

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATION, 1996

CIVIL PROCEDURE AND PRACTICE 1

WEDNESDAY, AUGUST 14, 1996

Instructions to Students:

- (a) Time: 3½ 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 ^{not} necessary to transcribe the question you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED

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MONA, KINGSTON, 7. JAMAICA

PART A

QUESTION 1

On Monday, December 18, 1995, at about 7:30 a.m. Robert Forest, an accounting assistant, of 10 Suffolk Street, Pottsville was riding his bicycle in an easterly direction along Pearl Street in Pottsville.

As ^{FOREST}Frost rode along a black Ford delivery van bearing registration number TA20E approached from the opposite direction. The van was driven by Calvin George of 50 South Street, San Fernando and it is owned by Mona Lisa Company Limited which has registered office at No. 2 Industry Lane, Pottsville.

Just as the van was passing ^{FOREST}Frost, it swerved into his path and knocked him to the ground. The speed limit on Pearl Street is 30 m.p.h. but at the time of the accident the van was travelling at approximately 50 m.p.h.

As a result of the collision, ^{FOREST}Frost suffered the following injuries -

- (i) fracture of the right wrist;
- (ii) abrasions to the right side of his face;
- (iii) fracture of the right femur.

Immediately after the accident, ^{FOREST}Frost was taken to Our Lady's Hospital, where he was admitted as a patient. He spent eight weeks there. After his discharge from hospital, Frost spent a further six weeks convalescing at home.

At the time of the accident, ^{FOREST}Frost was employed to Pronto Company Limited at a weekly salary of \$1,600. He received no pay during the period of his hospitalization and convalescence.

At the time of the accident, ^{FOREST}Frost was wearing a gold watch valued at \$20,000. This watch was completely destroyed. In addition, his bicycle valued at \$10,500 was damaged beyond repairs.

^{FOREST}
Frest has instructed you to institute proceeding on his behalf, against Mona Lisa Company Limited and Calvin George to recover damages arising from the accident.

Draft an appropriate Statement of Claim to be filed on behalf of ^{FOREST} Robert Frest.

QUESTION 2

Mrs. Marguerita Felicita is the proprietress of Simply Beautiful Ltd., a company that manufactures and sells fashionable ladies' wear.

Miss Elizabeth Fastidious is the proprietress of a boutique which sells ladies' wear. She is a long-standing customer of Mrs. Felicita and she obtained on credit, lady's wear to the value of \$250,000.

Miss Fastidious kept these ladies' wear for 4 weeks and then took them back to Mrs. Felicita, informing her that she was returning them as she had discovered that the styles of the garments were no longer current in the world of fashion.

An impasse developed between the two ladies. Mrs. Felicita refused to take back the garments and Miss Fastidious refused to pay for them.

Mrs. Felicita, through her attorneys-at-law, Swift, Sure and Company, issued against Miss Fastidious a specially endorsed Writ of Summons, claiming to recover the sum of \$250,000 for goods sold and delivered and costs \$25,000.

The Writ of Summons was served personally on Miss Fastidious who entered an appearance/acknowledged service.

Swift, Sure and Company then made an application to the court for summary judgment to be entered on behalf of Mrs. Felicita.

Miss Fastidious now instructs you to oppose that application on her behalf.

Write a summary of the address which you would make to the Judge/Master-in-chambers on your client's behalf.

QUESTION 3

Describe the procedure by means of which a party applies to strike out his opponent's pleading on the ground that such pleading discloses no cause of action or defence and state the principles by which the Judge/Master is guided in arriving at a decision whether or not to grant such an application.

QUESTION 4

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

"I am a salesman residing at 69 Morning Path, Derry. Mr. Hoshi Wong and I agreed orally that he would sell to me and I would buy a "used 1992 model blue Toyota Camry motor car" for \$350,000.

On June 10, 1996, I accepted delivery of the motor car and on that same date I paid to Mr. Wong \$350,000 by a cheque drawn in his favour on my account at the Liguanea Branch of the Bank of Nova; and I have the receipt which Mr. Wong gave me for that amount.

I do not owe Mr. Wong any money. The agreed purchase price of the motor car was \$350,000 and not \$500,000 as Mr. Wong has now stated.

I am desirous of defending the action brought against me.

Signed

Hans Christino"

Draft an appropriate Defence based on your instructions.

STATEMENT OF CLAIM

(Insert usual heading)

BETWEEN	HOSHI WONG	PLAINTIFF
AND	HANS CHRISTINO	DEFENDANT

1. The plaintiff was at all material times a used car dealer operating his business at 60 Montgomery Place, Kensington.

2. The Defendant is a salesman residing at 69 Morning Path, Islington.
3. By an oral agreement made on the 1st. day of June, 1996 at the Plaintiff's business premises 60 Montgomery Place, Kensington, between the plaintiff and the Defendant, the Plaintiff agreed to sell and deliver to the Defendant who agreed to buy a used 1992 model blue Toyota Camry motor car for the price of \$500,000.
4. On the 10th day of June, 1996 in pursuance of the aforesaid agreement , the Plaintiff duly delivered to the Defendant who accepted delivery of the said blue 1992 Model Toyota motor car at the Plaintiff's business premises at 60 Montgomery Street, Kensington.
5. On that said day of June, 1996 the Defendant paid to the Plaintiff \$350,000 as part payment on account of the agreed purchase price of the said Toyota Camry motor car.
6. The Defendant has failed/refused to pay the balance of the agreed purchase price of the said motor car, namely \$150,000, which said sum is due and owing by the Defendant to the Plaintiff.

AND THE PLAINTIFF CLAIMS -

- (I) The sum of \$150,000;
- (ii) Costs;
- (iii) Interest on the said sum at such rate and for such time as the Honourable Court deems just.

Dated the 6th day of August, 1996.

Settled:

H. Hop
for Hop, Skip, Jump & Company
Plaintiff's Attorney-at-law

Filed by Hop, Skip and Jump Company of 30 Queen Street, Baywater
Attorney-at-law for and behalf of the plaintiff herein.

QUESTION 5

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 indorsement of the Writ of Summons without actually amending such indorsement.

PART B**FACTS RELATING TO QUESTIONS 6, 7 AND 8**

On June 1, 1994, Leaveme Alone, a registered medical practitioner met and married Hugh Fallous, an engineer. It was a quiet morning wedding held on the grounds of a prestigious hotel in the city. They went off on a short honeymoon. On that occasion, Hugh was engaged in taking a snapshot of his new wife. He was insistent that she should make herself smaller so she could fit in the view-finder of the camera and was most irate that it would not happen. He lambasted her for her size. She was deeply hurt and thought him most insensitive and impolite.

After the honeymoon, the couple returned to the city where each practised their profession. Hugh often took to attending at his wife's surgery, standing in the waiting room and berating his wife in the most insulting terms. He accused her of having men and being fat and being a poor lover. This kind of conduct continued for about three months. She began having headaches, became depressed, lost her appetite and of course her patients. A doctor recommended her going away for a bit. She did so but on her return to practise, her husband's atrocious conduct began all over again. She again became ill and left him in April 1995. She now consults you as she has become quite disenchanted with the marriage.

QUESTION 6

Write an opinion as to what action she can take.

QUESTIONS 7

Draft the appropriate application.

QUESTION 8

Draft the proposed petition.
