

NORMAN MANLEY LAW SCHOOL  
Council of Legal Education

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 1987

CIVIL PROCEDURE & PRACTICE I  
(Monday, August 10, 1987)

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.

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P A R T   A

QUESTION 1

The annexed Statement of Claim was served on you as the Attorney-at-Law on the records for the defendant who instructs you that the said accident was occasioned by the negligence of the plaintiff who is alleged to have been chasing a co-worker in jest when the unfortunate incident occurred.

Your client also informs you that the incident occurred in an area of the said factory which is out of bounds for the plaintiff and other workers in his category and that clearly marked notice to that effect was conspicuously exhibited at the approach to that area; that the alleged hole in the concrete floor was covered but the metal cover was kicked off by the co-worker during the chase by the plaintiff.

Your client denies any allegation of negligence and asserts that the plaintiff was solely to blame for, or alternatively contributed to, the accident.

Draft an appropriate defence based on your instructions.



- (b) Failure to provide or maintain a safe means of access to the Plaintiff's place of work.

5. By reason of the matters aforesaid the Plaintiff sustained severe injuries and has suffered loss, damage and incurred expense.

PARTICULARS OF INJURIES

- (a) Concussion and six-inch laceration to back of head.
- (b) Laceration and contusion to right knee.
- (c) Bruising and swelling to right shoulder.
- (d) Fracture of the index finger of the right hand.

PARTICULARS OF SPECIAL DAMAGE

(a)	Medical Expenses	\$3500.00
(b)	Loss of earnings (9 weeks @ \$400 per week)	\$3600.00
(c)	Transportation	\$ 400.00
(d)	Damaged Shirt	<u>\$ 75.00</u>
		\$7575.00

AND THE PLAINTIFF CLAIMS: -

1. Damages.
2. Interest at such rate and for such period as the Honourable Court deems just.
3. Such further or other relief as may be just.

DATED THE 10TH DAY OF JULY, 1937

S E T T L E D

PER:

PLAINTIFF'S ATTORNEY-AT-LAW

FILED BY R. D. PAUL & CO. OF 5 DUKE STREET  
ATTORNEY-AT-LAW FOR AND ON BEHALF OF THE PLAINTIFF HEREIN.

QUESTION 2

(i) Without obtaining the leave of the Court, A issued a Writ of Summons for service on B outside the jurisdiction of the Court.

This writ was served on B who entered conditional appearance (acknowledged service under protest) challenging the validity of the issue of the writ and of its service on him.

B then applied to the Judge/Master for an order to set aside the issue of the writ and its service on him.

Were you the Judge/Master what order would you make? Support your decision with the assistance of case law.

(ii) C issued a Writ of Summons against D on March 1, 1985. Without renewing the writ, C served it on D personally on April 30, 1986. D entered an unconditional appearance (acknowledgement of service without reservation) and applied to have the service of the writ on him set aside.

Advise what order the Judge/Master ought to make giving reasons for your decision.

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QUESTION 3

(i) What are the grounds on which a party may apply to the Court to strike out his opponent's pleadings in whole or in part?

(ii) Describe the procedure by which a party applies to the Court to strike out his opponent's pleadings on the ground that such pleadings disclose no reasonable cause of action or defence, stating also the principles by which the Court is guided in arriving at a decision whether or not to grant such an application.

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QUESTION 4

Mr. Rock Stone is in business as a hardware merchant. He regularly supplies Slevy Brothers Ltd. with building materials. The following has occurred:

Slevy Brothers Ltd. has failed to pay Mr. Stone for 10 toilet bowls at \$500.00 each; 300 bags of cement at \$35.00 per bag; and 4 tons of steel at \$700.00 per ton. These goods were invoiced and delivered on January 10, 1987.

Slevy Brothers Ltd. is contending that the 10 toilet bowls and 200 bags of the cement in question were delivered to the company in a damaged condition and were unmerchantable. Slevy Brothers Ltd. had communicated this complaint to Mr. Stone the day after the goods were delivered.

On February 28, 1987 Mr. Stone issued against, and served on Slevy Brothers Ltd. a writ specially endorsed with a claim for the price of the goods mentioned in paragraph 2 above.

Slevy Brothers Ltd. entered an appearance (filed acknowledgement of service) but failed to file and serve a defence in the time limited to do so.

Mr. Stone has applied for Summary Judgment stating in his affidavit that in his belief Slevy Brothers Ltd. has no defence to the action.

Slevy Brothers Ltd. has consulted you seeking legal advice regarding any step or steps it might take to oppose the Plaintiff's application for Summary Judgment and the possibility of filing a Defence and Counterclaim. The Counterclaim will be for damages against the plaintiff for breach of the implied term in the contract that the goods supplied should be of merchantable quality.

Without drafting any document, advise the defendant company as to its legal position.

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QUESTION 5

On June 10, 1980, A a pedal cyclist suffered personal injuries when he was hit by a motor car owned and driven by B along the Mona Road.

In August 1984 A consulted Slow, Linger & Co., Attorneys-at-Law.

On December 30, 1984, this firm acting on A's behalf issued a Writ of Summons claiming damages for personal injuries against B.

No attempt was made to serve the writ on B until sometime in March 1985 when it was sent to the process server with a request that he should effect personal service of the writ on B.

In November 1985 the process server returned the writ to Slow, Linger & Co. with a notation that the writ was not served as the defendant could not be located at the given address and he was not known in that community.

Nothing more transpired until August 30, 1986 when the plaintiff, through his Attorneys-at-Law applied to the Judge/Master for a renewal of the Writ.

Were you the Judge/Master considering this application, what order would you make? Give reasons for your decision.

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P A R T    B

QUESTION 6

Princess Simple, a 19 year old Secretary and John Lowbrow were lovers for three months when Princess discovered that she was pregnant. She discussed the matter with John pointing out that she would not be able to attend Church or face her parents or her co-workers if he did not agree to marry her. John readily agreed and the date of the wedding was fixed for two months hence.

One week before the wedding on a routine visit to her doctor Princess was found to be suffering from a venereal disease which was considered a rare and difficult strain. When examined, John was found to be suffering from the same disease and it was accepted that he had infected Princess.

Princess became extremely emotionally upset but as the wedding arrangements were so far advanced, they were not cancelled and the parties were duly married by Rev. Goodhart on the 1st day of April, 1977. There followed a period of intensive and expensive medical treatment of both husband and wife. After three months treatment both were declared to be completely cured.

During the course of the treatment Princess was advised by her doctor that the baby could probably be affected by the infection and he recommended termination of the pregnancy. In her bewildered and emotionally upset state Princess refused to accept the advice. However, she developed a morbid fear that the child would be born deformed and cringed away from her husband every time he made advances. She would not permit him to touch her in any way and although they shared the same room they slept in separate beds.

Fortunately the child was born without any deformity. Princess fervently believed that the Lord had punished her for the extra-marital intercourse and vowed never to have sexual intercourse again.

Princess has turned out to be a perfect housewife and mother but she has been unable to overcome her repugnance to any physical contact with John. It is now three years since the marriage took place and John has become completely frustrated by Princess's attitude. During the last six months he has been on intimate terms with Miss Lightbody and wishes to marry her.

Draft the appropriate petition. (It is not necessary to submit Notice to Appear nor an Affidavit in Verification of the petition).

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#### QUESTION 7

One their marriage in 1970, Mr. Meanie outlined to his wife that they would have to live within their means. He was ten years older than his wife, and was receiving a salary as a bauxite factory foreman ten times greater than that of his wife who worked as a clerk. Mr. Meanie always made provision for his inescapable commitments, viz. his mortgage on the house, his very large insurance premiums on his own life, repairs for his car, his compulsory savings in his own name, his pocket money and out of the remainder, he provided house money.

Sometimes the amount provided by Mr. Meanie monthly for housekeeping was not enough to buy food for two weeks. All of Mrs. Meanie's earnings went into housekeeping. She tried unsuccessfully to persuade her husband to increase her allowance and he would not. As prices escalated, Mrs. Meanie's dilemma grew worse. Her husband demanded the same quality and variety of meals and denounced the wife as a poor housekeeper when she tried to explain.

Little by little Mrs. Meanie began to fall into debt. She borrowed from all her friends at the office to supplement her income for housekeeping purposes and when she could not repay, the loans began to 'dry up'. She could not speak to her husband who assumed the air of the 'high and mighty' who had married beneath his status. In desperation she poured out her troubles to Mr. Blighter, whom she considered a friend of the family. He promised to have a word with her husband but did not.

Then one day in December, 1978, Mr. Meanie telephoned his wife to prepare dinner for two extra guests that night. She told him she could not as the house was 'absolutely empty'. He raged at her and abused her for wasting his money and threatened that if all was not in 'ship shape' when he got home, she would hear more about it. In distress, Mrs. Meanie telephoned Mr. Blighter. He asked her to meet him at his office at once and he would see what he could do. At that meeting he gave her \$100 and told her to add up her debts and let him know the amount.

After dinner that night, Mrs. Meanie felt humiliated and so she told her husband that she had had to borrow money to feed them and that he should repay Mr. Blighter his \$100. Mr. Meanie said Blighter was a fool to lend money to a spendthrift woman and he certainly had no money to repay Blighter.

Word reached the office that Mrs. Meanie was entertaining the night before and three of her creditors demanded payment that very day. With no one to turn to, Mrs. Meanie remembered Mr. Blighter's promise and she again telephoned him. He invited her over and gave her a cheque for \$1000, enough to repay all her office debts.

Mrs. Meanie did not dare to tell her husband about this second loan, but she vowed never to borrow again. Everyday for the next two weeks, Mrs. Meanie and Mr. Blighter spoke on the telephone and when he invited her to lunch at a popular hotel she accepted gladly. He explained that the lease for his apartment had expired and he was staying at that hotel for a few days. He invited her to see his suite and she accepted. That day they had sexual intercourse. Mrs. Meanie visited that hotel on four further occasions at lunchtime. Mr. Blighter gave her \$1000 and told her all he had given her were gifts, but he wished the association to come to an end before Mr. Meanie discovered what was going on. However, Mr. Meanie did hear of his wife's lunchtime visits to the hotel and when he confronted her, she confessed to what she had done. Mr. Meanie drove her out of the house and has filed for divorce on the Grounds of Adultery.

Draft the answer.

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#### QUESTION 8

John Drone and Honey Chile were married on April 1, 1978 at the office of the Registrar of Marriage by Mr. H. H. Wood, the Registrar. John at 27 was Credit Officer in a leading commercial bank and Honey at 25 was an attorney-at-law of two years standing. The parties had met at a Christmas party in 1977 and their whirlwind romance culminated in marriage.

During the honeymoon Honey told John that she did not want children to upset her career and did not intend to have any then or in the foreseeable future. John was disappointed but he thought that that decision could be easily overcome with time. The couple set up house in a townhouse in a fashionable neighbourhood. Honey said she was not the 'cooking type' and as she had a cooked meal at lunch John should either do the same or cook for himself. This decision was a great disappointment to John but he acquiesced. Things went on like this for a month. Then one day John came home from work at 2 p.m. He heard sounds of music and a laughter in the house. When he entered he saw Honey with three girl friends in the house. Honey was in the process of cooking an elaborate meal. The dining



table had been set with the best cutlery and chinaware that they possessed. John was asked to partake of the meal but his surprise was so great that he had no appetite and so he declined and left the house.

On the weekend following, two of John's cousins who lived in the country paid him a visit at his townhouse. They desired to stay the night. Honey objected in the most forceful language, stating that she had married him and not his tribe. The relatives could not stay.

This pattern of behaviour on Honey's part continued for almost two years. Then Honey developed a habit of staying home one working day of each week and she would entertain her friends on that day. She would for this purpose use groceries provided by John and liquor also provided by him. John in turn objected to this waste of his resources but she countered by the use of abusive language. After each of these episodes John would be greatly embarrassed.

Things came to a head in December 1981. John came home one day to see Honey and the postman sitting around the dining table having alcoholic drinks at 11 a.m. He remonstrated with her about this and was in return rudely abused. A week later when John came home about 8 p.m. he saw Honey standing at the fence talking to a male neighbour. She was dressed in her nightgown. John objected to her presence there and both Honey and the male neighbour abused him saying he was 'dirty minded'. Two nights later John came home at 9 p.m. He saw Honey lying in her bed and the same male neighbour standing outside her window and they were talking and laughing. John was extremely embarrassed not just because he saw the people talking, but because he noticed that Honey was not wearing any clothes under the sheet, which covered her. He became extremely angry and there was a violent quarrel between husband and wife. Honey packed her personal belongings and left the house on December 21, 1981 saying that she would never return to live with such a suspicious man.

John now attends at the Norman Manley Law School Legal Aid Clinic. In relating the history of his marriage he has complained that through the marriage Honey has been a source of embarrassment to him and he has been the laughing stock of his neighbours and his workmates for permitting her to treat him as she did. He wishes to have his marriage dissolved.

Draft the appropriate petition. (It is not necessary to submit Notice to Appear on an Affidavit in Verification of the petition).

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