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NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1992

CIVIL PROCEDURE AND PRACTICE I
(Monday, August 10, 1992)

Instructions to Students:

- a) Time: 3 1/2 hours.
- b) Answer FIVE questions only.
- c) Answer to PART A and PART B must be done on separate scripts.
- 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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August 1992

Question 1

The Statement of Claim set out below was served on you as the attorney-at-law on the records for the defendant. He instructed you that the accident was caused solely or alternatively contributed to by the negligence of the plaintiff who was recovering a football that was kicked from adjoining premises on to the roadway.

The defendant further said that in an effort to retrieve the ball, the plaintiff rushed suddenly on to the road without first ensuring that it was safe to do so. On seeing the plaintiff he sounded the horn of the van, braked and swerved to the right and away from the plaintiff who kept coming into the path of the motorvan. He was driving at a moderate speed.

Draft an appropriate defence based on your instructions.

STATEMENT OF CLAIM

(Insert usual heading)

B E T W E E N	JAMES RYDER	PLAINTIFF
A N D	JOHN SILVER	DEFENDANT

1. The Plaintiff was at all material times a tailor residing at 5 Glen Corner in Parkland.
2. The Defendant was at all material times the owner and driver of a red Ford motorvan, licensed 333 AB.
3. On the 20th day of January 1991, whilst the Plaintiff was lawfully walking along the Cedar Hill main road in Parkland, the

Defendant so negligently drove, managed and or controlled his said red Ford motorvan licensed 333 AB on the said main road that it collided with the Plaintiff thereby causing him injury, loss and expense.

4. The said collision was caused solely by the negligence of the Defendant.

PARTICULARS OF NEGLIGENCE

- (a) Driving at an excessive speed.
- (b) Failing to keep any or any proper look out.
- (c) Failing to keep the motorvan under proper control.
- (d) Driving without due care and attention.
- (e) Failing to swerve or otherwise manoeuvre the said motorvan so as to avoid colliding with the Plaintiff.
- (f) Failing to have sufficient regard for other users of the highway.

PARTICULARS OF INJURIES

- (i) Two-inch laceration on right side of head.
- (ii) Fracture of the right femur.
- (iii) Abrasions and swelling on right side of body.
- (iv) Severe pain all over body.

PARTICULARS OF SPECIAL DAMAGES

Transportation to and from hospital	\$400.00
Medical Expenses	\$1,000.00
Medication prescribed	\$500.00
Loss of earnings for 18 weeks	
@ \$600 per week -	<u>\$10,800.00</u>
TOTAL	<u>\$12,700.00</u>

AND THE PLAINTIFF CLAIMS

1. Damages.
2. Interest at such rate and for such time as the Honourable Court deems just.
3. Costs.
4. Such further or other reliefs as may be just.

DATED the 5th day of AUGUST, 1992.

Settled

per _____

PLAINTIFF'S ATTORNEY-AT-LAW

ED by Skip, Hope & Co., of 25 Market Street, Bridge Place,
orneys-at-Law for and behalf of the Plaintiff herein.

Question 2

Paul Cassidy, an American citizen, visited your country on a two-week vacation. During his stay he rented a red Toyota motor car with registration number RXZ 2631 from Caribbean Car Rentals Ltd.

On May 4, 1992, two days prior to his return to the United States of America, Cassidy was driving the car along Hyman Avenue, Central City in your country, when as a result of his negligent driving, the car collided with and severely injured Theresa Dennison, a pedestrian who was walking along Hyman Avenue.

Dennison who consulted you for the purpose of instituting legal proceedings against Cassidy, informed you that Cassidy has returned to the United States of America and that his last known address in the United States of America is Apartment 2A, Sunset Boulevard, Jersey City, New Jersey,

Draft the document(s) which must be filed as a first step in the proceeding.

Question 3

To what extent may a plaintiff in his Statement of Claim which is served subsequently to his Writ of Summons, alter, modify or extend any claim made by him in the endorsement of the Writ without actually amending such endorsement?

Question 4

Sheila Goodridge of 16 Apple Blossom Avenue, Poinsettia Park, consulted you and gave the following statement -

" I am 37 years old and I am married and have three children. I am a freelance journalist but I also do a regular feature for the Daily Scoop Newspaper Ltd. My average weekly earning from my freelance work is \$3,500 and I earn an additional \$1,500 weekly from my feature with the Daily Scoop Newspaper Ltd.

I do most of my work at home but once a week in order to confer with my editor, I attend at the head office of Daily Scoop Newspaper Ltd. which is situated at 65 Kingsley Street, Poinsettia Park.

On May 4, 1992, I was proceeding along Kingsley Street to the office of my editor. I observed a large truck, owned by Delivery Services Ltd. of 50 Tenn Place, Green Island. This truck was parked alongside the head office of Daily Scoop Newspaper Ltd. It was delivering newsprints which were in large rolls, each about five feet in diameter.

These rolls were being lifted from the truck by means of a sling from a hoist protruding several feet over the street from the sixth floor of the Daily Scoop Newspaper Ltd. building.

On reaching abreast of the truck, I was walking along the pavement in order to enter the office of Daily Scoop Newspaper Ltd. when I heard a cracking sound. I looked up and I saw the

sling tearing apart. I tried to move away quickly but I stumbled forward. Just then a roll of newsprint came crashing down on me dislocating my right shoulder and ripping my dress which I had bought two days earlier for \$1,000.

I was taken to the Friendly Memorial Hospital where I was admitted and remained a patient for two weeks. My right shoulder was in a cast for a further six weeks during which time I employed a part-time secretary to do my typing. I paid her \$1,200 per week. I incurred medical expenses of \$6,500.

I earned no money for the period of two weeks when I was hospitalised.

I now wish to institute legal proceedings against Delivery Services Ltd. to recover damages for my injury and loss."

Draft an appropriate Statement of Claim to be filed on behalf of Sheila Goodridge.

Question 5

- (a) What do you understand by "Tender" as a defence?

- (b) What are the main differences in making and considering an application to strike out a Statement of Claim on the ground that it discloses no reasonable cause of action and one to

strike out a Statement of Claim on the ground that it is an abuse of the process of the court?

PART B

QUESTION 6

Miss Ulika Princess and Mr. Pennie Pincher were each 18 years old when they got married on January 1, 1967, in the Office of the Registrar of Marriage. Ulika then a trainee dressmaker, lived and worked with her Aunt Agatha. Pennie had spent a year at a roadside garage but was making no headway as a mechanic. As Ulika was pregnant, Aunt Agatha offered them a room in her house in which to live. And so they did. Pennie borrowed \$50 from Aunt Agatha and set up as a snow cone-cum-peanut vendor. Aunt Agatha continued to provide food for both Ulika and Pennie and each night she would take from Pennie any excess he had over \$50 and this she would lodge in an account in Workers' Bank in the joint names of Pennie and Ulika.

Mrs. Pincher gave birth to twin sons, Uno and Duo, on August 31, 1967, whereupon Aunt Agatha made two other rooms in the house available to the Pinchers. They paid no rent and Aunt Agatha continued to provide meals for the entire household. Mr. Pincher was an extremely hard worker and his delight was to hand over more and more profit to Aunt Agatha in the evenings. This arrangement

continued for four years.

One evening Aunt Agatha called Mr. and Mrs. Pincher together and with great pride, advised them that the savings account just passed the \$50,000 mark. Aunt Agatha said she was selling her house in Mountain Park and although it was worth much more she would sell it to them for \$40,000. Mr. and Mrs. Pincher accepted the offer with gratitude. Carefree & Co., Attorneys-at-Law, were instructed to transfer the property and upon enquiry from Mr. Pincher into whose name the title should be transferred, he said his wife had no head for business so the title should be in his name alone. This was done, and the tenants were instructed to pay rent to Mr. Pincher. He placed these rents in a separate account in his own name.

Aunt Agatha continued to care for Mr. Pincher and his family. Mrs. Pincher, now a full-fledged dressmaker, used what money she earned to purchase clothing for herself, her husband and children. Mr. Pincher and Aunt Agatha were on extremely good terms and on Mr. Pincher's birthday, Aunt Agatha gave him the bank book with the joint account saying he had proved himself to be a man, so now he could be responsible for handling his own bank book.

Mr. Pincher was still going about his trade on an old motor-cycle. His wife suggested to him that he should either purchase a new motor-cycle or buy a van. This led to the first disagreement between the couple. Where did Ulika expect him to get money from to buy a new motor-cycle or buy a van? Did she not know that those things cost money? Look how hard he had to work and she wanted him

to squander his money. No, he would do no such thing. The next day Mr. Pincher went to the bank and drew out the entire balance from the joint account and placed it in his sole name. Of this he said nothing to his wife.

Aunt Agatha died leaving her entire estate to the two sons of Mr. and Mrs. Pincher with Mr. Pincher as sole executor and trustee. Mrs. Pincher suggested to her husband that since they had been married for twelve years and he was no longer a boy, he should stop riding around to schools and should open up some kind of business. She made it clear that she was not at all happy with the way he carried himself and since he could do better, this was the time to start. Mr. Pincher was so furious at his wife's strictures that he slapped her several times and punched her all over her body so that she fell to the floor. He said he had no intention of wasting any of his money and if she stayed in his house and provoked him, something really serious would happen to her. She was a good dressmaker, he said, so she should go about her business and make life for herself and leave him and his children alone. Mrs. Pincher left the house on January 1, 1989, and attended Dr. Dogood who found that she had suffered a broken nose, contusion over both eyes and bruised ribs on the right side.

Mrs. Pincher next went to the bank to check on the accounts only to find that she had nothing. She has attended on you.

Draft the appropriate affidavit to ground an application to determine her property rights.

QUESTION 7

Based on the facts in Question 6, draft a Petition for dissolution of her marriage.

QUESTION 8

Miss Tantal Packing had an unusual childhood. Her father Rover Packing, joined the rebel forces fighting for independence in Ruritania and was posted as missing in action. Her mother, Gaye and sister, Grit, perished in a fire which destroyed their home. Tantal, aged 6, was truly an orphan. Her adoptive parents were the wealthy Mr. and Mrs. Proudlee who showed her every kindness and exposed her to a life of luxury and gracious living. At 16 years of age, Tantal had travelled twice around the world, was an accomplished model, spoke French and German fluently; was proficient at the piano and the guitar and was junior tennis champion for her country Claydom.

Tantal did not have a single friend - male or female. She had been seen by the leading psychologists and psychiatrists in the country but nothing that they prescribed seemed to work. Mr. and Mrs. Proudlee were anxious, frustrated parents, unable to understand how a beautiful talented young teenager could survive without the friendship of her peers.

On her 17th birthday, Tantal announced that she was going to marry her tennis coach, Mr. Hardie Knutt. Mr and Mrs. Prouldee

protested. They challenged Mr. Knutt with the accusation that he had from his position as coach unduly influenced Tantal and threatened to have him dismissed from the Club and to object to his finding suitable employment anywhere in the country. Tantal encouraged Hardie to defy her parents and in the face of the joint intransigence, Mr. and Mrs. Proudlee sanctioned the marriage which took place on June 1, 1984.

Ten minutes after the couple entered the bridal suite of the same hotel the fire alarm blared throughout the hotel. A voice, as if from nowhere, boomed: "Fire on the 25th floor. Evacuate at once." Tantal fled the room in her wedding dress and ringing in her ears were the screams of her mother and sister on that fateful night so many years earlier. She tore off her wedding dress, jumped into a taxi and returned to her home. Her husband arrived shortly after and endeavoured to comfort her. She rejected his attentions and told him then and there that her destiny was to be alone and he should leave her.

Tantal would see no one except her parents for a whole month. Then as if nothing had happened she returned to her modelling activities, played tennis daily and returned home at nights. She had adamantly refused to speak to Mr. Knutt about their marriage or even to permit him to visit her home. In the view of Mr. and Mrs. Proudlee, Tantal has totally blocked out of her mind everything to do with June 1, 1984.

Mr. Knutt has consulted you concerning his marital status as it is his desire to re-marry if that were permissible. If you

advise proceedings, draft the appropriate pleadings to commence those proceedings.
