

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1999

CIVIL PROCEDURE AND PRACTICE I

(Tuesday, May 25, 1999)

Instructions to Students

- (a) Time: 3½ hours
- (b) Answer **THREE** questions from Part A and **TWO** from Part B.
- (c) **Questions selected from Part B must be answered on a separate answer booklet.**
- (d) In answering any question, a candidate 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A**QUESTION 1**

A new client, Mr. Just Come, walks into your office and explains to you that he has dismissed his previous attorney-at-law, Ms. Stuffit, because she was too "high falutin" and could not explain what was involved in a "court" action in a language he could understand. As a consequence, he believed that she herself just did not understand what she was talking about and he was therefore suspicious of her. He explains that he would like you to represent him. He gives you a copy of a writ of summons on which you notice -

- (a) your client's name is spelt as "John Come";
- (b) the plaintiff is named as "Brad Boy";
- (c) the writ is signed neither by the plaintiff nor an attorney-at-law;
- (d) the indorsement on the writ reads -

"The plaintiff claims damages for personal injuries to the plaintiff for being struck on his head by the defendant during a boxing match on the 1st January 1993."

He further tells you that he was given this document by someone on his street who is also called Just Come, but who when it was served on him, realised the contents did not concern him and thought that it was he (the client) to whom the document related.

Just Come also informs you that the only Brad Boy he knows is now a 17 year old young man whom he met at a boxing match in January 1993 and with whom he had developed a friendship until recently when they had a disagreement and went their separate ways.

Advise Mr. Just Come on the procedural issues raised above.

QUESTION 2

Computers International Co. Ltd., situated at 110 Red Mall Street, Brixtonville, issued a writ of summons against Brittany Tulloch, a businesswoman of 10 Coopers Hill (Suit No. CL 1998/CO10 - Computers International Co. Ltd. v Brittany Tulloch). The plaintiff claimed the sum of \$154,000, being the price of goods sold and delivered and costs.

On January 10, 1999, the writ was served personally on the defendant. On February 1, 1999, the plaintiff's attorney-at-law entered judgment in default of appearance/notice of intention to defend against the defendant for \$154,000 plus costs.

On March 20, 1999, you are consulted by the defendant and instructed as follows -

"On December 15, 1998, I ordered an Epson LQ Lap Top Computer from the plaintiff for the price of \$154,000 to be paid on December 30, 1998. When I opened the box, I observed that it was an Epson AF250L Lap Top Computer, which I had read was not likely to be 'Y2K'. I informed the delivery man that was not the computer I had ordered and he should take it back, but he refused to take it back, and said I should speak to the store manager, Mr. Scream. I immediately telephoned Mr. Scream in the presence of the delivery man and told him of the error and that he should arrange to take the computer from my home. Mr. Scream proved to live up to his name and told me 'Y2K' was simply religious rubbish and would not affect any computer. I insisted however that I did not want it. To date it is still at my house."

Advise your client on the steps she can take, stating the required documents and their contents, and the likely outcome of any application to the Court.

QUESTION 3

Your client, Just Come, has handed you a statement of claim as follows -

STATEMENT OF CLAIM

(Heading as per your jurisdiction)

BETWEEN	BRAD BOY	PLAINTIFF
AND	JUST COME	DEFENDANT

1. The plaintiff is a 21 year old electronic engineer.
2. On or around January 1, 1993, at a boxing match inside the National Stadium, the defendant wrongfully assaulted the plaintiff by striking him on the head.
3. As a result of the unlawful assault and battery, the plaintiff sustained personal injuries and suffered loss and damage.

PARTICULARS OF INJURY

- (a) The plaintiff who is an asthmatic and paraplegic had a severe asthmatic attack and had to be treated by paramedics at the National Stadium.

- (b) The plaintiff had to be taken to Knights Private Hospital where he stayed for 3 days.
- (c) The plaintiff suffered terrible bruising to his face which will mar him for life.
- (d) The plaintiff had to receive psychological counselling to be able to recover from his trauma.

PARTICULARS OF SPECIAL DAMAGE

(a)	Cost of ambulance to hospital	\$ 400.00
(b)	Cost of hospital care	15,000.00
(c)	Loss of earnings	<u>70,000.00</u>
		<u>\$85,400.00</u>

4. Further the plaintiff is entitled to interest pursuant to S.3 of the Law Reform (Miscellaneous Provisions) Act at such rate and for such period as to the Court shall appear just.

And the plaintiff claims -

1. Damages
2. Costs
3. Interest as aforesaid
4. Further or other relief.

Signed

Note: (The statement of claim has been signed, dated, filed and delivered.)

Dated

Filed

Just Come instructs you that he did in fact meet Brad at the boxing match. Brad appeared to be a decent young man from a "good family" who told him that he was training to be an electronic engineer, a programme for which he still had six more years of study. At some point during the match he noticed that Brad was in much distress. When Brad explained to him that he was asthmatic and was in dire need of his medication, Just Come offered to go and purchase the medication for him with his own money. At that point, Brad appeared very grateful and promised to reimburse him for whatever he spent to obtain the medication.

When he got out of the stadium he realised that the Allnite Pharmacy just down the road was closed and he consequently hired a taxi at a cost of \$200.00 to go into town to purchase the medication. On his return he explained the situation to Brad and requested the money he had spent, whereupon Brad became very impatient and demanded the medication. While trying to get into his seat, he slipped on a walking cane that Brad had placed on the ground in front of his (Just Come's) seat and he fell on the ground accidentally striking Brad on the head in the process. Brad took the cane and immediately assaulted Just Come who was severely beaten, receiving multiple lacerations and a broken arm. He had to spend a week in hospital during which time he did not receive his salary. Further, Just Come has not received the reimbursement for his expenses promised by Brad.

Draft the appropriate pleading on behalf of Just Come.

QUESTION 4

Harry and Sandra are neighbours. On January 1, 1999, they entered into a contract to erect a wall between their properties so that Harry could buy a vicious pitbull terrier to guard his property without posing any danger to Sandra. Sandra herself also wanted more privacy. Harry was responsible for construction. It was agreed that the wall would be constructed of four-inch concrete bricks at a height of six feet. It is a widely-known fact that pitbulls are terribly strong and have been known to knock holes in brick walls and can jump walls over four feet in height when they are excited.

Harry who was in financial trouble, built the wall three feet in height out of hollow clay blocks. Harry subsequently bought the pitbull which he called Biteit. Two weeks ago, Maco, who was visiting Sandra and who had never seen a pitbull, was leaning on the wall when it collapsed and he sustained a broken foot. Biteit jumped over the wall and attacked Sandra who was going to assist Maco.

Maco has instituted legal proceedings against Sandra in an action for occupiers' liability. Sandra seeks your advice as she believes that Harry is really responsible for the injury to Maco and should also like to recover compensation for her own injuries.

- (a) Describe the action that you will take and the documents you will use to effect Sandra's instructions.
 - (b) Would it make any difference to your answer if Sandra knew that Harry had in fact contracted with Slipshod Construction Co. Ltd. to construct the wall in accordance with the contract she had with Harry and that the company was told about the purpose for which the wall was to be built?
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QUESTION 5

Bisco Food Ltd., a company incorporated under the laws of your jurisdiction, carries on the business of wholesale merchants at 38 Deptford High Street.

During the period February 10 to June 30, 1998, the said company sold and delivered to Mrs. Lady Attractive, who has a small hotel business at 40 Apple Street, the following -

Feb. 10, 1998	30 boxes of corn	\$12,000.00
Feb. 12, 1998	15 crates of pickled fish	\$25,000.00
Mar. 15, 1998	10 boxes of red apples	\$ 8,000.00
Apr. 1 1998	40 crates of red wine	\$40,000.00
May 10, 1998	50 cartons of broad peas	\$15,000.00
June 30, 1998	7 barrels of salt beef	\$10,000.00

Mrs. Attractive paid the sum of \$5,000.00 in May 1998 and a further \$3,000.00 at the beginning of June 1998, but is experiencing financial difficulties as a result of the slump in the tourism industry and has made no further payments despite repeated requests from the Company.

The Company has instructed you to issue proceedings against Mrs. Attractive. Advise them on the following -

- (i) The most expeditious manner in which to bring proceedings, listing the document(s) required to commence proceedings, summarising their contents.
- (ii) What steps can be taken to serve Mrs. Attractive with the document(s) if she learnt that proceedings were issued against her

on May 20, 1999 and left the island on May 22, 1999 in order to avoid service and is presently residing at 10 Drewstead Road, Streatham, London SW 16.

- (iii) Would it make any difference if Mrs. Attractive was an American Citizen and returned to her home in Orlando, Florida, U.S.A.?

PART B

FACTS RELATING TO QUESTIONS 6, 7 and 8

Mr. Dumbly Cayless divorced his wife in the State of Florida, United States of America. There was an evidentiary hearing at which Mr. Cayless testified and as the petition for dissolution on the ground of irretrievable breakdown of the marriage was not contested, the judge entered an order for the final dissolution of the marriage at the end of the evidentiary hearing.

Mr. Cayless then came to your country as a management consultant in December 1994. In January 1995, he met Mildred Proude, a spinster, and they were married in February 1995. He met Miss Easy Grant at a party on April 1, 1995, fell in love with her and by June 1995, Mr. Cayless had deserted his wife and was living with Miss Grant at his hotel. Mr. Cayless told Miss Grant that he had been divorced and was not anxious to rush into another marriage.

Mrs. Mildred Cayless was sales manager for the multi-national "Ken-L Dog Biscuit Company", travelled overseas frequently and did not contact Mr. Cayless after he told her that he had no love for her or for her money.

In January 1996, Mrs. Mildred Cayless gave birth to twin-daughters whom she named Princess and Duchess. On the advice of her father, Mrs. Mildred Cayless did not inform Mr. Dumby Cayless of the birth of the twins. Mrs. Cayless agreed with her father to take two years leave from her firm and the father would give her 75% of her salary during this period.

On January 2, 1998, Mrs. Mildred Cayless filed a Petition for dissolution of her marriage with Dumby Cayless. The Petition was heard on February 28, 1998 when the decree nisi was granted.

On March 2, 1998, Mr. Cayless and Miss Easy Grant were married at the Chapel of Truth by Pastor Goodenough. On the Marriage Certificate Mr. Dumby was described as a divorcee and the document presented to the pastor in proof thereof was the Florida Decree.

During the last day of a three-week honeymoon at the luxurious Ecstasy Hotel in your tourist resort area, Mr. Cayless was served by bailiffs with a summons for Child Support filed by Mrs. Mildred Cayless. Furious at the intrusion of the bailiffs and ignorant of the existence of the children, Mr. Cayless protested so loudly to the bailiffs that the altercation attracted Mrs. Easy Cayless' attention.

Mr. Cayless told his new wife that he had had an affair with Mildred a few years back but he could not call that a marriage as he did not love the woman and they were only together briefly. He had wanted to forget all about that incident and so had not bothered to mention it. Anyway, if it was money this woman wanted, he could afford it with his contract salary of \$1.5 million (in your currency) per month. Therefore, Mrs. Easy Cayless should think nothing more about it. Life, he said, was just for living.

The new wife was devastated. She said she knew that she was "Easy by name and nature", but this was the last straw. This man had been deceiving her for two years and people must have been mocking her without her knowledge. She wanted to have nothing more to do with him because of his deceit. She threw down the wedding and engagement rings, packed her suitcase and left the hotel.

On April 1, 1998, Mr. Cayless was summarily dismissed from his consultancy position, although his contract had a further 12 months to run. He is negotiating for a settlement of \$10 million and the indications are that he will get this money.

QUESTION 6

Mrs. Easy Cayless has consulted you and wishes to be advised if she can terminate her marriage.

If you advise legal proceedings, draft the petition (without supporting documents) to achieve this purpose for filing in the Superior Court of your country.

QUESTION 7

In an opinion of not more than 300 words, explain the legal basis of your advice to Mrs. Easy Cayless.

QUESTION 8

Mrs. Mildred Cayless has withdrawn her original application for child maintenance.

Draft the affidavit only for a renewed application as of May 30, 1999.
