

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1994

CIVIL PROCEDURE AND PRACTICE I
(Friday, May 27, 1994)

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

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

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CIVIL 1994

PART A

QUESTION 1

You have been consulted by Mr. Bernard Longfoot from whom you have taken the statement hereunder.

Draft a statement of claim to be filed on Mr. Longfoot's behalf.

Bernard Longfoot states -

"My name is Bernard Longfoot and I reside at No. 4 White Street, South City. I am a civil engineer.

On Monday, January 10, 1994, I attended a meeting of the Association of Engineers held at the Palm's Hotel, 50 Water Street, Plain View.

At approximately 10.30 p.m. the meeting was adjourned and I began walking towards my car which was parked on Water Street about 200 metres from the entrance to the hotel. As I was about to enter my car a police vehicle suddenly pulled up alongside and two men dressed in police uniform alighted from the vehicle. One of the men shouted, "Stop! Hold it! Police!"

The men enquired who I was. I gave them my name and told them that I had just left a meeting at the Palm's Hotel. They then told me that they were investigating a case of robbery which had taken place in the vicinity approximately an hour before and that I fitted the description they had of the person who committed the act.

I asserted my innocence and further told them that I had just left a meeting of engineers which was held at the Palm's Hotel.

The police officers identified themselves as Sergeant Winston Firefly and Constable Robin Hood, both stationed at Margate Police Station. Sergeant Firefly ordered me out of the car. Before I could respond, Constable Hood opened the door, held on to my right arm and so forcefully dragged me from the car that my right arm and shoulder pained and I struck my head on a metal portion of the right front door.

The police officers took me to the Margate Police Station where Sergeant Firefly told me I was being detained as a suspect in a case of robbery. I told him I knew nothing of any robbery and that he should check my story. He replied that the judge would do that.

I was placed in a jail cell at the station where I remained until 11.00 a.m. the next day when Constable Hood told me there was a mistake, whereupon I was released without being charged with any offence.

As a result of my injuries, I had to seek medical attention from Dr. Doogood on January 11 and 18, 1994. Each visit cost \$500 and I purchased prescribed medication at a cost of \$800. Because of the injuries I was unable to work for one week after the incident. I earn \$2500 per week."

QUESTION 2

Complete Appliance Co. Ltd. situated at 15 Main Street, Pentonville, issued a writ of summons against Prudence Hope, a housewife, of 10 Sunshine Road, Pentonville (Suit No. C.L. 1994/C010, Complete Appliance Co. Ltd. v Prudence Hope). The Plaintiff claimed the sum of \$4000 being the price of goods sold and delivered and costs.

On January 10, 1994, the writ was served personally on the defendant. On February 1, 1994, the Plaintiff's attorney-at-law entered judgment in default of appearance/notice of intention to defend against the defendant for \$4000.

On February 4, 1994, you were consulted by the defendant and instructed as follows -

"On December 15, 1993, I ordered a "New World" 24-inch colour television set from the plaintiff for the price of \$4000 to be paid on December 30, 1993. The set was delivered on December 15, 1993, but when I opened the box I observed that it was a "Laser" 24-inch colour television. I informed the delivery man that that was not the set I ordered and he should take it back. He refused to take back the television set and said that I should speak to the store manager, Mr. Fudge. I immediately telephoned Mr. Fudge and told him of the error and that he should take the set from my home. He told me that the "Laser" was a better set, but I insisted that I did not want it. To date, the set is still in my house.

I was served with the writ of summons in this matter and was later served with the judgment. I am very unhappy about the whole situation."

Draft the necessary document(s) for any proceedings you may initiate on your client's behalf.

QUESTION 3

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

"James Transport Co. Ltd. is the owner of a bus registration No. PP 410. The company operates from 80 Hampton Street, John's Town, and carries on the business of transporting goods and passengers. Glen Fordman is employed to the company as a bus driver.

On February 12, 1994, at about 5.00 p.m., Fordman was driving the company's bus in an easterly direction along Long Road, St. James, when the plaintiff suddenly ran across Long Road into the path of the bus which collided with him.

Mr. Fordman is not aware of any pedestrian crossing in the vicinity of the collision and is of the view that the accident was caused solely by the negligence of the plaintiff. He is adamant that he did all he could have done to avoid the collision."

Draft an appropriate Defence based on your instructions.

STATEMENT OF CLAIM

(Insert usual heading)

BETWEEN	LEROY SHORT	PLAINTIFF
AND	GLEN FORDMAN	FIRST DEFENDANT
AND	JAMES TRANSPORT CO. LTD.	SECOND DEFENDANT

1. The Plaintiff is and was at all material times a mason residing at 30 Long Road, St. James.
2. The First named Defendant was at all material times the driver of a passenger bus registration No. PP 410 and the servant or agent of the Second named Defendant.
3. The Second named Defendant is and was at all material times a company incorporated under the Companies Act with registered office at 80 Hampton Street, John's Town, and the owner of the said bus.
4. On or about the 12th day of January, 1994, at approximately 5.00 p.m., the Plaintiff was lawfully walking across Long Road, St. James, using the pedestrian crossing on the said road when the First named Defendant so negligently drove or managed the said bus along the said road causing it to collide with the Plaintiff.

Particulars of Negligence

- (a) Failing to keep any or any proper look-out.
 - (b) Failing to observe the Plaintiff on the said pedestrian crossing.
 - (c) Failing to stop, swerve or in any other way so manage the said bus as to avoid the said collision.
 - (d) Driving at a speed which was excessive in the circumstances.
5. By reason of the matters aforesaid, the Plaintiff suffered injuries, loss and damage.

Particulars of Injuries

The Plaintiff, who is 25 years old, suffered -

- (a) Abrasions to the face
- (b) Fracture of the right femur
- (c) Permanent partial disability of 15% in right leg.

Particulars of Special Damage

(i)	Hospital Expenses	\$10,500
(ii)	Cost of Surgery	\$25,000
(iii)	Cost of Transportation	\$ 1,000
(iv)	Cost of 1 Pair Crutches	\$ 500
(v)	Loss of Earnings for 10 weeks	
	at \$1000 per week	<u>\$10,000</u>
		<u>\$47,000</u>

AND THE PLAINTIFF CLAIMS -

- (1) Damages
- (2) Costs
- (3) Interest at such rate and for such time as the Honourable Court deems just.
- (4) Such further or other relief as may be just.

Dated the 16th day of May, 1994.

Settled.

Plaintiff's Attorney-at-Law

Filed by Jones and Company of 25 Bargain Street, John's Town, Attorneys-at-Law for the Plaintiff, whose address for serve is that of the said Attorneys-at-Law.

QUESTION 4

Thomas Greedy is the majority shareholder and managing director of ABC Co. Ltd. Pablo and Pedro Jordon are the two other directors of the company.

In early 1993 the business of the company was expanding at a rapid rate. To further enhance that growth, Thomas Greedy, unknown to the other directors, put into the company \$5,000,000 of his own money.

In January 1994, Mr. Greedy, by a specially endorsed writ, instituted proceedings against the company to recover the \$5,000,000 which he claims was a loan to the company. In due course Mr. Greedy applied for summary judgment.

You are consulted by the Jordons who are acting on behalf of the company. They instruct you to oppose Mr. Greedy's application and to seek leave to defend the action. They inform you that Mr. Greedy made a gift of \$5,000,000 to the company and that the amount was not a loan as he was now contending.

Summarise the submissions which you would make to the court in support of your clients' contention, stating the principles which should guide the court when considering Mr. Greedy's application.

QUESTION 5

John Smith, a British citizen, visited your country on two weeks vacation. During his stay, he rented a car registration number REO 1897 from Reliance Car Rentals Ltd.

On March 30, 1993, two days prior to his return to England, Smith was driving the car along Nonesuch Road, Eden Gardens, when owing to his negligence, the car collided with Petra Boyce who thereby sustained severe personal injuries.

You are consulted by Boyce for the purpose of instituting civil proceedings against Smith. He tells you that Smith has since returned to England and that his last known address in England is 31 Woodcote Road, Sutton, Surrey.

Describe the steps which must be taken by you so that your client's action can commence and draft the document(s) required to institute the first step.

PART B

FACTS RELATING TO QUESTIONS 6, 7 AND 8

Mr. Adam Foule, the proprietor of Prosper & Co., told his 16 year old son Bigge R. Foule that he should take no notice of rumours that his father was a racketeer, smuggler, drug dealer and gambler and that to avoid such derogatory remarks, the son should leave school and join the business as Sales Manager at a salary of \$60,000 per month. Thus persuaded, young Bigge quit school, accepted the gift of a Lexus sports car and driver's licence for which he had taken no test, and entered his father's business.

Bigge excelled at the game of Poker and on the night of March 31, 1993, he hit the jackpot when he won from Mr. Silley N. Woolley, a farm of 200 acres with a dwelling house thereon.

Next day the entire Foule clan, including 50 security officers of the company, went to the Woolley Farm to take possession of the property. Mr. Foule Snr. announced on arrival that he always hated the pretentious structure in which Mr. Woolley lived and would bulldoze it that day.

Mr. Woolley's wife, Martha and daughter Winsome, had noticed the irrational behaviour of Mr. Woolley all that morning, but were unaware of the disaster with which they were now confronted.

While Mrs. Woolley and her daughter, who had just turned 16 years, sought tearfully some explanation from Mr. Foule for their presence on the farm, Bigge Foule ordered the security personnel to remove all the Woolley's belongings from the house. As the men raced into the house, Mrs. Woolley tried to stop them. She was pushed violently to the ground and ordered to stay quiet.

Mr. Foule Snr. directed the bulldozer drivers to commence the demolition of the house.

Just then Mr. Foule Snr. directed his attention to the distraught, screaming, Winsome Woolley and told his son to go and quiet the girl.

As suddenly as the attack on the premises began, it ceased. Mr. Foule Snr. told his men to stop all action while he talked to the Woolleys. He told Mr. Woolley that he could remain on the property as Manager and no one would know the change of ownership, but he, Mr. Foule, quite liked the young girl and

wanted her for his son. The girl would have to come to live with Mr. Foule and his son Bigge and Bigge would even marry her if that would make Mr. Woolley feel better. Mr. Woolley asked for a chance to speak with his wife and daughter. Mr. Foule replied "They are here, speak to them now". Surrounded by Mr. Foule Snr., his son Bigge and all their armed security men, Mr. Woolley asked his wife if she had heard what Mr. Foule had said. She replied "Yes". Mr. Woolley turned to his daughter and asked the same question. She answered "Yes". Whereupon Mr. Foule interjected "It is all settled then".

While Mr. Foule outlined to Mr. Woolley his plans for the former Woolley Farm, his agents went to the Government Minister who had authority to issue a Marriage Licence and obtained a Licence for the marriage of Bigge R. Foule to Miss Winsome Woolley. These agents returned that same afternoon with the Rev. Aul Freeman, a Marriage Officer, and he performed the ceremony of marriage between Bigge R. Foule and Winsome Woolley in the presence of Mr. and Mrs. Woolley and Mr. Foule's employees, on April 1, 1993.

The newly weds went to the home of Mr. Foule Snr. where he and his son Bigge had lived with a retinue of servants. The young bride was told that she should never leave the house without escort and she was free to make one telephone call each day to her mother. They did not want her meddling in the Foule's business and therefore she should not contact anyone else.

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When Mrs. Winsome Foule discovered that she was pregnant she told her husband, who was seldom at home in the days and for the greater part of each night. He said he had made arrangements for her care with his Doctor at the Foule's Best Care Medical Centre and she would be escorted there.

Mrs. Foule gave birth to triplets, all girls, on November 15, 1993. Her husband was away on business at this time and when he returned on January 1, 1994, he sent a message to his wife that he was not accustomed to seeing babies around and she should prepare to return to her parents. Later that same day, Mr. Foule's helpers packed up all Mrs. Foule's personal effects and took Mrs. Foule and the children to the Woolley Farm. Mr. Bigge R. Foule has never seen his daughters.

Mrs. Foule, who has been lonely and depressed from the moment her home was invaded on April 1, 1993, has sworn that she will never again return to the Foule's home alive and that she will never live or cohabit with Bigge R. Foule again. She has sought your advice as to whether she can get rid of the Foules out of her life forever as under no condition does she wish to be Mrs. Foule.

You advise legal proceedings.

QUESTION 6

Draft the most appropriate pleadings to affect her marital status (omit Notice to Appear).

Am 10/15 - E. Good M!

QUESTION 7

Draft the affidavit(s) to support an application to the Supreme/High Court in separate proceedings for Custody and Maintenance of the children and Maintenance of Mrs. Foule.

QUESTION 8

Since you have been consulted, Mrs. Foule has learnt that Mr. Bigge R. Foule has been appointed Overseas Sales Manager for Prosper and Co. Ltd. and that he commutes between your country and the U.S.A. Prosper and Co. has established agencies in Las Vegas, Atlantic City and Chicago and it is unknown to Mrs. Foule just where overseas Mr. Bigge R. Foule will be at any one time.

As you have been unable to find Mr. Bigge R. Foule to serve him with your court process, draft the affidavit(s) to support an application to the court to enable you to effect service in respect of the proceedings you advise in Question 6.
