

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL  
LEGAL EDUCATION CERTIFICATE  
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2001

CIVIL PROCEDURE AND PRACTICE 1

(FRIDAY, AUGUST 10, 2001)

Instructions to Students

- (a) Time: 3½ hours
- (b) Answer **THREE** questions from Part A and **TWO** from Part B.
- (c) **Answer Part A and Part B on separate answer booklets.**
- (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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## PART A

### QUESTION 1

On the afternoon of Saturday, March 31, 2001, at about 3:00 p.m. Cheerful Jonnie Thomas, who was born on January 1, 1986, went along with his sister Sally and his cousin Jackson to the Wonderland Zoo, in order to obtain material on animals for a term paper he was preparing for his Biology class.

Cheerful Jonnie says that he was running away from Sally and Jackson in a game of hide and seek when the Security Guard, Hard Knocks, who was employed by the Zoo, caught up with him, held him and wrongfully and falsely accused him of injuring one of the monkeys at the zoo with a toy gun. Cheerful Jonnie was placed in handcuffs and held by Hard Knocks and locked in an empty animal cage for about two hours.

Hard Knocks then entered the cage, forcefully pulled Cheerful Jonnie's trousers off ripping it beyond repair, removed his shirt, slapped his face a number of times and beat him about his body with his baton. Although Cheerful Jonnie was accused of injuring the monkey, the police was never called to take Cheerful Jonnie to the police station. Cheerful Jonnie was eventually allowed to leave the zoo at 6:00 p.m.

As soon as Cheerful Jonnie was released he collapsed and fell unconscious near the exit gate. He was rushed to the Pride of the Caribbean Hospital where he was hospitalized for 15 days. The doctors' report says that as a result of the beating he suffered a broken rib, which in turn punctured his lungs and that he became unconscious as a result of lack of oxygen.

You are instructed by Cheerful Jonnie's father, Melvin Thomas, who tells you that a new trousers cost \$7,500. A gold chain was broken and had to be repaired at a cost of \$10,000.

Melvin Thomas tells you that the injuries to Cheerful Jonnie's ribcage and lungs will take about 18 months to heal. The medical report states that Cheerful Jonnie is to be seen by the physician every fortnight for a total of thirty six sessions at a cost of \$10,000 per session. The hospital and other medical bills amount to \$55,500.

Wonderland Zoo Limited, the operator of the zoo, is a registered company limited by shares, with their registered office at 10 Hope Gardens Boulevard.

You are instructed by Melvin Thomas to pursue an action in the Supreme/High Court against Wonderland Zoo Limited and Hard Knocks on Cheerful Jonnie's behalf for compensation.

Draft the Statement of Claim to be filed on behalf of Cheerful Jonnie.

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## QUESTION 2

Based on the facts in Question 1, you have now discovered that Hard Knocks has left the jurisdiction and is now living in Australia.

- (a) Explain the principles upon which the court may grant leave to issue and serve proceedings outside the jurisdiction; and
- (b) Discuss whether it appears that leave will be given in this case.

**QUESTION 3**

Pat Malone, the coach of Bere Technical School, decided to celebrate the team's victory in the All Island Table Tennis Tournament by hosting a barbeque at the school.

Moses Abel is the sole proprietor of Brunch Caterers and agreed in writing to supply most of the items for the barbeque to Pat Malone.

Moses Abel ordered the chickens from Less Chicken Suppliers Ltd., informing them of the contract he had with Pat Malone. Less Chicken Suppliers Ltd. agreed they could store the chickens for him until delivery.

Due to a power outage which occurred the night before the chickens were due for delivery, the chickens had already begun to rot by the time that Less Chicken Suppliers Ltd. delivered them the next day. The barbeque had to be cancelled.

Pat Malone has served a writ on Moses Abel who seeks your advice.

Outline the procedural steps you will take on his behalf describing the contents of the document(s) which you will need to prepare.

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**QUESTION 4**

You are instructed by Flexease Limited, a company that supplies underground cables.

They tell you that on April 1<sup>st</sup>, 1994, they supplied cables to two television cable providers, Dan Hird and Larry Bragwell, who are sole proprietors, at their request. They say that despite repeated requests for payment of the sums of \$250,000 each, they have not been paid.

On April 12, 2000, the Company Secretary, an attorney-at-law, issued two writs against Hird and Bragwell. The Company Secretary resigned in December 2000.

On April 17, 2001 the writs were discovered in a file at the company and were sent to the process server for service upon both defendants.

The process server personally served Hird on April 17, 2001.

Hird has applied to the judge to set aside the service of the writ on the ground that it was served after the expiration of 12 months from the date of its issue.

- (a) Flexease has instructed you to oppose Hird's application and to apply to the judge for renewal of the writ at the hearing.

Advise them as to the likely outcome of the application.

- (b) Bragwell who was never served, heard from Hird that a similar writ was issued against him and entered an unconditional appearance/acknowledgment of service to it on May 1, 2001.

Advise Flexease who are concerned that Bragwell will also make an application to set aside service of the writ.

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**QUESTION 5**

You are instructed by Tigicell Limited, whose previous attorney-at-law has migrated.

The Managing Director, Mandy Masters, tells you that Tigicell Limited has issued proceedings in the High/Supreme Court against John Jones, claiming \$350,000 the price of cellular telephones sold to him one year ago.

Jones has delivered a defence claiming the phones were of poor quality. Mandy Masters says that it was only when the company received the defence that they first heard of Jones' complaint and she believes the defence is a sham.

The previous attorney-at-law had filed a summons for summary judgment.

Mandy Masters had also sworn and filed an affidavit on behalf of the company in support of the summary, in which she states that Jones did not telephone at any time complaining about the cellular telephones or asking for her to take them back and that Jones in fact ordered a further consignment of the cellular telephone six months later. However, the company refused to deliver because the first invoice was outstanding. She exhibited a copy of the later order from Jones which is in writing.

Jones had also filed an affidavit, showing cause which states in paragraph 3 that he found the cellular telephones to be faulty when they were unpacked, and that he complained to Mandy Masters on the telephone on the same day. In paragraph 4 he says that Mandy Masters refused to take the cellular telephones back, and in paragraph 5 that the cellular telephones could not be sold, and he disposed of them at a dump.

You are instructed to appear at the hearing of the summons for summary judgment. Prepare a brief submission for the hearing on behalf of Tigicell Limited.

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## PART B

### THE FOLLOWING FACTS ARE RELEVANT TO QUESTIONS 6 AND 7.

Mr. Hive Positov, Professor of Anatomy at World-Alive University, was a guest of Mrs. Extra Dollar for Carnival 1999. His life-time hobby was dress-designing. He expressed horror at the lack of imagination in the costume of Miss Nunmore Sweet (the 18 year old daughter of his hostess) whose costume was intended to depict her as the celestial nymph "Women Rule".

Mrs. Dollar enthusiastically accepted the recommendations of the Professor for re-design as he easily convinced her that his creation would have the prize of the Emerald Necklace. To enhance the consciousness of Miss Sweet, the Professor said he would prescribe a secret drug which could not be detected by the Carnival administrators. Mrs. Extra Dollar who had had two unsuccessful marriages, gave her consent that if it worked for Miss Sweet, the Professor would administer it to her afterwards. He so promised.

Miss Sweet, who wished to be an actress, complimented him for the brilliance of his costume design and when he suggested that she needed a few injections to aid her relaxation and to enhance her confidence she had no reason to object. Within days Miss Sweet's personality changed from that of a compliant, organized individual, into that of a defiant, abrasive and overbearing person. On the Carnival Parade she displayed the costume, which was described by the

electronic and print media as "outrageous" in extravagant style, but won the Emerald Necklace worth \$100,000.

Mrs. Dollar demanded that the Professor reverse the process because she was horrified at the change in her daughter. The Professor said he had drugged her so that he could marry and make her his own as in all his medical practice he had never seen anyone with so perfect a body. He promised to reverse the process but only after the marriage. On that basis Mrs. Dollar agreed that the marriage should take place on January 3, 2000.

Miss Sweet who thought the Professor was the greatest man on earth who had made her win the Emerald Necklace, received the news of the proposed marriage between herself and Professor with unbounded joy. In her mind he would design her wedding dress and she would be the bride of the year. In two weeks they were married and as he was on his sabbatical the newly-weds lived in Mrs. Dollar's home.

After six months Mrs. Dollar realized that her daughter's behaviour was becoming more outrageous as she would say and do the most bizarre things. The Professor refused to discuss his wife's medical condition with her mother maintaining that she had willingly consented to the drug being given to her daughter and it was then too late to have second thoughts.

Mrs. Positov was involved in a motor vehicle accident and was taken to the hospital unconscious. Routine blood tests were done and they reveal that she has tested positive for AIDS. Marks on both arms and both legs reveal too that she has received numerous intravenous injections some of which could not have been self inflicted. At the insistence of Mrs. Dollar, the Professor has left her home and returned to his University.



**QUESTION 6**

Mrs. Positov who has remained at her mother's home seeks your advice as to whether or not she can bring her marriage to an end.

Advise her.

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**QUESTION 7**

Mrs. Positov has discovered that she is pregnant and wishes to know what steps she can take in relation to custody once the child is born.

Outline the procedure and the issues which will be relevant to the court.

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**QUESTION 8**

Mrs. Truth who has been separated from her husband, Mr. Truth, for over five years, has discovered that she is now six months pregnant and that Clarke Pondinell (a married man) is the father of the child. She believes that Pondinell has plans to migrate with his wife for a year in September 2001, whilst his wife pursues her MBA.

Their relationship has been a secret from his wife, but she tells you that now she is pregnant, her child has to have the best and Pondinell is well off.

She is not confident that Pondinell will maintain the child voluntarily and seeks your advice.

Advise her.

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