of Summons was served personally on the defendant on January 8, 1992 but she neither entered an appearance/acknowledged service nor filed a defence/gave notice of intention to defend within the time limited to do so.

On February 1, 1992, the plaintiff's attorney-at-law had judgment in default of appearance/default of acknowledgement of service entered against the defendant for \$25,000 and costs \$1,000.

On February 20, 1992, the defendant consulted you. She brought the copy of the Writ of Summons, a copy of the default judgment served on her and instructed you as follows -

"The claim against her arose from the fact that through Tom Payne, the manager of Southern Furnishing Company Limited, she ordered and the plaintiff company agreed to supply to her a mahogany dining table with six chairs for a price of \$25,000 but in breach of that agreement the plaintiff delivered a dining table and six chairs - all made of cedar.

On the date of delivery she

immediately informed the plaintiff, through Mr. Payne in a telephone conversation that the table and chairs supplied were not made in accordance with the agreed specification in that they were made of cedar and not of mahogany as agreed. She was therefore not accepting nor paying for them and that the plaintiff should come and take them from her home. To date the plaintiff has not complied with that request.

About a month after the telephonic conversation with Mr. Payne she was served a Writ of Summons in the matter.

Unfortunately, she became ill about two days after the service of the Writ of summons and was unable to contact an attorney-at-law.

She was later served with a copy of the default judgment in question and she is totally dissatisfied with the entire matter."

Draft the necessary document(s) for any proceeding you may initiate on your client's behalf.



Question 5

By adverting to the Rules of the Supreme/High Court, outline the procedure governing amendment of pleadings and summarise with the assistance of case law, the courts' attitude to the granting of amendments in general.

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PART B

Adam Demeritus was a soldier in the Utopian army for three years, saw active service in two blistering campaigns and was demobilized by his 21st birthday. His passion for cleanliness had frustrated his company commanders and although he had no fear for his own safety and could endure pain beyond the tolerance of all his colleagues, his three-year contract was not renewed.

Mr. Demeritus was abstemious and he was thrifty. He wore white suits, white gloves and a white nose mask. He exercised regularly morning and evening and enjoyed excellent health. Miss Polly Curvey, an attorney-at-law, was fascinated by this immaculately dressed man. She had difficulty arranging an introduction as he did not appear to have any close friends. So Miss Curvey, dressed in "track-suit" went on the exercise trail.

Their meeting was quite unremarkable, but in three months they were married quietly in the garden of Miss Curvey's home by Mr. Godfather, a duly appointed marriage officer.

Mr. Demeritus cooked for himself. Not only did he disapprove

of the foods which his wife ate, but he told her he could not be one hundred percent satisfied that she had taken all the hygienic steps necessary before and during the preparation of the meal. Mr. Demeritus was enraged when he discovered that his clothing was being laundered with other household articles and so they bought a second washing machine to be used solely for the husband's personal effects. Their romantic life was satisfactory except that Mr. Demeritus found kissing to be unhygienic and neither indulged nor permitted his wife to indulge in this practice.

Mrs. Demeritus gave birth to twin daughters on 1st April, 1987 the 1st anniversary of their marriage. The birth was uneventful except that Mr. Demeritus insisted upon home delivery as he knew of cases where children born in hospital had become infected.

Mr. Demeritus' own mother had died in child-birth and this probably accounted for his determination that the children should not be breast-fed. Because he was on his annual vacation at the time of their birth he was able to closely supervise the feeding of the babies and to ensure that they were not exposed to un-sterile conditions. No one visiting the home was permitted to touch the babies and Mr. Demeritus said repeatedly that he did not welcome visitors while the children were young and vulnerable.

When it was time for Mrs. Demeritus to return to her law practice, the husband announced that he had received a promotion to be Chief Security Officer at the Redemption Bank, that his salary of \$600,000 per annum was sufficient to maintain the family and that he did not approve of working mothers. Mr. Demeritus

dismissed the housemaids and forbade his wife to re-hire anyone.

Life continued in the household with Mrs. Demeritus almost wholly isolated from friends and relatives. Mr. Demeritus personally shopped for the twins to ensure that they had only the "right foods", and continued to cook for himself, while his wife was free to prepare her own meals.

On 1st April, 1991, Mrs. Demeritus' sister died in the neighbouring Island of Ruritania. Notwithstanding the husband's vociferous protests, Mrs. Demeritus left home to attend the funeral. It was carnival time in Ruritania. Mr. Demeritus was watching television. He saw among the revellers, Mrs. Demeritus scantilly clothed, jumping, prancing, gyrating and being embraced by sundry "half-naked" men in the main street of the town. He was beside himself with rage.

For two days he could not make contact with his wife by telephone. When she returned home he greeted her with the most vicious verbal and physical abuse. She was barely conscious when his rage subsided. He disconnected the telephone wires and absolutely refused to permit her to seek medical attention.

Since that day Mr. Demeritus has not spoken to his wife nor shared the bedroom with her. The telephone has not been re-connected. Although he takes the children to and from school he does not speak to either of them and they are forbidden to speak in his presence.

Mr. Demeritus is being transferred by his bank to Ruritania. Mrs. Demeritus has seen documents to indicate that when Mr.

Demeritus goes at the end of the month he proposes to take the twins with him.

Her house has always been the matrimonial home. Since the incident of the 4th April, 1991, Mr. Demeritus made all household purchases, paid all bills himself and placed on a shelf in the kitchen small sums which his wife used for personal expenses.

Mrs. Demeritus has consulted you. She wishes to be advised of all the legal remedies open to her in respect of her marriage.

Question 6:

Draft a petition for the dissolution of marriage. (Notice to appear not required.)

Question 7

Draft affidavit(s) in support of an application for custody of the children.

Question 8:

Draft affidavit(s) in support of an application for maintenance of the wife and children.

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