

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1994

CIVIL PROCEDURE AND PRACTICE I
(Wednesday, August 10, 1994)

Instructions to Students

- (a) Time 3 1/2 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 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART AQUESTION 1

Joe was employed to the A & B Company Limited as a machinist. By virtue of the Safety Regulations made under the Factories Act, the machine that Joe operates must have a metal guard placed around it to render it safe for the workers.

On March 10, 1988, while Joe was operating the machine in the course of his employment, the metal guard flew off and Joe's right arm was severely injured by the blades of the machine. The arm had to be amputated.

In 1991, John Snook, Joe's attorney-at-law, entered into negotiation with the representatives of A & B Company Limited in an effort to obtain compensation for Joe's injury. Negotiations continued until 1992 when it became clear that an amicable settlement would not be reached.

On January 30, 1993, John Snook filed a writ of summons against A & B Company Limited claiming damages for negligence and/or breach of statutory duty under the Factories Act arising from the injury to Joe.

The writ of summons was not served as it was mislaid among documents which were on another file in Mr. Snook's office.

Despite several searches, the writ of summons was not found until March 30, 1994. Immediately Mr. Snook applied to the court for a renewal or extension of the writ.

The order for the renewal or extension of the writ of summons was granted on April 10, 1994.

The renewed writ of summons was duly served on A & B Company Limited who instructed you to apply to the court to set aside the order granting the renewal of the writ and also the service.

Prepare, citing relevant authorities, a written account of the submission that you would make to the court on behalf of A & B Company Limited.

QUESTION 2

Mr. John Frivolity is an actor and playwright residing at Pelican Way in Kemshot. He manages Kemshot Dramatic Company Limited which performs many of his plays.

On Monday, January 10, 1994, Mr. Frivolity entered into a contract with Central Amusement Authority, which is located at 50 Plymouth Street in Kemshot and owns and operates Southern Dramatic Theatre.

The contract was in writing and by its terms the Kemshot Dramatic Company Limited, on paying a fee of \$5,000 per evening, would have the use of the building and premises of Southern Dramatic Theatre between the hours of 8.00 p.m. and 11.00 p.m. each day from Monday, January 17, 1994, through to Saturday, January 22, 1994, for the purpose of presenting a series of dramatic performances to which the public would be invited.

On the same date of the contract, Mr. Frivolity paid to Central Amusement Authority the amount of \$30,000 to cover the cost of the use of the theatre for the period stated in the contract.

On Monday, January 17, 1994, to Wednesday, January 19, 1993, the performances of the Kemshot Dramatic Company Limited took place in the theatre as scheduled. These performances were appreciated by the audience and financially were successful. Mr. Frivolity and the Kemshot Dramatic Company Limited realised a net profit of \$70,000 for each of those three evenings.

On the evening of Thursday, January 20, 1994, Mr. Frivolity and the other members of the Kemshot Dramatic Company Limited arrived at the Southern Dramatic Theatre for that evening's presentation. They found that the gates and doors of the premises were all locked and that they and their patrons were barred from entering the premises.

A representative of Central Amusement Authority handed to Mr. Frivolity a letter which informed him that the premises of the Southern Dramatic Theatre would no longer be available to him or the Kemshot Dramatic Company Limited.

Mr. Frivolity was forced to cancel the performances that were scheduled for that Thursday evening as well as those for the following Friday and Saturday.

The projected loss of profit arising from the cancellation of the performances is as following -

- | | | |
|-------|---|----------|
| (i) | For the evening of Thursday, January 20, 1994 | \$70,000 |
| (ii) | For the evening of Friday, January 21, 1994 | \$80,000 |
| (iii) | For the evening of Saturday, January 22, 1994 | \$80,000 |

Mr. Frivolity has instructed you to institute civil proceedings against Central Amusement Authority on his behalf.

Draft an appropriate Statement of Claim to be filed on behalf of your client.

QUESTION 3

A is a factory worker employed at D's factory. On June 10, 1987, A was severely injured in the course of his employment when B, a fellow worker, negligently caused sulphuric acid to spill on him.

On May 5, 1992, A filed a writ of summons claiming damages against D as a result of the incident. A's writ of summons was endorsed as follows -

"The Plaintiff claims against the Defendant to recover - general damages; \$5000 special damages and costs."

On the same day that it was issued the writ of summons was served on D who entered an unconditional appearance/acknowledged service and gave notice of intention to defend.

A then filed, and within the time limited to do so by the Rules of the Supreme/High Court, served on D a Statement of Claim which contained the following paragraph -

"The Plaintiff claims against the Defendant to recover damages for negligence for that on the 10th day of June, 1987, B whilst acting in the course of his employment as a servant or agent of D, negligently caused or allowed sulphuric acid to be spilt on the Plaintiff causing him to suffer severe burns to his face, chest, neck and portion of his back."

Particulars of injuries were also given.

D applied to the court to have the abovementioned paragraph of the Statement of Claim struck out on the ground that it is introducing a new cause of action not mentioned in the writ of summons.

A has instructed you to oppose D's application.

Prepare a written account of the submission that you would make to the court on A's behalf.

QUESTION 4

The Statement of Claim set out below was served on you as the attorney-at-law on the records for the defendant from whom you collected the following statement -

"My name is Romano Valesquez and I reside at 45 Woodpecker Drive in Skyland.

I am a landscape artist who specializes in oil painting. I own and operate Valesquez Gallery which is really a sales outlet for my paintings.

On March 25, 1993, Pablo Paraiso visited my gallery. He was delighted with my work and displayed keen interest in two of my paintings, namely -

"Monkey Mountain" which bore a selling price of \$30,000; and "Marvellous Sunset" which bore a selling price of \$50,000.

I agreed to sell and Mr. Paraiso agreed to buy the painting "Monkey Mountain" for \$30,000. He paid me this sum of money and I gave him the painting and a receipt which bore No. 411.

I did not agree to sell him the painting "Marvellous Sunset". He liked this latter painting but said that he could not afford one so expensive.

Romano Valesquez"

Draft an appropriate Defence based on your instructions.

STATEMENT OF CLAIM

(Insert usual Heading)

BETWEEN	PABLO PARAISO	PLAINTIFF
AND	ROMANO VALESQUEZ (Trading as Valesquez Gallery)	DEFENDANT

1. The Plaintiff is and was at all material times a dealer in oil paintings and resides at 40 Fame Road in Townsville.
2. The Defendant is and was at all material times a landscape artist specializing in oil painting, and the owner and operator of Valesquez Gallery.
3. By an oral agreement made between the Plaintiff and the Defendant on the 10th day of March, 1993, the Plaintiff agreed to buy and the Defendant to sell an oil painting painted by him and known as "Marvellous Sunset" for the price of \$30,000.
4. On the said date of the agreement the Plaintiff in pursuance thereof paid to the Defendant the sum of \$30,000.
5. In breach of the said agreement the Defendant has refused and continues to refuse to deliver the said painting to the Plaintiff in spite of repeated oral and written requests made by the Plaintiff to the Defendant to do so.

AND THE PLAINTIFF CLAIMS

1. Specific performance of the said agreement.
2. Further or in the alternative damages for breach of contract.
3. Further or other relief as the Honourable Court deems just.
4. Costs.

DATED the 9th day of August, 1994

Settled.

per _____
PLAINTIFF'S ATTORNEYS-AT-LAW

FILED by Longshot & Co. of 40 Central Square, Bridge Place,
Attorneys-at-law for the Plaintiff herein.

QUESTION 5

Amos serves a writ of summons and statement of claim on Beadle who is contending that those documents do not disclose a cause of action.

(a) Advise Beadle -

- (i) regarding any remedy that is available to him and how he should proceed;
- (ii) what he must establish in order to succeed.

- (b) In what respect would your answer be different if Beadle was contending that Amos' claim was scandalous, frivolous or vexatious and was an abuse of the process of the court?
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PART B

FACTS RELATING TO QUESTIONS 6, 7 AND 8

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 April 1, 1989, the first 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 conditions that were not sterile. 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 April 1, 1993, Mrs. Demeritus' sister died in the neighbouring Island of Ruritania. Notwithstanding her 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 scantily 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 she returned home in April 1993, 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.
