

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1987

CIVIL PROCEDURE & PRACTICE II
(Wednesday, May 20, 1987)

Instructions to Students

- a) Time: 3½ hours
- b) Answer Three questions from PART I and TWO questions from PART II.
- c) Questions selected from PART II 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.

P A R T I

QUESTION 1

On August 1, 1986, Mr. John Jones aged 25 was driving his Honda Civic 0563 AN with his fiancée Miss Judith Dunn as a passenger along the Johns Town Highway towards Johns Town.

As they were crossing the Crossroads at Four Roads with the traffic lights in his favour, a motor truck numbered CC 271 owned and driven by Mr. Borntolooze Brown approached the right side of the Honda Civic motor car at great speed in disobedience of the traffic lights which were on red and drove into the right side of the car. The car which was valued at \$40,000 was damaged beyond repair but the wreck was sold for \$5,000.

Jones suffered a compound fracture of his right arm, two lacerations to his right cheek, a fracture to his right mandible and abrasions to his chest. He spent three weeks in hospital and was absent from his employment as a technician for 18 weeks. His salary was \$470.00 per week and he incurred medical expenses of \$1,500. Jones also lost his Dick Tracey watch valued at \$120.00 as well as clothing to the value of \$90.00.

Miss Dunn suffered a laceration to her right leg and abrasions to her back. She lost a pair of shoes valued at \$60.00 and a basket of groceries which was valued at \$50.00.

Draft the appropriate Statement of Claim in the names of the proper parties to the action.

QUESTION 2

What is meant by the term "discovery of documents"? State how an order for discovery may be obtained.

QUESTION 3

Explain and distinguish between "further and better particulars" and "interrogatories". Outline the procedure to be adopted as to each of them.

QUESTION 4

What advice would you give to James who is the Plaintiff in an action if:-

- (i) the Defendant failed to enter an Appearance to or acknowledge service of the Writ of Summons?
 - (ii) the Defendant failed to answer interrogatories having been ordered so to do by the Judge/Master in Chambers?
 - (iii) the Defence contains scandalous allegations?
-

QUESTION 5

(a) State the purpose of and the procedure on a Summons for Directions.

(b) "Justice is not or ought not to be a cloistered virtue".
Briefly discuss with reference to decided cases.

P A R T II

QUESTION 6

Give the procedural rules which govern legal proceedings by and against unincorporated associations.

QUESTION 7

State the main provisions of Order 102 of the Annual Practice (The White Book) of the Supreme Court of the United Kingdom, dealing with legal proceedings by and against incorporated associations.

QUESTION 8

Give the procedural steps for any three of the following:

- (a) Expulsion of a member from a Club.
 - (b) Distribution of profits to its shareholders by a company registered under the Companies Act.
 - (c) "Privatisation" of a government-owned bank.
 - (d) Formation of an Industrial Provident Society.
-

QUESTION 9

The following document has been sent to you by instructing Attorney for vetting before it is filed in the Registry of the Supreme Court. Correct and re-draft this document.

"SUIT NO. C.L.B. of 1987

IN THE SUPREME COURT OF JUDICATURE
IN COMMON LAW

BETWEEN	Marc Brice	PLAINTIFF
AND	Sharon Dove	RESPONDENT
AND	Conrad Beatty	RESPONDENT

THE HUMBLE PETITION OF MARC BRICE SHEWETH:

1. That on the 6th day of January 1986, your Petitioner was induced by the first Respondent to invest his life savings of \$50,000 in CHIQUE SALON LTD. on the understanding that your Petitioner would be given:

- (a) 20% of the shares of the said Company;
- (b) a debenture with a floating charge on the assets of the Company to secure the remainder of \$40,000;
- (c) the post of Co-Managing Director.

2. That on the 7th day of January 1986, your Petitioner gave the first Respondent a cheque for the said sum of \$50,000 and she assured your Petitioner that she would see to it the matters set out above would be duly done.

3. That for the first year of the Company's operations your Petitioner and the first Respondent managed the affairs of the Company on the basis that the said matters were done and the Company made a profit of \$200,000.

4. That on the 28th day of December 1986, your Petitioner and the first Respondent had a quarrel over the appointment of one CONRAD BEATTY the Second Respondent, as advertising manager.

5. That since then the affairs of the Company have been conducted in a manner oppressive to your Petitioner and the following facts have come to light:

- (i) Your Petitioner's name has not been placed on the Register of Members;
- (ii) On 7th January, 1987 a share certificate for 50% of the shares has been issued to the second Respondent;
- (iii) The locks on the doors of the Salon have been changed;
- (iv) The Respondents have used all the profits of the Company to buy an apartment in their own names;
- (v) The said debenture dated 7th August, 1986 though duly executed, has not been registered.

WHEREFORE this Honourable Court will be moved for the following reliefs to put an end to the aforesaid oppressive conduct and to correct the state of affairs:

- (i) The Register of the Members be rectified to indicate that your Petitioner is the holder of 20% of the shares;
- (ii) The said debenture be registered;
- (iii) The Respondents be declared a trustee of the said apartment for the Company.

DATED 11th March, 1987

TO the Registrar

Supreme Court, Kingston

AND TO the Respondents or their Attorneys-at-Law

FILED BY S. Mingus, Attorney-at-Law for the Applicant.
