

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST-YEAR SUPPLEMENTARY EXAMINATIONS, 2004

CIVIL PROCEDURE AND PRACTICE I

(TUESDAY, AUGUST 3, 2004)

Instructions to Students

- (a) Time: 3 ½ 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 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 relevant territory.**
- (e) It is unnecessary to transcribe the questions you attempt.
- (f) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

Mrs. Bigfoot understands that both Joy and Petal who had given birth to their children were living in the household with Mr. Bigfoot since the summer of 2003.

Mr. Bigfoot recently came to see Mrs. Bigfoot and has for the first time in a long while spoken to her. He believes that legislation has recently been passed in the country which will give cohabitants and spouses a share in property. He appears to be very worried about his situation with Joy and Petal. He says that he believes that he and Mrs. Bigfoot should reconcile and that will be his way to get himself out of what he says is "a dreadful situation". Mrs. Bigfoot was not in agreement with Mr. Bigfoot's suggestion. He then became very boisterous and threatened that if she does not agree he will seek custody of the children, and she, he says, 'will have to go and make life for herself.'

QUESTION 6

Mrs. Bigfoot consults you as to whether or not she can obtain an injunction to prevent Mr. Bigfoot interfering with her and to prevent him from coming to live in the matrimonial home. Advise her.

QUESTION 7

Advise Mrs. Bigfoot on the matters the court will take into account if Mr. Bigfoot makes an application for custody and the likely outcome of the application.

QUESTION 8

Draft a petition for dissolution of the marriage on behalf of Mrs. Bigfoot, listing the documents which will accompany the petition.



NOTICE OF APPLICATION FOR COURT ORDERS

Form 7 [Rule 11.8(3)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

The Applicant, A.B. (full name) of (full address) seeks the following order(s):

[List the Court Order(s) being sought]

The ground(s) on which the Applicant is seeking the order(s) is/are as follows:

[Briefly state the grounds on which the order(s) is/are sought]

The Applicant estimates the likely length of the hearing to be:

[Insert number of days, hours or minutes as the case may be]

NOTICE:

This Application will be heard by [a Judge in Chambers] [Master] on the day of 20 at the Supreme Court, King Street, Kingston at in the morning/afternoon. If you do not attend this hearing either personally or by an attorney-at-law an order may be made in your absence.

Notice of this application is being given to the following persons:

[List the name and address for service of each Respondent except in

circumstances where the Application is permitted without giving Notice. If application is being made without notice, state that 'IT IS NOT INTENDED TO GIVE NOTICE OF THIS APPLICATION PURSUANT TO ... (and here state the rule or practice direction under which this is permitted]

NB. This Notice of Application must be served as quickly as possible on the Respondent to the Application - (See Rule 11.11)

Dated the day of 20

Signed
[Applicant or Attorney-at-Law for Applicant]

The Registry of the Court is situate at King Street, Kingston, telephone numbers (876) 922-8300-9, fax (876) 967-0669. The office is open between 9:00 a.m. to 4:00 p.m. Mondays to Thursdays and 9:00 a.m. to 3:00 p.m. on Fridays, except on public holidays. When corresponding with the Court, please address forms or letters to the Registrar and quote the claim number.

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application).

PART A

FACTS RELATING TO QUESTIONS 1 & 2

Defoe Limited, a registered company, are your clients and are in the business of selling electrical components. You are consulted by the Managing Director, David Green.

David Green tells you that Carlos Canada bought a new flat screen high definition television set from the company on April 20, 2004, and has filed a claim form and particulars/statement of claim for damages. Carlos claimed that when it was first switched on it exploded causing a small fire.

Your clients have had the television examined by an expert (Gary Gentle) and the report reveals that the problem was caused because Carlos' home had been poorly wired and in some places had 220 voltage instead of 110 voltage, and that this was the cause of the explosion.

Your clients also say that they have a contract with the manufacturers of the TV set, Qest Components Limited, for an indemnity.

In addition they tell you that on the said date Carlos attended their shop, he brought his 12 year old son, Tommy Canada, who was in the Manager's view hyperactive and uncontrollable. He kept running around the shop. They have a sign in the shop stating 'if you break it you buy it'. Tommy knocked over a hi-fi system which was completely destroyed. The component set cost \$150,000.

QUESTION 1

Discuss the legal issues that you would consider before responding to or taking legal action, indicating in relation to each issue the course you will adopt.

QUESTION 2

The Particulars/Statement of Claim served on your client is reproduced below. You have acknowledged service and given notice of intention to defend. Draft the appropriate statement of case in response.

You may add any additional information which is necessary to sustain your claim.

YOUR COUNTRY

HCA# 2343/2004

**IN THE HIGH/ SUPREME COURT
BETWEEN**

Carlos Canada

Claimant

and

Defoe Limited

Defendant

1. The Defendant is a company limited by shares and registered under the Companies Act, with its registered office at 10 Cheaptown Steet, Luton

and was at all relevant times in the business of selling electrical components.

2. On April 20, 2004, the Defendant in the course of their business sold to the claimant a flat screen television high performance for the sum of \$450,000 (copy invoice annexed).
3. It was an implied term of the contract of sale that the television would be of satisfactory quality.
4. On the same date of the purchase the Claimant plugged in and turned on the television set in his home.
5. In breach of the said implied term, the television set was not of satisfactory quality in that it exploded as soon as it was plugged in causing substantial damage to the claimant's home.
6. By reason of the matters stated above the claimant suffered loss and damage.

Particulars of Damage

Value of TV	\$450,000
Fire Damage to Antique Rug	\$ 25,000
Fire Damage to wall	\$ 13,000

7. Further the claimant claims interest (pursuant to the relevant statute in your country) on the amount found to be due to the Claimant at such rate and for such period as the Court thinks fit.

AND THE CLAIMANT CLAIMS:

1. Damages;
2. Interest;
3. Costs;
4. Further or Other Relief.

Jim Lawless
Attorney at Law

Certificate of Truth

FILED on the 4th day of May 2004 by Messrs Lawless & Co of 10 Prince Street,
attorneys for the Claimant.

QUESTION 3

You are instructed by VSB Bank Ltd.

You filed a claim form against their customer, Carl Davis, who is indebted to VSB Bank Ltd. on his credit card which under the contract with the bank, he holds jointly with his wife.

Mr. Davis has filed a defence, stating that although he admits he owes the money, his wife incurred the liability without his knowledge. Your client's legal officer has sent you a letter stating that this defence is of no concern to them because the credit card holders are jointly and severally liable. He wants you to

act expeditiously to conclude this matter as quickly as possible in the bank's interest.

- (i) Discuss the procedural steps you will now take.
 - (ii) Draft the Application Form for Court Orders (attached form).
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QUESTION 4

You are instructed by Anthony Sime. He has just found out that on the May 1, 2004, Furniture Supreme Ltd obtained a judgment in default against him in respect of a claim which they had brought in the Supreme/High Court. The claim was in respect of an amount of \$285,000 for the purchase of furniture and household appliances.

Mr. Sime tells you that the company have not been computing correctly the amount outstanding and that before the issue of the claim form, he sent them several letters from his current address at 10 Right Way Close, Kingstown, disputing the debt and also telling them that he and his wife were separated and he no longer resided at the old address to which they were sending him information.

Mr. Sime wants to know how they obtained the judgment without serving him personally. He tells you the claim form was sent to his former address at 15 Wrong Town, Sydenham. He has receipts which show that the Company are computing the amount incorrectly and that he has paid off the debt.

Advise Mr. Sime, setting out the procedure and the contents of the documents you will need to draft to support any application you will make on his behalf.

QUESTION 5

Miss Mega Lue is a tenant of David Loft and has not paid her rent of \$40,000 per month for the last 7 months.

David Loft served a valid notice to quit upon Mega Lue who then tendered a cheque to David for the amount of \$250,000. On presentation the cheque was dishonoured.

David Loft consults you and wishes to know how he should proceed against Miss Lue and whether an early judgment is possible?

- a) Advise David.

 - b) Would your answer to (a) above be any different if David tells you that when he mentioned issuing court proceedings to Ms. Lue, she said she will file a defence and that she will also counterclaim for damages for breach of covenant by David, who has failed to carry out certain repairs to the rented property?
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PART B

FACTS RELATING TO QUESTIONS 6, 7, AND 8

Alex Bigfoot and Vinegeer Bigfoot met in July 1992, when she graduated from the High Life Academy of Fashions at age 18, and he presented her with the Bigfoot Shield which he donated for the student who was voted the "One Most Likely to Succeed in Life".

Vinegeer was very impressed by Mr. Bigfoot although he was 10 years her senior. He was 6 feet 6 inches tall and weighing 250 lbs. He was very involved in the community and a very popular politician. She had not up until then, met any man whom she considered good enough for her.

On the day following the graduation, Vinegeer telephoned Mr. Bigfoot to thank him for the beautiful shield and he invited her to lunch. There followed three wonderful months of courtship and on October 15, 1992, they were married in the Church of the Divine Apostolic at Newday by the Rev Wantmure.

They had three children:

Rudolph born July 1, 1993, Rubilyee born July 8, 1994 and Runcie born July 15, 1995.

Mrs. Bigfoot found house keeping a tedious burden. Mr. Bigfoot had committee meetings at home for his political party and for his lodge. He would arrange barbecues and dinners without prior notification to Mrs. Bigfoot and expect her to be in attendance and to make the necessary domestic arrangements

As the children grew older and started school, Mrs. Bigfoot became more and more involved with them and left the housekeeping to the domestic staff. Apart

from when he was entertaining at home, Mr. Bigfoot was frequently away from the home. Mrs. Bigfoot saw less and less of her husband and eventually in June 2001, she suggested that her husband and herself have separate bedrooms because they kept such different hours. To this arrangement, Mr. Bigfoot readily agreed.

In February 2001, Joy, the most experienced housekeeper applied to Mrs. Bigfoot for maternity leave and notwithstanding the most diligent and searching questioning, she would not disclose who the father of the child was. In early 2002 Petal, another of the housekeepers, applied for maternity leave and like Joy, she would not say who was the father of the child

Mrs. Bigfoot began to hear rumours in January 2003, to the effect that the housekeepers would not talk because they had a "big man" looking after them.

On the night of May 23rd, 2003, Mrs. Bigfoot, who was never one to keep her ideas to herself, accused her husband of infidelity with the two girls as soon as he came home. The children were awake, two of the housekeepers were in the house and it seemed that Mr. Bigfoot, who as a rule had no more than one beer each day, had consumed more than his quota at an office party that evening.

Mr. Bigfoot reacted by slapping his wife in the face and then pushed her away so that she fell against a sofa and hit her head causing a wound. Mrs. Bigfoot attended the Medi- Kit Clinic and received five stitches for the wound.

On her return to the house, Mrs. Bigfoot was told that Mr. Bigfoot had removed his personal belongings. He moved into an apartment which he owns and since that time he has been visiting the children infrequently and provided money for the running of the household although he refused to speak directly with Mrs. Bigfoot.