

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATION, 1991

CIVIL PROCEDURE AND PRACTICE I

(Friday, May 31, 1991)

Instructions to Students

- a) Time: 3 1/2 hours
- b) Answer THREE questions from PART A and TWO questions from PART B.
- c) Questions selected from PART B must be answered on a separate sheet.
- 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 unnecessary to transcribe the questions you attempt.

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PART A

QUESTION 1

At about 7:00 a.m. on Monday, December 10, 1990, Mr. Ron Reno, a tailor who resides at 54 Montgomery Street, Greenland in your country, was walking along on the left sidewalk of Thames Avenue in Greenland.

A white Mazda pick-up licensed 135 AR, owned by Jonella & Co. Ltd., a company with registered office at 6 Banana Street, Greenland and driven by Aston Blue of 5 Pear Lane, Christchurch, approached from the opposite direction.

The speed limit for motor vehicles travelling on Thames Avenue is 30 m.p.h., but the pick-up was travelling at approximately 45 m.p.h. As this pick-up was about 12 metres from Mr. Reno, it developed a skid, got out of control, mounted the sidewalk and collided with Mr. Reno hitting him to the ground. He suffered the following injuries:

- (i) fracture of the right femur;
- (ii) fracture of the left fibula and tibia;
- (iii) abrasions and swelling to the right hip and side.

Immediately after the accident, Mr. Reno was taken to the St. John's Memorial Hospital where he was admitted as a patient and remained there for eight weeks; after his discharge from hospital, he spent a further period of five weeks recuperating at home.

Prior to this mishap, Mr. Reno was permanently employed to Garment Manufacturing Co. Ltd., where he earned \$600 per week. At the time of the accident, he was wearing a gent's Bulova wrist watch and a gold chain valued \$3,500 and \$4,500 respectively.

These items were never found after the accident.

The firm of attorneys-at-law of which you are an associate has filed a generally endorsed Writ of Summons on behalf of Mr. Reno in which he is claiming against Jonella & Co. Ltd. and Aston Blue, damages in negligence for the injuries and loss he sustained as a result of the aforesaid collision.

Draft an appropriate Statement of Claim to be served on the Defendants on behalf of the Plaintiff.

QUESTION 2

With the assistance of the Rules of the Supreme/High Court and case law, explain the similarities and dissimilarities between the issue, service and effects of service of a Writ of Summons and a Third Party Notice.

QUESTION 3*

Mr. Peter Potosi, a dry goods merchant of 5 Straight Lane, Fort Nugent, has issued against Mr. Timothy Ray, a retailer of 30 Pearl Avenue, Padmore, a specially endorsed Writ of Summons [1991/P 205 - Peter Potosi v Timothy Ray] in which the Plaintiff claims to recover from the Defendant the sum of \$15,000 for goods sold and delivered and costs.

This Writ of Summons was served personally on the Defendant on March 7, 1991 but he has neither entered an appearance/acknowledged service nor filed a defence. Consequently, on April 20, 1991, judgment in default of appearance/acknowledgement of service was entered in favour of the Plaintiff.

Mr. Ray has consulted you today and instructed you that he has a good defence to the action. He admitted that the Plaintiff supplied the goods in question to him, but he is adamant that he paid the Plaintiff for them and that he has a receipt signed by the Plaintiff as acknowledgement of payment of the amount for which he is sued. Mr. Ray has expressed the desire to have his case tried rather than the matter decided by default judgment. He also informed you that he was ill when the Writ of Summons was served on him so that he was unable then to enter an appearance/acknowledge service and to contact an attorney-at-law to represent him.

Draft the necessary documents that you would file to effect the appropriate application to the Judge/Master that you should make on behalf of your client.

QUESTION 4

Discuss fully any TWO of the following:

- (i) counterclaim;
- (ii) tender;
- (iii) set-off.

QUESTION 5

Mr. Robert Cannister is an American citizen who resides at 1416 Fortythird Street, Kenbrook, New Jersey, United States of America.

Mr. Cannister came to your country on holidays. On Sunday, March 3, 1991 he "checked in" as a paying guest at the luxurious Sun & Sea Beach Hotel Limited, Columbus Bay for fourteen nights at the rate of \$90 (U.S.) per night. He agreed with the admission clerk that he would settle his bill prior to leaving the hotel.

He enjoyed his stay immensely, but at its expiration, he clandestinely left the hotel and without settling his bill, returned to his home in the United States of America, with no intention of returning to your country.

The Sun & Sea Beach Hotel Ltd. is desirous of instituting civil proceedings to recover the sum of \$1,260 (U.S.) for the hotel bill from Mr. Cannister and has instructed you to do so on its behalf.

Draft the documents which you would file as a first step in the commencement of these proceedings.

PART B

QUESTION 6

Mr. Hive Positov, Professor of Anatomy at World-Alive University, was guest of Mrs. Extra Dollar for Carnival 1990. 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) which 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, 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 Nunmore, 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 August 1, 1990.

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 bizzare 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.

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. Professor Positov has an income in excess of \$350,000 from salary and investments. He is reputed to possess jewellery and paintings worth \$3 million.

If you advise legal proceedings, draft an appropriate petition.

NOTE: Notice to appear and any supporting document need not be drafted.

QUESTION 7

Mrs. Adlin Truth married Mr. Twotime Charlie Bridewell, just three days after the decree absolute dissolving her marriage with John Truth was granted. Mr. Bridewell had been bestman at the wedding of the Truths on April 1, 1983 and had remained a friend of the family until Christmas 1989 when Mr. Truth overheard a telephone conversation between his wife and Mr. Bridewell in which they discussed plans for setting up house together in neighbouring Mongoose Town Island. Mr. Bridewell said he could not tolerate the sight of the identical twin sons of the Truths whom he described as horrible, detestable brats and consequently they would have to be

left behind. Mrs. Truth said she had had enough of them and did not intend to cart them along as for five years they were nothing but a stumbling block to her career.

The revelation of his wife's infidelity and his friend's disloyalty so enraged Mr. Truth that he violently assaulted his wife to the extent that she was hospitalized for a week. Had Bridewell not gone into hiding he would have received similar treatment. When Mrs. Bridewell was discharged from the hospital she removed from the matrimonial home and took the children Biff and Bam with her. After one week she returned them to the matrimonial home during the absence of Mr. Truth and left behind a note intimating her intention to seek a divorce. In her petition for dissolution of the marriage she averred that the twins lived comfortably with their father and consequently she was not seeking custody.

On a visit to the children's school the Headmistress enquired of Mr. Truth why he was removing the children as they were making good progress. This information led Mr. Truth to make further enquiries and he learnt that Mr. and Mrs. Bridewell had reservations for themselves and the two children to leave for Mongoose Town Island four days later.

Mr. Truth has expressed to you his strongest objection to the children being taken away from him and seeks your advice as to what legal steps he can take in the matter.

Draft the legal documents to secure immediate relief.

QUESTION 8

Using the facts given in question 7, draft the legal documents to support an application for custody.
