

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1997

CIVIL PROCEDURE AND PRACTICE I

Wednesday, August 13, 1997

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 not necessary to transcribe the question you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED

PART A**QUESTION 1**

(a) On July 10, 1997, Tara, the owner of premises tenanted by Poorman comes to your chambers and informs you that Poorman is in arrears of rent in the sum of \$240,000. She also tells you that she is in urgent need of money and would like to recover the unpaid rent as quickly as possible.

Describe the procedural steps which you should take to recover the unpaid rent in the shortest possible time describing the contents of each of the relevant documents used and stating the anticipated outcome of such steps.

(b) What difference would it make to the steps taken at (a) above if Poorman were to contend that he expended \$260,000 to effect repairs to the premises and that under the lease repairs were the responsibility of Tara?

It is to be assumed, where relevant that Poorman has entered an appearance/given notice of intention to defend.

QUESTION 2

Cleon Broadway is a hardware merchant residing at 65 Cleveland Road, Mount James, where he also operates his hardware store on the ground floor of the building.

Mr. James Baloney is an architect and building contractor residing at Bayside, Mount James

On Monday, March 3, 1997, Baloney went to Broadway's store at 65 Cleveland Road. There Baloney and Broadway entered into an oral agreement.

By the terms of that agreement, Broadway agreed to supply and deliver to Baloney the goods listed hereunder and in return Baloney agreed to accept the goods and to pay the purchase price on delivery of the said goods.

- | | | | | | |
|------|-----------------------|---------------|---------------|-----------|-----------|
| (i) | 15 enamel bath tubs @ | \$20,000 each | - | \$300,000 | |
| (ii) | 10 kitchen sink | @ | \$10,000 each | - | \$100,000 |

On Monday March 10, 1997, Mr. Broadway duly supplied the goods in accordance with the agreement, but Baloney has not paid for them despite repeated demands for such payment.

Broadway has instructed you to institute civil proceedings on his behalf against Baloney to recover payment for the goods.

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

QUESTION 3

By a written contract made between Thomas Copperfield and Fernandez Bumble, Copperfield a civil engineer of Warmington, Springvale agreed to construct for Bumble ten one-bedroom flats which were to be built according to certain stated plans and specifications. Bumble who is an artist of Red Ground, White City, agreed in return to pay Copperfield on completion of the flats the sum of \$20 million dollars.

The ten flats have been completed but Bumble has refused to pay the \$20 million or any part of it as he is contending that Copperfield is in breach of the agreement.

Consequently, Copperfield has issued a Writ of Summons (CL. 1997/C502 Thomas Copperfield v. Fernandez Bumble) in which the plaintiff claims to recover from the defendant the sum of \$20 million as money owing to him by virtue of a contractual 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, 1997, the defendant obtained judgment in default of appearance (default of acknowledgment of service) against the defendant for the sum of \$20 million dollars and costs to be agreed or taxed.

It is now August 5, 1997 and the defendant instructs you to take the necessary steps to "reopen" 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 \$20 million that the plaintiff is claiming would not be due and owing until the defects mentioned are corrected.

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

QUESTION 4

As the attorney-at-Law for Lanie Brooks, on April 1, 1997 you caused a Writ of Summons No. C.L. 1997/B1330 to be issued against Phillip Cross, claiming damages for personal injuries arising from an accident which occurred on December 31, 1996.

On April 2, 1997, George Tull, your process server, attempted to effect personal service of the Writ of Summons on Phillip Cross at his apartment which is situated at No. 2 Nonsuch Road, Ebenezer Park. Tull arrived at Cross' apartment at approximately 1:30 p.m. but he was informed by the occupants who claimed to be the new tenants, that Phillip Cross no longer lived there.

On April 4, 1997, Tull returned to Cross' apartment and enquired of several neighbours as to the whereabouts of Phillip Cross but Tull was unable to get any useful information so he returned the Writ of Summons to you, unserved. He also communicated to you, the reasons for the non-service.

- (i) Outline the procedural steps which may be taken in order to effect service of the Writ of Summons by an alternative means, stating briefly the likelihood of your application succeeding.

- (iii) Draft the document (s) to be used in support of the steps to be taken in (i) above.

QUESTION 5

The Statement of Claim shown below was served on you as the attorney-at-law for the defendant.

- (i) Briefly outline the procedural steps that may be taken by you in respect of the Statement of Claim.

- (ii) Select one of the procedural steps that you have mentioned and draft the necessary document (s) to pursue that step.

STATEMENT OF CLAIM

(Insert usual heading)

BETWEEN	JEREMIAH CASTRO	PLAINTIFF
AND	TOM MOORE	DEFENDANT

- (1) The Plaintiff is and was at all material times a mason residing at 5 Tulip Lane in James Town.
- (2) The Defendant is and was at all material times the owner and driver of a blue Honda motor car.
- (3) On or about the 10th day of March whilst the Plaintiff was lawfully walking along the road the defendant drove/controlled his motor car so that the said motor car collided with the Plaintiff.
- (4) As a result of the aforesaid collision, the Plaintiff suffered injury, loss and incurred expense.

5. AND THE PLAINTIFF CLAIMS

- 1. Special Damages \$25,000
- 2. General Damages
- 3. Costs

4. Interest at such rate and for such time as the honourable court deems just.
5. Such further or other relief as may be just.

DATED the 5th day of May 1997

Settled

James Seymour
Plaintiff's Attorney-at-Law

Filed by James Seymour and Company of 10 Chancery Lane, Fairview, attorneys-at-law for and behalf of the Plaintiff herein whose address for service is that of his said attorneys-at-law.

PART BFACTS RELATING TO QUESTIONS 6, 7 AND 8

Phillipa Fancie, was considered to be a crashing bore by all her acquaintances. She had no friends. Indeed, no one was quite in her class. In every conversation she haughtily declared that her house was the most fashionable in the neighbourhood, that her interior decorators were the most sophisticated in the country and reminded whoever would listen that the last time the Governor entertained royalty he borrowed china-ware and crystal from her to complete his place settings. Her husband, the Hon. Illustrio Fancie, was a senior minister in the Government.

In the general elections in 1995, the Hon Illustrio Fancie lost his parliamentary seat and his Party was not returned to office. Mrs. Fancie was devastated. What would she do with her monogrammed stationery; would she still be addressed with the courtesy title of "Lady Fancie", and what would become of her twelve year old twin daughters Mary and Martha, born on the 13th anniversary of their marriage and who had just been enrolled in the most exclusive boarding school in Atlantis? What tortured her most was the thought that she might have to return to work as a sales-clerk in a shoe store if her husband who had been a professional politician all his life did not find gainful employment to maintain their extravagant lifestyle.

Amid tears and abuse of their political opponents, Mrs. Fancie demanded of her husband what he proposed to do. He suggested that they should approach their difficulty in a practical way. Firstly, they should auction their house and its contents and move into a town house. He got no further. Mrs.

Fancie broke the champagne bottle which she was holding in her hands over his head and when he fell she stamped on him with her high-heeled shoes. She drove directly to the airport and emplaned for Atlantis where she has since been living with her mother, Mrs. Goodenough.

Mr. Fancie who suffered a depressed fracture of the skull and a chipped seventh rib was hospitalized for eight weeks and underwent two major operations. He recovered completely and is now Managing Director of the largest Insurance Company in the country with a reputed personal income of two million dollars per year.

Since April 1, 1995, the date of the assault upon Mr. Fancie, he has not communicated with his wife nor has he given her one cent for maintenance for herself or the children. Mrs. Goodenough has written to Mr. Fancie on several occasions advising him of the deterioration of his wife's health i.e. of recurrent periods of depression brought about on her by remorse for attack upon him and her desire for a reconciliation. She has also repeatedly advised him that her own resources were rapidly being depleted and that soon she would not be able to maintain his daughters at school. Each letter was returned with a complimentary slip on which was written in Mr. Fancie's handwriting.

"Keep them. I regret the day I ever met your d--- daughter."

QUESTION 6

Apply to the High/Supreme Court on behalf of Mrs. Fancie for custody of the two girls, Mary and Martha.

QUESTION 7

Apply to the same court for maintenance of Mrs. Fancie and her two daughters.

QUESTION 8

Draft a Petition on behalf of Mr. Fancie for the dissolution of his marriage.
