

**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE**

**FIRST YEAR EXAMINATION, 1996**

NORMAN MANLEY LAW SCHOOL  
COUNCIL OF LEGAL EDUCATION  
MONA, KINGSTON, J. M. C.A.

**CIVIL PROCEDURE AND PRACTICE I**

**Friday, May 31, 1996**

**Instructions to Students:**

- (a) Time: 3½ 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 not necessary to transcribe the question you attempt.

---

**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED**

**PART A**

**QUESTION 1**

Gerry Jiggs is a popular performing artiste and entertainer residing at 6 Mount Shephard Road, Townsville.

Thomas Byrne who resides at 10 Eastdown, Freetown, is a promoter of concerts featuring popular music.

On Monday, March 25, 1996, Jiggs and Byrne entered into a written contract. By the terms of that contract, Jiggs agreed for a fee of \$20,000, to be the sole performer at the concert to be staged by Byrne at the Townsville town hall on the evening of Saturday, April 13, 1996, commencing at 7:00 p.m. and ending at 10:00 p.m.

As a consequence of the agreement, Byrne advertised the concert in the local media and patrons responded by purchasing 1000 tickets at the cost of \$350 each.

Byrne rented the Townsville town hall for the evening of the concert at a cost of \$15,000 and he also engaged the services of five ushers who would assist with the seating of the patrons. Each usher would be paid \$1,000.

On the evening of the concert, all the patrons and ushers were in attendance at the town hall.

They anticipated an enjoyable evening and waited with bated breath for the concert to commence. This enjoyment was not to be realized as Jiggs failed to honour his obligation under the contract and never showed up for the performance.

Byrne was obliged to refund \$350,000 that he had collected from the patrons. In addition, he had to pay the rental for the hall and each usher for the evening.

Byrne has instructed you to institute civil proceeding on his behalf against Jiggs to recover damages.

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

---

## QUESTION 2

Electrical Supplies Company Limited, which is located at 50 Frederick Street, Bayside, through its attorney-at-law, issued against Trapper Joe of 28 Cayman Avenue, Cheapside, a Writ of Summons (C.L. 1996/E100 Electrical Supplies Ltd. v. Trapper Joe) in which the plaintiff claims to recover from the defendant the sum of \$32,000 for goods sold and delivered and costs \$7,000.

The Writ of Summons was served personally on the defendant on Monday, February 12, 1996, but he neither entered an appearance/acknowledged service nor filed a defence/gave notice of intention to defend within the time limited under the Rules of the Supreme Court.

On March 4, 1996, the plaintiff's attorney-at-law obtained judgment in default of appearance/default of acknowledgment of service against the defendant for the amount claimed and costs.

On March 15, 1996, the defendant consulted you. He brought the copy of the Writ of Summons, a copy of the default judgment served on him and instructed you as follows -

"The claim against me arose from the fact that through Dick Jumping, the Sales Manager of Electrical Supplies Company Limited, I ordered and the plaintiff's company agreed to supply and deliver at my address a Panasonic Stereogram set valued \$32,000. In breach of that agreement, the plaintiff delivered a Soni Stereogram set. On the date of the delivery of this latter set, I immediately informed the plaintiff, through Mr. Jumping in a telephone conversation that his company had supplied a Soni Stereogram set and that the agreement was for the company to supply and deliver a Panasonic stereogram set. I further informed him that I was not accepting nor paying for the Soni stereogram set and that he should come and take it from my home. To date the plaintiff has not complied with that request.

About a month after my conversation with Mr. Jumping, I was served with a Writ of Summons in the matter. I was unable to contact an attorney-at-law and I did not know what to do. I was later served with a copy of the default judgment in question and I am dissatisfied with the entire situation as justice was not done. I would like the court to try my case."

Draft the necessary document (s) for any proceedings you may initiate on your client's behalf in an effort to satisfy his desire.

---

### **QUESTION 3**

Harry Box is the owner and operator of Shoreline Hotel which is famous for its excellent sea food dishes and banquet service.

On November 12, 1995, Box entered into a written agreement with General Foods Limited whereby the latter agreed, inter alia, to supply Box with 1000 lbs. of fresh king fish at a price of \$20 per lb. It was clear to General Foods Limited that the fish was needed for a banquet to be held at the Shoreline Hotel on December 22, 1995.

By a letter dated November 12, 1995, Carl Simon, the managing director of General Foods Limited wrote to Wayne Briggs, the sales manager of Cool Place Limited, a refrigeration company, informing him of the contract which General Foods Limited had made with Box, and at the same time contracting with Cool Place Limited to store the 1000 lbs. of king fish, properly refrigerated, until delivery to Box. It was agreed that the cost of this storage would be \$50 per day.

As a result of defects in the storage facilities at Cool Place Limited the fish in question began to "spoil" before General Foods Limited delivered them to the hotel for the banquet.

As no alternative source of fresh king fish was readily available the banquet had to be cancelled and this caused loss of profit to the hotel

Consequently, Box instructed his attorneys-at-law, Page and Page of 5 Court Lane, to commence proceedings against General Foods Limited to recover damages for breach of contract against that company.

Accordingly, on January 12, 1996, Page and Page caused a Writ of Summons to be issued and served together with a Statement of Claim on General Foods Limited. To this Writ of Summons, General Foods Limited, through it's attorneys-at-law, Prosper and Gibbs of 6 Chancery Place, entered an appearance/served notice of intention to defend on January 19, 1996, and thereafter in February 1996, filed its defence in which it is blaming Cool Place Limited for the spoilage of the fish in question.

General Foods Limited now wishes to institute third party proceedings against Cool Place Limited.

Draft the document (s) necessary as a first step to commence that proceedings.

---

**QUESTION 4**

The Statement of Claim set out below was served on you as the attorney-at law on the records for the defendant who instructed you that the accident was solely due or was contributed to, by the negligence of the plaintiff who was crossing the Pedro Hill main road without first ensuring that it was safe to do so. He said that the plaintiff ran suddenly into the road without first looking to his right, for if the plaintiff had looked, he would have seen the approaching truck and would have realised that it was unsafe to cross at that time. The defendant also instructed you that as soon as he saw the plaintiff he sounded the horn of the truck, applied the brakes and swerved away from the plaintiff in an effort to avoid the accident. All his efforts were of no avail as the plaintiff continued coming into the path of the truck.

Draft an appropriate defence based on your instructions.

**STATEMENT OF CLAIM**

(Insert usual heading)

<b>BETWEEN</b>	<b>SIMPLE SIMON</b>	<b>PLAINTIFF</b>
<b>AND</b>	<b>STEVE BUNBLE</b>	<b>DEFENDANT</b>

1. The Plaintiff is and was at all material times a painter residing at 10 Mango Path, Pentonville.

2. The Defendant is and was at all material times the owner and driver of the Bedford truck licensed 025AP.
3. On Friday December 15, 1995, the Plaintiff was lawfully walking along the Pedro Hill main road in the parish of Saint Michaels, when the Defendant so negligently drove, controlled or operated his said Bedford motor truck licenced 025AP on the said main road that the said truck collided with the Plaintiff.

#### Particulars of Negligence

- (i) Driving at an excessive speed.
  - (ii) Failing to keep proper lookout.
  - (iii) Driving too close to the soft shoulder of the road.
  - (iv) Failing to brake, swerve or manoeuvre the said motor truck so as to avoid the collision.
  - (v) Failing to have any or sufficient regard for other road users.
4. As a result of the aforementioned collision, the Plaintiff suffered injury, loss and incurred expense.

#### PARTICULARS OF INJURIES

- (i) Two-inch laceration on right side of head.
- (ii) Fracture of the right femur and ulna.
- (iii) Three-inch laceration on right side of the body.
- (iv) Severe pains all over body.

**PARTICULARS OF SPECIAL DAMAGES**

(i)	Transportation by taxi to and from hospital	\$1,500
(ii)	Medical Expenses	\$12,500
(iii)	Clothing damaged	\$ 2,000
(iv)	Loss of earnings for 18 weeks at \$900 per week	<u>\$162,000</u>
	<b>TOTAL</b>	<b><u>\$178,000</u></b>

**AND THE PLAINTIFF CLAIMS -**

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

Dated the 28th day of March 1995.

Settled:

Per \_\_\_\_\_

Plaintiff's attorney-at-law

Filed by F. Neil O'Brian of 75 Maraval Street, Georgetown, Attorney-at-law,  
for and on behalf of the plaintiff herein.

\_\_\_\_\_

**QUESTION 5**

On Thursday May 30, 1996, Mary Stewart came to your chambers in a frightened and an agitated state. She had bruises over her body. She told you that she had been beaten earlier that morning by Thomas James, from whom she had recently separated after they had been living together in a common law union for the past two years. The incident had taken place at her home and Thomas had threatened to return to further terrorize her.

Mary informed you that she broke off the relationship because Thomas has a violent temper and he had physically abused her throughout their relationship.

Since the separation, she has often been accosted in the streets by Thomas, who on those occasions invariably threatened to harm her if she did not return to live with him.

Mary further informed you that she feared that unless Thomas was restrained, he would return to her house that night and inflict further violence upon her.

- (a) Outline the steps in civil procedure which may be taken on the day of your instruction to prevent Thomas James from further molesting Mary Stewart.
- (b) Describe the contents (excluding the formal parts) of the documents to be used in support of the steps taken in (a) above.

**PART B****Facts Relating to Questions 6, 7, and 8.**

Miss Rumbasoca Cubana fled from Cuba and came to your country as a refugee. She is aged 21 years and a university graduate. Her parents who were people of substance, held high ranking positions in the politburo. She is at odds with her parents because of her outspoken criticism of the communist regime there and its abuse of human rights. Friends of hers have been incarcerated in jails for protracted periods without trial. Because she feared for her own safety, she left her country.

Although on arrival she was detained and kept in a remand centre, the immigration authorities have allowed her to stay with Mr. and Mrs. James Freeman, a local family sympathetic to her cause. After some time she is advised by the authorities that she is not a genuine refugee and she is given notice that she will be deported as soon as arrangements can be made and within two weeks at the most.

Mr. and Mrs. Freeman are most distressed and even more so Miss Cubana. Mr. Freeman has a bachelor friend Rufus Ram who did not appear to be engaged in any productive activity but who was actually quite wealthy. Mr. Freeman suggests to his friend that he should marry the girl to prevent her being deported.

Miss Cubana met Rufus and did not at all approve of him. She told him that the object of the marriage was to enable her to obtain a passport of the country so that she could migrate to Canada. Both parties agreed that the marriage should be in name only.

On April 1, 1996, the ceremony took place at a Civil Registrar's office. The Freemans were witnesses and present also was the Registrar's secretary and the messenger. Although the parties went off to a hotel where they spent the night, the marriage was never consummated.

Mrs. Ram does obtain a passport and a visa as a landed immigrant to Canada. Thereafter, wishing to be rid of Rufus, she consults you.

**QUESTION 6**

Draft an opinion as to Mrs Ram's rights.

---

**QUESTION 7**

If you advise filing a petition/application, draft the necessary documents.

(No notice to appear or similar process need be submitted)

---

**QUESTION 8**

Assume on the facts that Mr. Ram has left the jurisdiction has gone off to the Cayman Islands but his whereabouts in those islands are not known. Prepare an affidavit to support an application for service other than personal.

---