

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTAL EXAMINATIONS, 2000

CIVIL PROCEDURE AND PRACTICE I

(Wednesday, August 9, 2000)

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 candidate 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 territory.**
- (e) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Puny Small, the 17 year old son of one of your long-standing clients brings you several documents the material parts of which are reproduced below. He requests your assistance in determining how he should proceed. He informs you that on Sunday morning when he was washing his car, a big muscular man approached him, looked at something in his hand which appeared to be a photograph and then told him to take the documents. When he refused, the man flexed his muscles and told him that he had better take the documents if he knew what was good for him. Having taken them, he was so afraid that he brought the documents straight to you without doing anything else.

The First Document is a **Writ of Summons** headed:

IN THE HIGH COURT OF JUSTICE

BETWEEN

Big A. Bad

AND

Puny Small

The indorsement of claim states:

The plaintiff claims:

1. Damages in the sum of \$300,000 for damage to a fence owned by the plaintiff on March 22, 2000 at 36 Wilson Road, St. Augustine
2. Costs
3. Further or other relief

The Second Document is a **Statement of Claim**, the material parts of which read:

STATEMENT OF CLAIM

1. The plaintiff is and was at all material times a police superintendent who has a special interest in horticulture and resides at 22 Bully Street, Curepe.
2. The defendant is the neighbour of the plaintiff.
3. On or about March 22, 2000, the plaintiff was mowing his lawn whilst his wife was watching him from the balcony of his home, when the defendant not looking where he was going, ran into his fence and knocked it down.

AND the Plaintiff claims:

1. Damages
2. Interest
3. Costs
4. Further and other relief.

Outline the various issues that you will have to consider to effectively represent your client and the strategy that you will adopt to bring these proceedings to a speedy end.

QUESTION 2

On January 22, 2000, Mr. Bright entered into a written contract with Ekin International, which is owned and operated by Swifty Joe and Ato Run, to purchase 2,000 pairs of sneakers for a shoe store that he owned. Ekin International has its headquarters at 25 Drury Lane, London, WCI H3 United

Kingdom. The contract was made with Very Suspicious who purported to be a local agent for Ekin International. Payment was to be made in advance and the shoes were to be delivered on February 19, 2000, in time for the local Carnival celebrations.

The shoes were never delivered and Mr. Bright cannot find Very Suspicious anywhere. He instructs you to institute legal proceedings against Ekin International to recover compensation for his loss.

- (a) Outline the factors that you will have to consider before instituting such proceedings;
 - (b) Describe the procedure that you would adopt to institute and serve legal proceedings on Ekin;
 - (c) Draft the affidavit.
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QUESTION 3

On January 22, 1999, Mable begins the business of harvesting sea moss and processing and bottling it for sale. The business does very well and on August 12, 1999, she takes out a loan of \$150,000 from the partnership, Scrupless, Greedy and Vicious (the firm) to finance her expansion. The loan is secured by a mortgage bill of sale in favour of Scrupless, Greedy and Vicious on a Toyota Hilux pickup that Mable bought to transport her goods as well as a promissory note in favour of the firm for \$150,000.

In March of this year, Mable becomes very ill and is unable to conduct business as usual. Profits fall and she writes to the firm indicating that she is unable to meet her payments for the next six months and would like some consideration. In fact, Mable has already paid over \$90,000 in principal and interest on the loan. Scrupless responds by informing her that if she does not meet her payments they will *“forthwith and without further notice seize her pickup and offer it for sale”*.

On April 1, the firm through Vicious repossesses the vehicle. Prior to the seizure, Mable had had the Hilux valued at \$130,000. On April 10, the vehicle is sold for \$15,000. Mable, believing this to be the end of the matter is surprised when she receives a specially indorsed Writ of Summons claiming \$60,000 on monies due and owing on the promissory note. There is no mention of the mortgage bill of sale in favour of the bank to secure the loan, nor of the seizure and sale of the Hilux.

The firm never accounts to her for the amount of money for which they sold the Hilux, what was the sale procedure, how many offers were tendered, or what efforts they made to ensure they got a fair price for the sale. Mable speaks with Greedy who informs her that the action is a mistake which will be soon rectified so she does nothing. Yesterday, the firm through its attorneys-at-law obtained a default judgment against Mable and she comes running to you in tears.

- (a) Outline the procedure that attorneys for the firm would have had to take to secure this default judgment; and
 - (b) Describe the procedure available to you to have it set aside.
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QUESTION 4

On Monday, December 18, 1999, at about 7:30 a.m. Des John, an accounting assistant, of 10 Suffolk Street, Pottsville was riding his bicycle in an easterly direction along Pearl Street in Pottsville.

As John rode along, a black Ford delivery van bearing registration number TA20E approached from the opposite direction. The van was driven by Jane Dunn, of 50 South Street, San Fernando and it is owned by Fay Chin Company Limited which has registered office at No. 2 Industry Lane, Pottsville.

Just as the van was passing John, 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, John 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, John was taken to Olu Hospital, where he was admitted as a patient. He spent eight weeks there. After his discharge from hospital, John spent a further eight months convalescing at home.

At the time of the accident, John was employed to Pronto Computer Company Limited at a monthly salary of \$60,000. He received no pay during the period of his hospitalization and convalescence.

At the time of the accident, John was wearing a gold watch valued at \$2,000. This watch was completely destroyed. In addition, his bicycle valued at \$10,500 was damaged beyond repairs.

John has instructed you to institute proceedings on his behalf to recover damages arising from the accident.

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

QUESTION 5

Kelsey Karan is the proprietress of a chain of boutiques.

The main boutique is situated at 99 Charles Square, Kensham.

On January 8, 1997, Miss Karan ordered 1,000 dresses at the agreed price of \$580,000 from Mr. David Klein, a wholesaler, in the garment industry.

On March 3, 1998, the consignment of dresses was delivered to Miss Karan at her downtown centre and she sent a cheque payable to David Klein in the sum of \$580,000, to cover the cost of the dresses.

On the same day of their delivery, Miss Karan undertook routine quality inspection of the dresses. She discovered that in a number of cases, buttons and zippers were not securely sewed on and that the collars of some of the dresses were lopsided.

Miss Karan immediately instructed her bankers to stop payment on the cheque. She also informed David Klein by telephone of the defects that she had discovered and requested him to remedy them.

Klein maintained that the dresses were without fault and he demanded payment of \$580,000.

Klein has instructed you to commence, on his behalf, legal proceedings with a view to obtaining summary judgment against Miss Karan for \$580,000 being the agreed sale price of the dresses.

Advise on -

- (i) the procedural steps to be taken in order that the plaintiff may obtain summary judgment, summarising the contents of the necessary documents;
 - (ii) the principles which guide the Court in deciding whether or not to grant summary judgment ;
 - (iii) the order which the Court is likely to make in respect of Klein's application, giving reasons.
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PART B

Facts relating to Questions 6 & 7.

Margaret and Richard Bigshot were married on April 17, 1979. Richard and Margaret lived in a rented apartment during the first years of their marriage. Margaret stayed at home whilst Richard worked as a teacher until 1984, when he entered university to pursue a degree in architecture.

The degree spanned four years during which time Margaret took a job as a secretary in order to meet the household bills and financially support Richard through university. Her income also provided for the financial and educational needs of their two small children, Michael, born on March 2, 1982, and Robert, born on September 15, 1986.

Upon Richard's graduation in 1988 he landed a job with Plans Unlimited, a prominent architectural firm in Mobile City. Margaret left her job and stayed at home to take care of the children. Around June 1995, Richard built the couple's "dream home" in Billowing Heights and they moved in shortly thereafter.

When Richard became a partner of the firm, he spent more and more hours away from home and gradually become more and more distant in his relationship with Margaret and the children.

On May 19, 1999, while Margaret was in Richard's study she stumbled across a Valentine's Day card signed by Sandra Trueheart, with a picture enclosed of Richard and a female companion locked in an embrace. When Margaret confronted Richard with the card and the picture, he confessed that he had been having an affair with Sandra (the girl in the picture) since 1997.

Margaret immediately asked him to leave the house and Richard packed his clothes and has been living with his brother since May 19, 1999.

Margaret has come to you for advice.

QUESTION 6

Describe in detail the steps that you must take to secure a divorce for Margaret listing the documents to be used and outlining briefly the contents of those documents.

QUESTION 7

Outline the procedure that you would follow to secure for Margaret the following:

- (i) her rights to the matrimonial property;
 - (ii) maintenance for herself, Robert and Michael
 - (iii) custody of Robert and Michael.
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QUESTION 8

Tiny and Beulah Motormouth have been married for the last ten years. Since their marriage Tiny always thought that Beulah was rather too aggressive in their relationship. Tiny is the only working person in the family and bought the matrimonial home from his income. Beulah however, insisted that the property be transferred in her name as she always maintained that she would survive him and wanted to have some financial security if he predeceased her.

Beulah was in the habit of letting everyone know their personal problems even to the point of embellishing them to make Tiny look bad. However, over the last three years Beulah, who is twice Tiny's size, has grown physically abusive and when Tiny tries to stand up to her she would beat him. Tiny is ashamed to tell anyone about this but has had to seek medical attention from his doctor three times during this period.

Tiny is at his wit's end and last month threatened to leave Beulah. Beulah immediately administered the worst "licking" on Tiny that he had ever seen visited on anyone and she told him that if he left her she would fix it so that he would never be fit to be with anyone else again. Since then, Beulah has been forcing Tiny to eat her cooking as soon as he gets home every evening. This is unusual as Beulah rarely cooks. The food is extremely spicy. Tiny notices that he is losing his hair rapidly and his fingernails are not growing.

Last week Tiny told Beulah he had had enough and intends to leave her and get a divorce. Beulah then locked Tiny in the bathroom and has been doubling up on his meals. Tiny was able to escape yesterday when Beulah went visiting some neighbours and is now staying with his brother.

Tiny fears for his life and has come to you to initiate proceedings for a divorce from Beulah. However, his immediate concern is for his personal safety and wants you to seek an order from the Court to secure his protection.

Describe the procedure that you would adopt to seek an injunction against Beulah and draft the necessary affidavit in support of your application.
