

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1995

CIVIL PROCEDURE AND PRACTICE I

Wednesday, August 9, 1995

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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

P A R T AQUESTION 1

Mr. Mark Farr of 25 Sunrise Strip, Stony Place, is a dealer in antique furniture. His store is located at 50 Mark Way, Stony Place.

Miss Joy Fastidious is an actress and a lover of antique furniture. She lives at 40 Glendon Greens, Stony Place.

On Monday, May 29, 1995, Miss Fastidious visited Mr. Farr's antique furniture store and immediately fell in love with various pieces of furniture which were on display. On that same Monday, Miss Fastidious and Mr. Farr entered into an oral agreement whereby Mr. Farr for the sale price of \$35,000 agreed to sell and deliver at the home of Miss Fastidious by Wednesday, May 31, 1995, a particular antique mahogany bed which she identified to him.

Miss Fastidious paid the \$35,000 on the said date of the agreement, but Mr. Farr has failed to deliver the bed up to the present time.

Despite several requests made by Miss Fastidious she is unable to get the bed or a refund of her money.

Miss Fastidious has instructed you to file proceedings on her behalf asking for specific performance of the agreement or alternatively damages for breach of contract against Mr. Farr.

Draft an appropriate Statement of Claim to be filed and served on behalf of Miss Fastidious.

QUESTION 2

The Statement of Claim set out below was delivered to you as the attorney-at-law on the record for the defendant whose instructions to you are as follows -

"I am a civil engineer and I own and operate George's Construction Company Limited situated at 50 Penn Street, Padmore. I know Mr. Stalone McKenzie the plaintiff. He is a hardware merchant. His store is at 150 Torrid Street, Padmore.

I ordered and obtained from Mr. McKenzie the kitchen sinks and bath tubs in question. The total purchase price for those articles was \$130,000.

My contention is that this suit should not have been brought against me as on April 12, 1995, I took the sum of \$130,000 to Mr. McKenzie at his hardware store and handed the money to him but Mr. McKenzie was in an angry mood. He was in a dispute with one of his employees. He refused to accept the money saying that he was in no mood to deal with any customer.

I am surprised that this action is brought against me and I wish to defend it.

Signed: George Finger"

Draft an appropriate Defence based on your instructions.

STATEMENT OF CLAIM

(Insert usual heading)

BETWEEN	STALONE MCKENZIE	PLAINTIFF
A N D	GEORGE FINGER	DEFENDANT

1. The Plaintiff is and was at all material times a hardware merchant operating his hardware store at 150 Torrid Street, Padmore.
2. The Defendant is and was at all material times a civil engineer and the owner and operator of George's Construction Company Limited situated at 50 Penn Street, Padmore.
3. On Monday, March 6, 1995, in pursuance of an oral agreement made between the Plaintiff and the Defendant whereby the Plaintiff agreed to supply and the Defendant agreed to accept delivery and to pay the purchase price, the Plaintiff delivered to the Defendant goods valued at \$130,000, particulars of which are given hereunder -

Particulars of Goods

(i) 10 Kitchen sinks at \$6,000 each	\$ 60,000
(ii) 5 Enamel bath tubs at \$14,000 each	<u>\$ 70,000</u>
	TOTAL: \$130,000

4. In breach of the said oral agreement, the Defendant has failed/refused to pay the purchase price of the said goods - to wit \$130,000.

AND THE PLAINTIFF CLAIMS -

- (i) \$130,000
- (ii) Interest on the said sum at such rate and for such time as the Honourable Court deems just.
- (iii) Costs
- (iv) Such further or other relief as the Honourable Court deems just.

Dated the 10th day of July, 1995.

Settled:

P. Tall

Attorney-at-law for Plaintiff

Filed by Tall, Long & Lean of 65 North Parade, George Town attorneys-at-law for the Plaintiff, whose address for service is that of his said attorneys-at-law.

QUESTION 3

By a written contract made between Mr. Artful Dodger and Mr. Richard Bumble, Mr. Dodger, a building contractor of Riverside, Greenvale, agreed to construct for Mr. Bumble ten one-bedroom flats which were to be built according to certain stated plans and specifications. Mr. Bumble who is an artist of Green Acres, White City, agreed in return to pay Mr. Dodger on completion of the flats the sum of \$15,000,000.

The ten flats have been completed but Mr. Bumble has refused to pay the \$15,000,000 or any part of it as he is contending that the plaintiff is in breach of the agreement.

As a consequence, Mr. Dodger has issued a writ of summons, (CL. 1995/D601) Artful Dodger v. Richard Bumble, in which the plaintiff claims to recover from the defendant the sum of \$15,000,000 as the amount of money owing to him by virtue of the agreement and costs.

This writ of summons was served personally on the defendant who did not enter an appearance (acknowledge service) in the time limited to do so, and on July 24, 1995, the plaintiff obtained judgment in default of appearance (default of acknowledgment of service) against the defendant for the sum of \$15,000,000 and costs to be agreed or taxed.

It is now August 8, 1995, and the defendant consults you for legal advice and instructs you to take the necessary steps to "re-open" the case as he is contending that the flats in question were not constructed in accordance with the agreed plans and specifications. In particular, in breach of the agreement, the plaintiff had used metal louvre windows instead of wooden louvre windows and for the floor, terrazzo tiles instead of ceramic tiles.

The defendant further instructs you that he wishes to defend the action as he is of the view that the \$15,000,000 that the plaintiff claimed would not be due and owing until the defects mentioned were corrected.

Draft the necessary documents to put into effect any application that you would make to the judge/master in chambers on behalf of the defendant.

QUESTION 4

The Statement of Claim shown below was served on the defendant who is your client.

- (a) Outline the procedural steps which may be taken by you in respect of the Statement of Claim.
- (b) Select one of those procedural steps and draft the necessary document(s) to pursue the step selected.

STATEMENT OF CLAIM

(Insert usual heading)

BETWEEN
A N D

BASIL CARRINGTON
FELIX OSMOND

PLAINTIFF
DEFENDANT

1. On or about the 4th day of March whilst the Plaintiff was lawfully walking along the road the Defendant drove, managed or controlled his motor car so that the said motor car collided with the Plaintiff causing the said Plaintiff injury, loss and expense.
2. And the Plaintiff Claims -
 - (i) Damages
 - (ii) Interest at such rate and for such time as the court deems just.

(iii) Costs

(iv) Such further or other relief as may be just.

Dated the 7th day of August, 1995

Settled

Tom Senior

Plaintiff's Attorney-at-law

Filed by Sloppy Joe & Company of 12 Market Street, Fairhaven,
attorneys-at-law for and on behalf of the Plaintiff herein.

QUESTION 5

On February 20, 1989, Leroy Simpleton was riding his bicycle along Guava Ridge Road when he was injured by a motor van owned and driven by John Tavares.

In October 1993, Mr. Simpleton consulted Swift, Slow & Company, attorneys-at-law, and instructed the firm to institute legal proceedings on his behalf against Mr. Tavares.

On December 20, 1993, Messrs. Swift, Slow & Company, acting on behalf of Mr. Simpleton issued a writ of summons claiming damages in negligence for personal injuries against Mr. Tavares.

Because of an oversight no attempt was made to serve the writ on Mr. Tavares until sometime in May 1994, when the writ was sent to the process server with a request that he should effect personal service of it on Mr. Tavares.

In November 1994, the process server returned the Writ to Swift, Slow & Company with a notation that the writ was not served as the defendant could not be located at the given address and that from information received the defendant was not known in that community.

Nothing more transpired until April 30, 1995, when the plaintiff's attorneys-at-law applied to the judge/master in chambers for a renewal of the writ.

With reference to the Rules of the Supreme/High Court and case law indicate what order ought to be made on this application.

P A R T BFACTS RELATING TO QUESTIONS 6, 7 AND 8

At their graduation from university in 1990, six graduates bonded together that they would each marry in the period April 1, 1994, to July 3, 1994, and have a joint honeymoon at a hotel on July 4, 1994.

Miss Recordia, secretary of the group, wrote reminders to all members on April 1, 1994 and advised that she had made reservations for twelve at Rawsgate Hotel for July 4, 1994.

Miss June Follower who had spent two years in Law School and had been in sole practice for less than two years had had no real plans for marriage when the reminder letter arrived. Determined not to let the group down Miss Follower suggested to Deacon Gaylord who had been trying to pay some attention to her that she wished to be married on July 1, 1994 and would consider a proposal from him. The Deacon expressed his love and admiration for Miss Follower but said he was ill-prepared for such a commitment as he had no resources and his stipend from the church would be insufficient to maintain her as wife. Miss Follower showed Deacon Gaylord her bank-book and her income tax returns after only one year of practice and convinced him that she could and would take care of all financial matters.

Miss Follower volunteered to make all the wedding arrangements including honeymoon plans. The wedding ceremony was held at the Born-Again Salvation Temple on July 1, 1994. The parties agreed to remain in their respective homes until July 4, when they would fly to Rawsgate Hotel.

At the hotel the arrangements were co-ordinated by Mrs. Recordia-Anuff. The six couples were to occupy one large room for seven days. Each person was to be free to exercise his or her sexual preferences for the entire period without any regard for the marital relationship between any two persons.

When the Rules were explained Deacon Gaylord refused to participate. The other eleven were enthusiastic about the affair and kept Deacon Gaylord locked in the room from the 4th to the 6th July. The hotel management discovered that something unusual was taking place there, cancelled the reservations and ordered the group to leave.

Deacon Gaylord went directly to his home, consulted his Pastor, a marriage counsellor, and made a complaint to the Police. He has not seen his wife since he left her in the company of her friends at the Rawsgate hotel.

Deacon Gaylord wishes to re-marry and has come to you for advice. He has instructed you that he recently made enquiries from his wife's parents of her whereabouts and they chased him away complaining that he had ruined their daughter. He has, however, learnt that his wife qualified as an attorney in New York State, United States of America and is practising as an associate with a firm of attorneys. He has been unable to discover the name of the law firm or the home address of his wife.

QUESTION 6

In an opinion of not more than 300 words, advise Deacon Gaylord if there is any basis on which he can bring his marriage to an end.

QUESTION 7

If you advise legal proceedings, draft the most appropriate petition only, for presentation to the Superior Court of your country.

QUESTION 8

On your instructions personal service cannot be effected upon Mrs. Gaylord. Draft the most appropriate application with a view to effecting service upon Mrs. Gaylord.
