

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1993

CIVIL PROCEDURE AND PRACTICE 1

(Friday, MAY 28, 1993)

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 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.
- (d) It is unnecessary to transcribe the questions you attempt.

P A R T AQuestion 1

Humphrey's Construction Co. Ltd., a company with registered office at 55 Potters Row, Bluefields, was engaged in the construction of a three storey office building at 165 Robert Street in Penville.

On Monday January 11, 1993, Andrew Peters a mason employed to Humphrey's Construction Co. Ltd., and who resides at 30 East Road, Kensington, was laying concrete building blocks to form the wall on the third floor of the building. In order to perform this job Peters was instructed by the construction company to walk on the planks which formed part of the scaffolding provided around the building. As Peters moved along the planks, one became loose and he slipped and fell to the ground severely injuring both shoulders and breaking his left arm.

As a result of his injuries, Peters was unable to work for 10 weeks. He earns \$2500 weekly. He incurred medical expenses amounting to \$4,500 and his wrist watch which valued \$5,000 was damaged beyond repair.

Peters has instructed you to institute proceedings against Humphrey's Construction Co. Ltd., on his behalf.

Assume that you have already filed and served on the company a generally indorsed writ of summons in the matter.

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

Question 2.

On May 3, 1993, Paradise Car Sales Ltd., a company with registered office at 40 Belmont Place, Seaside, obtained judgment in default of appearance/acknowledgment of service against David Fields of 65 Prospect Road, Kemshot, in respect of a claim for \$10,500, the balance due and owing by the defendant to the plaintiff company on the purchase price of a second-hand motor van licensed P.B. 712.

David Fields has consulted you with a view to make an application to the court to have the judgment set aside and that he be granted leave to defend the action.

Mr. Fields gave you a statement which contained the following information -

"I bought a second-hand motor van licensed P.B. 712 from Paradise Car Sales Ltd., through Mr. Rawle Purcell, the company's sales manager, for \$40,000.

I made down payment of \$10,000 at the date of the purchase and continued making agreed monthly payments of \$1500.

Two months ago, as I was experiencing financial difficulties I met with Mr. Rawle Purcell and he, acting on behalf of Paradise Car Sales Ltd., agreed that the outstanding balance on the purchase price of the motor van was \$10,500 and that further monthly payments would be suspended for six months.

About a month after Mr. Purcell and I agreed that the monthly payments would be suspended for six months, I was served with a writ of summons in which Paradise Car Sales Ltd., was seeking to recover from me the sum of \$10,500 as the balance of the purchase price of the motor van.

I did not enter an appearance/acknowledge service of the writ of summons as I was too ill to seek legal advice.

I should not have been sued for \$10,500 as only the payment of three instalments are now due and owing. I wish to defend the action."

Draft the document(s) necessary for Mr. Field's application.

Question 3

Christine Dior is the proprietress of a chain of boutiques. The main boutique is situated at 99 Charles Square, Kensham.

On January 8, 1993, Miss Dior ordered 1000 dresses at the agreed price of \$120,000 from Mr. Saul Bernstein, a wholesaler, in the garment industry.

On March 3, 1993, the consignment of dresses was delivered to Miss Dior at her downtown centre and she in return sent a cheque payable to Saul Bernstein in the sum of \$120,000 to cover the cost of the dresses.

On the same day of their delivery, Miss Dior 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 Dior immediately instructed her banker to stop payment on the cheque. She also informed Bernstein by telephone of the defects that she had discovered and requested him to remedy them.

Bernstein maintained that the dresses were without fault and he demanded payment of \$120,000.

Bernstein has instructed you to commence on his behalf, legal proceedings with a view to obtain summary judgment against Miss Dior for \$120,000 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 Bernstein's application, giving reasons.
-

Question 4

On March 24, 1993, Vernon Williams, a hotelier, entered into a written contract with Marine Industries Ltd.

By the terms of the contract Marine Industries Ltd., agreed, inter alia, to supply Vernon Williams, the operator of the Shanari-la Beach Resort with 1500 lbs of lobsters at \$60 per lb.

Mr. Williams informed Mr. Cyril Steward, the sales manager of Marine Industries Ltd., that the lobsters were to be used at a "Seafood Festival" to be held at the Shanari-la Beach Resort on April 3, 1993.

On March 26, 1993, Marine Industries Co. Ltd., acting through Mr. Steward, stored the lobsters in question in cold storage at Icacos Storage Ltd., on payment of the cold storage fee.

At the time of the arrangement for the lobsters to be kept on cold storage, Mr. Cyril Steward, acting on behalf of Marine Industries Co. Ltd., informed Mr. Winston Blake, the owners of Icacos Storage Ltd., of the purpose for which the lobsters would be used and the necessity to keep them properly refrigerated.

As a result of faulty storage facilities at Icacos Storage Ltd., the lobsters were decomposed by the time Marine Industries Ltd., delivered them to Shanari-la Beach Resort.

Because of the foregoing matters, Mr. Vernon Williams instructed his attorneys-at-law, Swift & Swift of 5 Equity Lane, General City to commence legal proceedings against Marine Industries Co. Ltd., to recover damages for breach of contract in that Marine Industries Co. Ltd., contrary to the terms of the agreement between that company and himself had supplied him with lobsters that were totally unfit for human consumption, whereby he had suffered loss in his business.

On April 23, 1993, Swift & Swift, acting on behalf of Mr. Williams, issued a writ of summons against Marine Industries Co. Ltd. The writ of summons and a Statement of Claim were served on the company on the said date that the writ was issued.

On April 30, 1993, Marine Industries Co. Ltd., entered an appearance/acknowledged service and on May 12, 1993, filed and served its defence in which it blames Icacos Storage Ltd., for the spoilage of the lobsters.

Marine Industries Co. Ltd., now instructs you to initiate Third Party Proceedings against Icacos Storage Ltd., on its behalf.

Draft the document(s) necessary as a first step in the proceedings on behalf of Marine Industries Co. Ltd.

Question 5

On April 5, 1993, Jack Byron, through his attorneys-at-law, Short and Long, issued a writ of summons claiming damages for breach of contract against Cyril Devonish who then resided alone at 25 Pineapple Grove, Pennington, within the court's jurisdiction. Mr. Byron was at the time of the issue of the writ of summons employed as an assistant manager at Junior, George and Co. and was stationed at the company's office situated at 95 Wright Street, Pennington.

On April 10, 1993, before the writ of summons was served on Devonish, he left the jurisdiction on transfer to his employer's head office at 1009 Second Street, Miami, Florida, United States of America for an indefinite period.

The plaintiff is anxious to have the writ of summons served on the defendant.

Advise him as to -

- (i) the methods of service available, summarising the contents of the documents used in support thereof.
 - (ii) What difference would it make regarding the methods of service if Devonish had left the jurisdiction for the U.S.A. on April 3, 1993?
-

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 1991 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 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 8 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 half-million dollars per year.

Since April 1, 1991, 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 her 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 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.

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS 1993
CIVIL PROCEDURE AND PRACTICE 1
(Wednesday, August 11, 1993)

Instructions to Students

- (a) Time 3 1/2 hours
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-

PART A

Question 1

The Statement of Claim set out below was delivered to you as the attorney-at-law on the records for the defendant whose instructions to you are as follows -

" I am a nurse, residing at 40 Third Avenue, Southgate. Mr. Charles Fountain is a furniture maker living at 35 Second Street, Southgate.

On Saturday February 27, 1993, I went to the home of Mr. Charles Fountain where I examined a mahogany dining table and six chairs that he had just made.

After some discussion, Mr. Fountain and I agreed orally that he would sell to me and I would buy the mahogany dining table together with the six chairs for \$20,000. We agreed that payment should take place when he delivered the table and chairs at my home.

On Monday March 15, 1993, I accepted delivery of the table and chairs, made payment for them in full and I obtained a receipt for the money paid.

I do not owe Mr. Fountain any money. The agreed purchase price of the table and six chairs was \$20,000 and not \$35,000.

I am desirous of defending the action brought against me.

Signed:

Jane Domville "

Draft an appropriate Defence based on your instructions.

STATEMENT OF CLAIM

(Insert usual Heading)

BETWEEN	CHARLES FOUNTAIN	PLAINTIFF
AND	JANE DOMVILLE	DEFENDANT

1. The Plaintiff is a furniture manufacturer residing at 35 Second Street, Southgate.
2. The Defendant is a nurse residing at 40 Third Avenue, Southgate.
3. By an oral agreement made at 35 Second Street, Southgate on the 27th day of February 1993, between the Plaintiff and the Defendant, the Plaintiff agreed to sell and Defendant agreed to buy a mahogany dining table together with six chairs for the agreed price of \$35,000.
4. It was an agreed term of the contract that the Defendant would pay the full purchase price of the table and chairs at the time the Plaintiff delivered the said goods at the Defendant's home at 40 Third Avenue, Southgate.

5. In pursuance of the said agreement on Monday March 15, 1993, the Plaintiff duly delivered to the Defendant who accepted delivery of the said table and six chairs at the Defendant's home.

6. In breach of the said agreement and after accepting delivery of the said goods the Defendant paid \$20,000 to the Plaintiff instead of the amount of \$35,000 which was the agreed price of the goods.

7. The Defendant has failed/refused to pay the balance of the agreed purchase price of the goods, namely \$15,000 which sum is due and owing by the Defendant to the Plaintiff.

AND THE PLAINTIFF CLAIMS:

- (i) the sum of \$15,000;
- (ii) costs;
- (iii) interest on the said sum at such rate and for such time as the Honourable Court deems just.

DATED 3RD DAY OF AUGUST 1993.

Settled

John Jones

for James Jones & Co.

PLAINTIFF'S ATTORNEY-AT-LAW.

Filed by James Jones & Co. of 60 Frederick Street, Riverside,
Attorneys-at-Law for and on behalf of the Plaintiff.

Question 2

On May 10, 1993, Mark Sloppy, a hardware merchant, through his attorneys-at-law, Moore & Moore of 85 Jones Circle, Skyland, issued a writ of summons (Suit No. C.L. 1993/S044) against Paul Desperado.

The writ of summons was specially indorsed with a Statement of Claim in which the Plaintiff was claiming to recover from the Defendant the sum of \$6,000 for goods sold and delivered and costs \$500.

On May 12, 1993, the writ of summons was served personally on the defendant who on May 20, 1993, entered an appearance/acknowledged service.

As the Defendant took no further step in the action, on June 30, 1993, the Plaintiff obtained judgment in Default of Defence for the amount claimed and cost.

The Defendant has instructed you to apply to have the judgment set aside.

He further informed you that he owed the Plaintiff no money as he had returned the goods in question to the Plaintiff as the said goods were defective and unsuited for the intended purpose.

Draft the necessary document(s) that you file in pursuance of your client's application.

Question 3

On February 3, 1993, John Cautious, attorney-at-law for the Plaintiff, issued and served a writ of summons in which he claimed damages for negligence on behalf of his client.

After the writ of summons had been served on the defendant, Cautious discovered -

- (i) that he had inadvertently misspelt the name of the defendant;
- (ii) that he had inadvertently omitted to make a claim for damages for personal injuries which his client had suffered.

Further at the trial of the action Cautious' client furnished him with new information which would necessitate his pleading not only further particulars but indeed a new cause of action which though current at the date of issue of the writ of summons, had by the date of trial become barred by the Limitations Act.

- (a) By adverting to the Rules of the Supreme/High Court, outline the procedure to be adopted regarding the applications to be made in respect of the above ammendements.
 - (b) Illustrate with the assistance of case law the courts' attitude to the granting of these amendments.
-

Question 4

The plaintiff, Anita Bradshaw, a hardware merchant, brought an action against your client, Leroy Collister, a building Contractor, claiming the sum of \$50,000 for goods sold and delivered.

Although Collister admitted that he owed the plaintiff the amount claimed, he gave you the following information -

- (a) that the plaintiff is indebted to him in the sum of \$20,000 in respect of service rendered by the defendant to the plaintiff approximately six months before the Plaintiff issued his writ of summons against him;
- (b), that he offered to pay to the Plaintiff the sum of \$50,000 on January 30, 1993, three months before the plaintiff commenced her action against him but that the plaintiff refused to accept the money. He further said that he is willing to pay into court the full amount of the claim;
- (c) that the goods supplied by the plaintiff were of inferior quality and as a result, the defendant suffered loss to the amount of \$60,000 on his building contracts.

What possible defence is available to Collister in each of the above case? Give reasons for each answer.

Question 5

The Statement of Claim set out hereunder was served on you as the attorney-at-law for the defendant -

"STATEMENT OF CLAIM"

(Usual Heading)

BETWEEN	ALEXANDER BELIIX	PLAINTIFF
AND	BRYAN JENKINS	DEFENDANT

1. The Plaintiff's claim is to recover the sum of \$20,000 being the balance due and owing for goods delivered on divers days to the Defendant.
2. Further the Plaintiff claims damages for personal injuries resulting from an accident which occurred between the Plaintiff and the Defendant on November 15, 1992, along a road, in Charlton City.
3. AND THE PLAINTIFF CLAIMS:
 - (i) Damages;
 - (ii) Costs;
 - (iii) Interest at such rate and for such time as the Honourable Court deems just.

DATED NOVEMBER 4, 1992

Settled

John Doeman

Plaintiff's Attorney-at-Law

Filed by John Doeman, attorney-at-law of 87 Princess Street,
Kingston, Plaintiff's attorney-at-law.

- (i) By virtue of the Rules of the Supreme/High Court what steps can you take on behalf of your client in respect of this Statement of Claim? Give reasons.
 - (ii) Draft the document(s) necessary to effect one of the steps that you have mentioned.
-

PART BQUESTION 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 conscientiousness 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 successful 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 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.

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. Truth 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 with 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.

After the divorce, 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 Islands 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.

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1993

CRIMINAL PRACTICE AND PROCEDURE

(Tuesday, May 25, 1993)

Instructions to Students:

- (a) Time: 3 1/2 Hours.
 - (b) Answer FIVE questions.
 - (c) 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.
 - (d) It is unnecessary to transcribe the questions you attempt.
-

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COUNCIL OF LEGAL EDUCATION
MONA, KINGSTON, 7. JAMAICA

QUESTION 1

On the 1st of January 1993, Strolley and Kemp were in a bar on Rum Lane drinking. Kane, a friend of Kemp, approached them and suggested that Kemp leave the bar. Strolley told Kane that he was a busybody and threatened to throw him out of the bar if he did not leave. Whereupon, Kane pulled his gun and fired at Strolley who flung himself to the ground. The shot missed Strolley but grazed Kemp's chest and after ricocheting from a wall hit Cooper the bartender, in the leg causing a wound.

A hostile crowd rushed at Kane who whilst pointing the gun at the crowd started to move backwards towards the door. He was grabbed from behind by Constable Alert who was just entering the bar. As the constable held Kane the gun went off hitting Bullard, another customer in the bar.

Draft the indictment for trial in the Supreme/High Court in respect of the offences committed by Kane against Strolley, Kemp and Bullard.

QUESTION 2

After Lewis' relationship with a girl had ended he made threats to kill her and her new boyfriend. Subsequently, Lewis caused criminal damages to the property of the girl and after being arrested and taken to a police station assaulted a police officer.

Lewis was charged with threats to kill, malicious damage to property and also with common assault on a police officer.

At the trial the judge ruled that the count alleging common assault could lawfully be joined on the indictment.

Lewis was convicted on all three counts.

Lewis wishes to appeal and would like to know-

- (i) whether or not the judge was right in permitting the joinder;
- (ii) what the effect of a misjoinder would be.

Advise him.

QUESTION 3

Burgess was convicted for assault. The incident was said to have taken place outside a bar. A prosecution witness, Nolan, claimed to have seen the incident from a seat inside the bar and identified the defendant as the assailant. The attorney-at-law representing the defendant applied for the bench to visit the locus in quo. At the locus the three justices, their clerk, the prosecutor and the defendant's attorney-at-law went into the bar. The defendant was left outside. It is now seven days since the conviction of the defendant who was fined and paid the fine on the same day.

He now wishes to appeal and wants to know if on the facts outlined he has any good ground of appeal and what he must now do to perfect an appeal

Advise him.

QUESTION 4

A car driven by Speedy was stopped by the police at a road block. Moody and Smokey were passengers in the car. Constable Searchwell asked all three men to get out of the car. The constable told them he was going to search the car and frisk them. He searched the car but nothing incriminating was found. He then frisked the men. In the trousers pocket of each man he found a small parcel containing ganja. Constable Searchwell asked them where they were coming from. They refused to answer. He arrested and charged each of them for possession of ganja.

Three informations were laid. At the summary trial before a magistrate the prosecutor applied to the court for leave to have the three informations tried at the same time. The application was not opposed by counsel for the defence. In fact, he told the court that it would be a waste of time to have three trials. The magistrate granted the application. All three accused persons were convicted.

They now seek your advice as to whether or not the magistrate erred in allowing the informations to be tried together.

Advise them.

QUESTION 5

Write notes on THREE of the following-

- (i) Order of Speeches;
- (ii) Suspended Sentence;
- (iii) Taking of the verdict of the jury in respect of alternative counts e.g. larceny and receiving.
- (iv) Abandonment of appeal;
- (v) Power of the Court of Appeal to order a new trial.

QUESTION 6

Answer ANY ONE of the following-

- (A) Discuss FOUR of the major procedural differences between felonies and misdemeanours.
- (B) (i) Discuss:
 - (a) the power of the D.P.P to enter a nolle prosequi and
 - (b) the jurisdiction of the Resident Magistrate in respect of criminal offences.
- (C) Indicate the courses open to an accused on arraignment in the Supreme/High Court and comment on any THREE of the courses.

QUESTION 7

B was convicted for manslaughter on an indictment which charged him for murder.

According to the transcript of the shorthand notes the jury first retired at 10.15 a.m. They returned to Court at 10.45 a.m to ask for a map which could not be given to them. They left the court five minutes later and then returned at 11.10 a.m.

According to the official court record what then transpired follows-

Registrar: Mr. Foreman please stand.

Members of the jury have you arrived at your verdict?

Foreman: Yes, Sir.

Q. Is your verdict unanimous?

A. Yes in respect of murder but no in respect of manslaughter.

Q. How say you is the accused guilty or not guilty of murder?

A. Not guilty.

Judge: How are you divided in respect of manslaughter?

A. 8 - 4

At this stage the Judge told them to go back and try to arrive at a unanimous verdict and if they could not do that, what they were entitled to do.

At 11.30 a.m. they were again escorted out of the court to their room. They returned at 12.25 p.m.

The Judge plunged straight in and said "Mr. Foreman have you been able to reach a unanimous verdict"?

The foreman replied "Yes my Lord".

Judge: How say all of you guilty or not guilty of manslaughter.

Foreman: Guilty sir.

However, after the allocutus was put, but before B had been sentenced and before the jury had been discharged the foreman told the court that he had made an error and that one juror had dissented from the verdict.

The judge accepted the majority verdict and sentenced B. B is not satisfied and wishes to appeal.

Advise him as to his chances of success.

QUESTION 8

Reynold and Simeon were arraigned before Justice Farr and a jury for the murder of Owen. Both Reynold and Simeon pleaded "Not Guilty". They were put in charge of the jury and the trial proceeded. During the opening of the case for the prosecution the attorneys-at-law for the accused men interrupted and said that their clients wished to change their pleas to guilty of manslaughter subject to the acceptance by the judge and the prosecution.

The trial judge agreed to accept the pleas and proceeded to sentence each accused to three years hard labour and thereafter discharged the jury.

Two days later Simeon's relatives consulted you and complained that they were dissatisfied with what transpired at the trial.

Advise the accused.

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1993

CRIMINAL PRACTICE AND PROCEDURE

(Thursday, August 12, 1993)

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-

QUESTION 1

During the night of February 10, 1993, Robman and Nawaz entered the dwelling house of Rushdie by breaking a window.

Rushdie had retired to bed having first secured all the doors and windows of his house. Robman put a knife to the throat of Rushdie and said, "Give me the key to the vault". Rushdie, *Attempted Burglary* screamed and his boarder Kray a policeman came to his rescue and held and disarmed Robman.

Nawaz stabbed Kray in the back thereby forcing him to release his partner in crime. The two intruders then rushed from the house and disappeared in the dark. *Wounding & intent*

A few days after, Robman and Nawaz were detained by the police and subsequently identified by Rushdie and Kray at identification parades.

✓ Draft the indictment to be presented in the Supreme/High Court.

QUESTION 2

Duvall was convicted of rape after a six-day retrial. On the second day a juror had lunch with an attorney-at-law who was not in the case but who prosecuted regularly in the courts. The conversation over lunch ranged from matters concerning the administration of justice to mutual friends (including members of the Bar) but did not involve discussion of the case being currently tried.

Immediately after the lunch the attorney-at-law told prosecuting counsel about his having lunch with the juror. The following day Duvall's counsel and the trial judge were informed.

The judge questioned the juror in the absence of the rest of the jury and Duvall's counsel then invited the judge to discharge the whole jury. The judge discharged the juror but refused to discharge the whole jury referring to the fact that it was a retrial and the complainant had twice already had to give evidence about being raped.

The remaining six jurors convicted Duvall who appealed contending that the failure to discharge the whole jury was a material irregularity.

Write an opinion on his chances of success on appeal.

QUESTION 3

Porthouse was charged with an offence under the Road Traffic Act.

The first information was defective in that it charged an offence under section X of the Act but the particulars of offence combined sections X and Y of that Act.

An alternative information was substituted before the magistrate at a later date. An earlier plea of not guilty had been taken on the first information and a similar plea was taken and entered on the second.

The prosecutor elected to proceed on the second information and offered no evidence on the first which was accordingly dismissed.

Counsel for the accused then submitted that the second information should also be dismissed on the autrefois acquit principle since the charges were the same or substantially the same. Counsel for the prosecution argued that it was not open to the magistrate to dismiss the information before evidence had been heard in relation to either information.

Advise the magistrate.

QUESTION 4

Write notes on THREE of the following-

- ✓ (i) the preferring of an indictment in the High/Supreme Court;
 - ✓ (ii) appeals from the Petty Sessions Court;
 - (iii) fitness to plead;
 - (iv) preventative detention;
 - ✓ (v) challenge for cause.
-

QUESTION 5

On March 10, 1990, Leon Jack severely wounded his wife Jane by inflicting several blows to her head with a hammer. On February 10, 1991, Jack was convicted and sentenced to fourteen years imprisonment for wounding Jane with intent to murder her. Jane died on March 21, 1991, as a direct result of the injuries she sustained at the hands of Jack. Jack was arrested on March 25, 1991 and charged with Jane's murder. He has since been committed for trial in respect thereof.

The Director of Public Prosecutions proposes to indict Jack for Jane's murder and informs you that Jack's attorney-at-law has already indicated that to indict Jack for murder will be misconceived because "no one ought to be punished twice for the same act".

Discuss the relevant issues that arise in this matter including-

- (i) the D.P.P's proposal to indict Jack for Jane's murder;
- (ii) the observations made by Jack's attorney-at-law.

QUESTION 6

Consequent upon either the leave of a judge or the direction of the DPP Joe was committed to stand trial on two charges - one of burglary and the other robbery with violence, arising out of offences committed on the same date but unrelated to each other. He was accordingly indicted. The indictment was

murder
dangerous driving -> manslaughter
1.18
Thomas
Constitution
murder
indictment
on manslaughter

same act
murder
indictment
on manslaughter

series of offences
same date

Ludlow -
Ballyn Singh -
Joinder
not alternative

Griffiths Charles

inadvertently not signed by the proper officer.

On the day of the trial Joe when arraigned, pleaded not guilty to both counts. The prosecution thereupon applied for severance of the indictment and separate trials of the two counts on the ground that they were improperly joined. The defence submitted that the best course would be to quash one of the counts. The court ordered separate trials. A jury was then empanelled to try the burglary charge. Joe was convicted and sentenced. He is dissatisfied with his conviction and sentence and seeks your advice.

Advise him.

is by accident

QUESTION 7

is mean now not relevant

On May 1, 1993, Brutus was arrested on a charge of stealing. He was brought before the Magistrate on May 2, 1993. The Magistrate adjourned hearing of the matter to May 9, 1993. Brutus failed to appear on that day. The prosecution was not ready to proceed and sought an adjournment. This application was refused and the magistrate accordingly dismissed the complaint.

Discretion to dismiss adjourn.

(a) The prosecution is aggrieved at the magistrate's decision and seeks your advice. Advise the prosecution. *can't put off to allow pos. to address their case*

(b) Can Brutus challenge any steps the prosecution may take to prosecute him for the same offence?

QUESTION 8

Ainsley and Marcos were indicted for the larceny of a motor car valued at \$5,000. at the Assizes. On arraignment, they both pleaded "Not Guilty". Attorney-at-law for the prosecution opened the case after a jury had been selected. As soon as the first witness for the prosecution was called, Ainsley began to stamp and shout insults at the trial judge with the object of preventing the case from proceeding before that judge.

(a) Had you been the presiding judge what procedure would you have adopted? *Removed him from court*

(b) Assuming you were the defence attorney-at-law for the other accused and the presiding judge sought your assistance, what submission if any, would you have made to protect the interest of your client? *Separate trials.*

fact that

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1993

LANDLORD AND TENANT
(Wednesday, May 26, 1993)

Instructions to Students:

- a) Time: 3 1/2 hours.
- b) Answer FIVE questions only.
- c) 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.
- d) It is unnecessary to transcribe the questions you attempt.

QUESTION 1

Pierre is a university lecturer in French and under his contract of employment he is provided with a two-storey house in the vicinity of the university and owned by the university. In order to increase his income Pierre converts the bottom floor into four flats which he rents to students.

Pierre regards students as unreliable and devised the following scheme to ensure the payment of rent. Each student is required to sign a rental agreement with the landlord whereby each purports to be a joint tenant with all the other tenants who are also students, for a period of one year from the date of signing. Pierre signs the rental agreement as "Landlord and agent for the other tenants".

In February, two of Pierre's tenants were expelled from the university and left the flats without paying rent. Pierre insists that the remaining tenants, Joanne and Mark, pay the rent for the defaulting students and has threatened suit if they fail to do so.

The university has recently offered Pierre a larger house and he serves notice on Joanne and Mark to immediately quit and deliver up possession of the flats they occupy. Pierre's letter to quit advises Joanne and Mark that he, Pierre, is a mere licensee of the university and therefore cannot create a valid lease of the premises.

Joanne and Mark approach you for advice.

Advise them.

QUESTION 2

(a) In 1991, Wilson obtained a lease of commercial premises for a term of ten years. The premises contained a workshop. The lease contained a covenant -

"not to assign, underlet or part with possession of part only of the demised premises."

Wilson subsequently allowed Trail to use the workshop for his business of repairing car bodies. In 1992, Wilson entered into an oral agreement with Trail to grant him a lease of the workshop for a term of twelve months and thereafter yearly until determined by six months notice on either side.

Wilson, however, has refused to execute a written agreement. Trail has therefore threatened to seek a decree of specific performance against Wilson.

Advise Wilson.

(b) In 1975, Cissy, who lived in the United States of America, wrote to her agent Eddie and instructed him to "give my nephew Tim a piece of my land to work to help himself and his children."

In that same year, Eddie handed over the land to Tim who worked it for approximately four years and who built a chattel house thereon. In late 1989, Tim rented the house for \$2,200 per year to Auntie B who has continued to live there up to the present time.

In March 1993, Cissy returned home and gave one month's notice to Auntie B to leave the premises. Auntie B has refused to do so

claiming that she is a yearly tenant and is therefore entitled to one year's notice.

Cissy has sought your advice.

Advise her.

QUESTION 3

At the end of July 1992, Oscar purchased a dwelling house which is exempt from rent restriction/control legislation. The house has been occupied under an oral monthly tenancy for some ten years by Tessa who has used it as a residence for herself and her six children. Tessa has also, since 1985, run a day care centre in an outhouse which she constructed in a corner of the garden. In mid-August 1992, Tessa went on holiday and instructed her eldest son to pay the rent in cash, to the new landlord, Oscar, when it became due on September 1.

On her return on September 16, 1992, Tessa discovered that the rent for September had not been paid and immediately delivered a cheque for the arrears to Oscar's wife at his residence.

On September 17, 1992, Tessa received from Oscar a notice to quit in a month's time for arrears of rent. Tessa is very distressed at this turn of events as she had hoped to remain in occupation for many more years. She has sought your advice.

What is your advice? Give reasons.

QUESTION 4

(a) Tara entered into a five-year lease with Leyton the freehold owner of residential premises in Highgate. Prior to signing the lease, Tara made it clear to Leyton that she would be giving piano lessons on the premises in the evenings and on weekends.

Three months after she entered into possession, she often found it impossible to conduct piano lessons. The occupants of the adjoining premises, who were also Leyton's tenants used the premises as a wedding centre for the holding of wedding ceremonies and receptions. Tara informed Leyton that if the noise continued she would have no option but to vacate. Last month she left the premises.

Advise Leyton.

(b) Larry is the landlord of a block of four apartments in Fox Hill. The tenants of the two apartments upstairs are members of a commune and often entertain many friends in their apartments. The tenants of the ground floor apartments, Toni and Taj, complain that the activities of their neighbours are an embarrassment to them and that the heavy smoke that often comes downstairs from upstairs is upsetting. They are of the view that these acts constitute a breach of their covenant for quiet enjoyment with Larry.

Advise Toni and Taj.

(c) Minnie is the yearly tenant of a studio apartment which is part of an apartment complex. She has always paid the rent on time. Two days ago, she came home from work to find no water in the apartment. At first, she assumed that there was a general water lock-off but subsequently discovered that the executive committee of the corporation had locked off the water to her

apartment as her landlord was three months in arrears with payment of the maintenance charge.

Advise Minnie.

QUESTION 5

Toby recently leased from Lois for two years, an apartment, part of a three-storey block of apartments. The apartment is on the ground floor.

The lease contained, inter alia, a covenant by the tenant -
"to keep the interior of the leased premises
and all the leased fixtures, fittings and
glass therein in good tenantable repair."

There was no covenant on the part of the landlord to do any repairs.

Within days of going into possession, Toby observed moisture and flaking on the ceiling of the bathroom and a few days later water began to drip from the ceiling and concrete particles began to fall.

Last week Toby spoke to Lois who told him that it was not her responsibility to repair the leak as it was coming from the apartment above and that he should discuss the matter with Ray who was the owner and occupier of that apartment.

Toby therefore, spoke to Ray, who told him that the water dripping below came from an abandoned pipe running between the

horizontal dividing wall between the two apartments. Ray further explained that the corporation had, a year earlier, abandoned the use of all the old pipes in the building but that pipe had not been properly sealed and when he complained about this to the corporation he was told that the pipe was not now their responsibility, but that of the two owners. Ray, however, disagreed.

Toby in despair now seeks your advice.

Advise him.

QUESTION 6

On April 9, 1989, Lottie granted a lease of a building (not subject to rent restriction/control legislation) to Thelma for ten years, at a rent of \$12,000 a year payable in advance. Clause 3 of the lease contained the following covenants, inter alia, by the tenant -

- "(5) not to use the demised premises otherwise than as a private residence.
- (6) Not to underlet the demised premises or any part thereof without the previous consent in writing of the landlord such consent not to be unreasonably withheld."

The lease also contained a forfeiture clause for non-payment of rent or other breach of covenants. In February 1993, Thelma without applying for or obtaining Lottie's consent, sublet a room in the demised premises to Sandra who used it as her residence. Lottie became aware of the sub-letting in March 1993.

On April 2, 1993, Lottie served Thelma with a notice requiring her to remedy the breach of covenants contained in paragraphs (5)

and (6) of Clause 3 of the lease within 28 days. The rent which was payable on April 9, 1993 had not been paid and by letter dated April 20, 1993, Lottie demanded payment, the demand being expressed to be without prejudice to any breach of covenant. The rent was tendered but Lottie refused to accept it. Thelma ignored the notice served on April 2, 1993.

Lottie has instituted proceedings for forfeiture of the lease for breach of the covenants contained in paragraphs (5) and (6) of Clause 3 and Thelma has consulted you.

Advise Thelma.

QUESTION 7

Leo owns a house and a shed standing on a one-acre parcel of land. On June 1, 1990 he leased the entire premises to Mack, a motor mechanic and taxi driver, for ten years at a yearly rental of \$12,000 payable monthly. From the date of the lease, Mack has been living in the house and using the shed for his motor repair business. The last six months' rent being in arrears, Leo's bailiff, two weeks ago, entered the premises and seized and carried away the following -

From the shed: a taxi owned by one of Mack's customers, a motor cycle and a hydraulic jack both owned by Mack, and a car owned by Mack's wife, Judy.

From the house: a refrigerator, a rented television set, two king-sized beds and the kitchen sink.

The bailiff also seized a taxi, owned by Mack, which was parked on the roadway adjoining the demised premises.

You are consulted by Mack who tells you that the goods seized were impounded at Leo's premises. He also tells you that two days ago he saw Leo riding the motorcycle in the city and yesterday he entered Leo's premises and carried away the motorcycle.

Advise Mack.

QUESTION 8

Kendal owns three properties which are subject to rent restriction/control legislation. The properties are known as numbers 1, 3 and 5 High Street. No. 1 is a two-bedroom two-storey house which is unoccupied. No. 3, a one-bedroom apartment, is let to Stella at a rental of \$2,800 per month. No. 5 consists of four bedrooms, and is let to an elderly couple, Mr. and Mrs. Feelyoung who have been living there for ten years.

With regard to No. 3, it appears to Kendal from the number of different motor cars and Ninja bikes seen at the gate daily, that the apartment is being used for immoral purposes.

With regard to No. 5, Kendal has decided that he would like to live in it along with his wife and three children.

- (i) What steps should Kendal take with a view to obtaining possession of No. 5? Is he likely to succeed?

- (ii) Kendal intends, whenever Stella is not at home to enter with workmen and place Stella's possessions on the lawn and bolt up the doors to the apartment.

Advise Kendal on this course of action.

- (iii) Kendal intends to lease No. 1 and has sought your advice as to the procedure to be followed in determining the rent.

Advise him.

NORMAN MANLEY LAW SCHOOL

COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1993

LANDLORD AND TENANT
(Friday, August 13, 1993)

Instructions to Students:

- a) Time: 3 1/2 Hours;
 - b) Answer FIVE questions only;
 - c) 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.
 - d) It is unnecessary to transcribe the questions you attempt.
-

QUESTION 1

Zach, the freehold owner of Blackacre, in 1991 transferred the title to Acre Company, a limited liability company. Soon after, Zach who was one of the directors of the company offered in writing to grant Best Supplies Limited, a license to occupy Blackacre for commercial purposes.

The terms stipulated in the offer were that Best Supplies Limited's occupation of the premises would be for a period of one year renewable by agreement of both parties. Best Supplies Limited would pay a rent of \$10,000 per month and in addition \$4,600 per month to cover the cost of water and general maintenance. Acre Company would be responsible for general maintenance of the premises but if any dilapidations were caused or permitted by Best Supplies Limited, they would have to pay for the cost of repairs which would be undertaken by Acre Company.

Best Supplies Limited are very anxious to take up the offer since the rent seems very reasonable in the present economic circumstances.

Advise them as to the legal status of such an agreement.

QUESTION 2

Draft a letter of advice to your client, a prospective tenant, explaining the meaning and import of the following covenants in a lease for a dwelling house -

- (i) That the tenant shall insure the demised premises with ABC Insurers Limited in the name of the landlord.

- (ii) That the tenant shall have the first refusal to lease the demised premises for a further period of 5 years.
- (iii) That the tenant shall deposit a sum equal to six months rent against possible breakages or repairs.
- (iv) That the tenant shall not commit waste.

QUESTION 3

Larry, the owner of contiguous properties at No. 5 and 7 Main Street, in the heart of the city, rented No. 5 to Dr. Quack, to be used as a surgery. Two months later he rented the premises at No. 7 to Jonathan Rollins, the well-known criminal lawyer, as his chambers. Both tenancies contained express covenants not to assign or sublet without the consent of the landlord.

Dr. Quack who enjoyed a thriving and prestigious medical practice during the first two months of the tenancy, noticed that his practice began to decline after the letting of No. 7 to Rollins. Quack's patients complained to him that they had difficulty getting past the large number of suspicious persons that congregated outside of Rollins' chambers, that they could no longer find parking places, that crime was on the increase and that many of them would rather go to a medical practitioner with a more prestigious address. In due course Quack lost most of his patients.

Six months after he began occupying No. 7, Rollins sublet two rooms to Papa Ranks, to operate a record shop and restaurant. The resulting noise from the record shop and restaurant made it difficult for Quack to continue his practice.

Larry is of the opinion that the activities of Rollins and Papa Ranks are reducing the value of his properties. He has also been sued by Quack who claims damages for breach of the covenant for quiet enjoyment. Larry now seeks your advice.

Advise him.

QUESTION 4

Your client, the Hon. Old Family, has agreed to take a lease for 25 years of a great house built in 1830 and located in a farming area. The house which is constructed of cut-stone and timber is in a state of disrepair. The roof is about to collapse, the upper flooring is non-existent in places and some of the timber uprights are rotten. The main walls, however, are in fair condition. The draft lease, drawn by the lessor's attorney-at-law contains (inter alia) the following covenant by the lessee -

"To repair and keep in thorough repair and good condition all the premises hereby demised and the said premises being so repaired and kept to peaceably yield up to the landlord his personal representatives or assigns at the end or sooner determination of the term hereby granted."

Old Family seeks your advice as to the nature and extent of the obligations which will be imposed on him by this covenant.

Advise him.

QUESTION 5

Lee agreed to let two adjoining apartments (not subject to rent restriction/control legislation) to two brothers, Vance and Barry each on a three year lease.

The lease to Vance was oral and only provided for the term and the rent. The lease to Barry was under seal. It contained inter alia, a covenant against underletting, assigning or parting with possession of the premises without the consent of the landlord and a covenant that the apartment should be used for residential purposes only.

Barry shortly thereafter, went away on study leave for one year and asked Vance to look after the apartment and to pay his rent. He promised to reimburse Vance when he returned.

Soon after Barry left, Vance let their sister Celia occupy Barry's apartment so that he could get her to pay the rent, which she did regularly. Celia also carried on her part-time business of typing at the apartment.

Vance, who is experiencing financial difficulties, lets one room of his apartment to Harry, a nephew, and Celia asks a friend to share Vance's apartment with her for security reasons.

Lee wishes to sell the two apartments with vacant possession since he is leaving the jurisdiction.

Advise Lee.

QUESTION 6

On June 1, 1988, Layne, under separate leases let his two buildings "Astor" and "Manor" to Tommy for 50 years at an annual rent. The leases contained covenants against assigning, underletting or parting with possession without the consent of the landlord, with a proviso for re-entry and forfeiture for breach of covenant.

In 1990, Tommy, without Layne's consent converted "Astor" into two self-contained apartments, involving considerable structural alterations. He sublets the apartments on 10-year leases to Jack and Jill, without obtaining Layne's consent. On January 1, 1990, Tommy without Layne's consent assigned "Manor" to Sam.

By letter dated August 30, 1990 Layne asked Tommy to determine the tenancies of Jack and Jill but Tommy refused to do so.

You are consulted by Tommy who tells you that he last paid rent for "Astor" on June 1, 1993, and for "Manor" on June 1, 1990. He also tells you that Jack has refused to pay him any rent on the ground that he, Tommy, has no right to underlet the apartment. Further, Layne is threatening to forfeit the leases of both buildings. Tommy seeks your advice as to whether Layne can forfeit the leases and whether he, Tommy, can forfeit Jack's sub-lease.

Tommy seeks your advice.

Advise Tommy.

QUESTION 7

Martin is the landlord and Doris the tenant of a building let to her at a rent of \$1,000 a month. Doris uses the premises partly

as her residence and partly as a hairdressing salon. Jill, a typist and part-time assistant at the salon, lives in one of the rooms and pays Doris \$100 a month for rent and her meals which Doris provides.

The last two months rent being overdue, yesterday afternoon at about 4:00 o'clock Martin entered the building through the back door which was shut but not locked. On seeing Doris who was at the time in the kitchen, Martin told her that he had come to levy distress for the arrears of rent. He then seized and carried away Doris' two electric hair dryers, her automatic washing-machine and her bed. Martin returned about 20 minutes later and drove away with Jill's car which was parked on the premises.

Advise Doris and Jill.

QUESTION 8

Advise whether the following are entitled to rely on the provisions of the Rent Restriction/Control Act -

- (a) Ben, the father of five children, who occupies a three-bedroom apartment in the Public Housing Scheme at Sweets Village is threatened with eviction for being three months in arrears of rent which he considers too high. When built, the cost of the apartment was US\$20,000.
- (b) Mary has lived for seven years at the home of widow Jones occupying her own bedroom and bathroom. Her breakfast and a hot drink at night are provided by the widow on weekdays as Mary goes on weekends to her family; who live outside of the city. For this she has regularly provided enough to pay the widow's land tax - \$1,500 per year and

occasionally she contributes \$100 for buying food when the widow complains of poverty.

- (c) Ned has been employed by Hopefield Plantation to maintain their farm machinery. He rents their gate house at \$200 per month. He lives in it and is allowed to cultivate a one-acre plot in a corner of a field behind the engine room of the large estate.
-

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1993

LAW OF EVIDENCE AND FORENSIC MEDICINE
(Monday, May 17, 1993)

Instructions To Students

- (a) Time: 3 1/2 hours
- (b) Answer QUESTION 1 and FOUR others.
- (c) Answer QUESTION 1 on the separate answer sheet provided.
- (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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MONTESSANO, JAMAICA

2

FORENSIC MEDICINE

Question 1 (COMPULSORY)

(a) What is the difference between a laceration and an incised wound?

(b) With regard to the medical examination of a rape victim, name THREE test samples usually taken for forensic laboratory investigation. State briefly what is the legal significance of these tests.

(c) State THREE causes of asphyxia.

(d) In a murder trial, the defendant testified that during a struggle for a firearm it discharged accidentally, the bullet hitting the deceased in the left chest. In cross-examination by the prosecution, the defendant stated that the weapon at the time it was discharged, was about 18 inches from the deceased. The doctor in his evidence stated that an entrance gunshot wound was noted on the left anterior chest of the deceased and this wound was surrounded by a circular patterned abrasion. Gunpowder residue was also noted in the subcutaneous tissue of the wound.

- (i) In your opinion, what caused the circular patterned abrasion?
 - (ii) What was the range of fire?
 - (iii) Give a brief opinion as to whether the doctor's evidence correlates with the defendant's evidence.
-

LAW OF EVIDENCE

Question 2

Consider the burden and standard of proof on every issue arising in each of the following cases -

(a) Jane, a passenger in a car driven by Roy, her father, is injured when the car collides with another vehicle driven by Tom. Jane brings an action against Tom claiming damages in negligence. Tom denies liability, alleging that the collision was caused solely by Roy's negligent driving and that Jane's injuries resulted from her failure to wear a seat-belt which is a statutory requirement in your state.

(b) Robin is charged with assaulting Sam. Robin claims to have been acting in self-defence or alternatively that it was an accident.

(c) A statute relating to offensive weapons provides as follows -

" Any person who without lawful authority or reasonable excuse has with him in any public place any offensive weapon as hereinbefore defined shall be guilty of an offence".

Peter was arrested at a secondary school and charged with using abusive and insulting language to a teacher of the school. On being searched a large flick knife was found on him. He was also charged under the abovementioned statute with having in his possession an offensive weapon.

Question 3

Jim is charged with raping Pat, who is 16 years of age. The allegation came to light when Pat was questioned by her father when she returned home several hours late on the evening of the alleged rape. Jim told the police that Pat consented and that she was known to be "easy", having already had sexual relationships with several of his friends.

Jim's wife, Diana, has told the police that he was infatuated with Pat and that on the evening in question Jim had returned home saying that he had got into a "bit of trouble" and that the police might be calling at the home. However, Diana has indicated that she is not willing to give testimony to this effect.

Advise the prosecution -

- (i) on the admissibility of Pat's complaint to her father;
- (ii) whether Jim's attorney-at-law will be able to cross-examine Pat on the alleged sexual relationship with Jim's friends;
- (iii) on the admissibility of Diana's statement to the police and whether she is a compellable witness for the prosecution.

Question 4

Paul is charged with indecently assaulting Jane, aged 12. The prosecution's case is that Paul lured Jane into his car to see pictures of children's carnivals which he had posted all over the inside of his car. He then indecently assaulted her. Jane gave a detailed description of her assailant and of the inside and outside of the car, including the fact that the inside of the car was covered with pictures of children's carnivals.

The police are aware that Paul has been convicted in the past for such types of offences. He was arrested shortly after the assault on Jane was reported. Paul's car was the same make and colour as Jane had described and the description she had given on the car's interior corresponded in every detail. Jane had no hesitation in identifying Paul at an identification parade as the man who indecently assaulted her. Paul claims that he has never seen or met Jane and has consistently asserted his innocence. He has also indicated that he does not accept that Jane has been indecently assaulted by anyone. The medical evidence indicates that Jane has had some sexual activity but cannot confirm that it is recent or its precise nature.

Advise the prosecution on -

- (i) The admissibility of evidence of the previous offences;
- (ii) the issue of corroboration.

Question 5

You are representing Jack on a charge of larceny. The prosecution's case is that Jack stole an expensive lady's evening dress and a pair of earrings, valued at \$500 and \$1000 respectively, from a parked car in one of the busy streets in your capital city.

Jack, who is aged 30 and has several previous convictions for robbery and burglary, will plead not guilty. His defence will be mistaken identity. The chief prosecution witnesses, who are police officers, will testify that they witnessed the commission of the offence as part of a surveillance operation conducted from an unmarked police vehicle and from private office premises in the immediate locality.

After his arrest, Jack, having been cautioned, asked to speak to his attorney-at-law, but this was refused by the officer in charge at the police station, on the ground that access to him might prejudice their inquiries regarding the earrings which had certain identifying marks on them. After five hours in custody, during which time he was interviewed twice, sometimes declining to answer questions, Jack made a statement admitting his guilt. He was then charged, cautioned and allowed to consult with his attorney-at-law.

Advise Jack as to -

- (i) the law (and any discretion) relating to the admissibility of his confession statement;
 - (ii) the extent to which you will be allowed to cross-examine the chief prosecution witnesses about the locations from which they claim to have witnessed the commission of the offences.
-

Question 6

Bill is charged with the rape and murder of Paula, aged 15. The prosecution case is that Bill met Paula (whom he knew) as she walked along an unlit street in a residential area in your capital city at about 8.00 o'clock in the night. Bill there and then attacked and raped her at knife-point, and then stabbed her fatally. Bill's defence is that he has been wrongly identified. Consider the admissibility of the following pieces of evidence -

- (i) The evidence of Paula's mother, Mary that from her house nearby, she heard Paula's voice screaming "Bill, no".

 - (ii) Paula's screams brought her sister, Jane, running from the house. Jane, a nurse, comforted Paula and told her repeatedly that she would be alright. Despite such reassuring words Paula said to Jane, "It was Bill, he raped me. Jane, I'm not sure I'm going to make it. Tell them to bury me next to Grandad".

 - (iii) When Bill was arrested, Constable Dick interviewed him and without cautioning him, put to him that he had raped and murdered Paula. Bill remained silent.
-

Question 7

(a) Describe and discuss 'the without prejudice rule'. What is its value in the process of civil litigation?

(b) While acting as the attorney-at-law for one party to litigation you receive a letter written by the attorney-at-law for the other party to a third party which was obviously not intended for you. You expect to use this letter in support of your client's case at the trial of the action. Your opponent requests a return of the letter and has threatened to prevent you making use of the letter.

If you attempt to do so, can he prevent you?

Question 8

Henry, James and Albert are jointly charged with burglary of a merchandise store. Each has a number of previous convictions for burglary. The only evidence which connects them to the crime is that of Sam who admits to driving the get-away car and who has decided to give evidence for the prosecution.

Advise on each of the following developments at the trial -

(i) Henry gives no evidence, but his attorney-at-law puts to Sam in cross-examination that he has previous convictions for dishonesty which Sam admits to be true.

What use, if any, can the prosecution make of Henry's previous convictions?

(ii) James, in the course of giving sworn evidence, asserts that Sam is a liar.

Can the prosecution cross-examine James on his previous conviction?

(iii) Albert states in the course of his sworn evidence that Henry, James and Sam invited him to help with the burglary but he refused and did not take part.

Can Albert be cross-examined on his previous convictions and, if so, by whom?
