

**COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL  
LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATION, 1997**

**CIVIL PROCEDURE AND PRACTICE 1**

**TUESDAY, MAY 27, 1997**

**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.

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

**PART A**

**QUESTION 1**

Alexander Cassonova is a painter residing at 50 Norbury Close, Southport in your country.

At approximately 2:00 a.m. on Sunday, February 16, 1997, Mr. Cassonova was walking on the Southport main road. He was returning from a visit to his mother and he was carrying in his hand a travelling bag in which he had a clock which was a gift to him from his mother .

As Mr. Cassonova was walking along, a marked police motor car pulled up alongside him. A police officer who identified himself as Police Constable John Vigilante of the Roadside Police Station, alighted from the car. He held onto Mr. Cassonova, at the same time saying to him, "Boy! what you have in that bag?"

Before Mr. Cassonova could reply, Constable Vigilante grabbed the bag from him, opened it, and saw the clock.

He then asked Mr. Cassonova, "Who you steal this clock from?"

Mr. Cassonova replied that the clock was given to him by his mother.

Constable Vigilante then pushed Mr. Cassonova into the police car. During this incident Mr. Cassonova hit his right shoulder and the right side of his

head on the metal section of the door of the police car. Constable Vigilante then told Mr. Cassonova that he was under arrest.

He took Mr. Cassonova to the Roadside Police Station where he placed him in a jail cell where Mr. Cassonova remained from 2:30 a.m. to 10:00 a.m. that same day when Constable Vigilante released him without laying any charge against him.

After his release Mr. Cassonova sought medical attention from Dr. Doogood as his right shoulder and the right side of his head were bruised, swollen and pained him severely. He paid \$1,000 to Dr. Doogood for medical attention and he also bought prescribed medication for \$2,500.

As a result of the injuries received, Mr. Cassonova was unable to work for two weeks. At the time of the incident he was engaged on a project where he was earning \$10,000 weekly.

The firm of attorneys-at-law of which you are an associate has filed a generally indorsed Writ of Summons on behalf of Mr. Alexander Cassonova in which he is claiming damages for Assault and Battery and False Imprisonment arising from the incident.

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

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**QUESTION 2**

By a Writ of Summons issued on March 26, 1997, Lionel Carr, a building contractor of No. 21 High Street, Boys Town, claimed the sum of \$120,000 being money due for work he did on the residence of Harry Chance which is situated at No. 11 Princess Street, Old Town.

On April 2, 1997, the Writ of Summons together with a Statement of Claim was served personally on Harry Chance but he neither entered an appearance/ acknowledged service nor filed/delivered a Defence.

Consequently, on April 30, 1997, Lionel Carr obtained a default judgment.

Chance now consults you and tells you that the work done by Carr consisted of an addition to his (Chance's) house and that two weeks after the completion of that work, the roof to the addition collapsed. Chance was then forced to employ another contractor to replace the roof at a cost of \$150,000. He also tells you that shortly after the Writ of Summons with the Statement of Claim was served on him, he became ill, was confined to bed and was unable to enter an appearance/acknowledge service and to contact an attorney-at-law to act on his behalf.

Draft the documents in respect of any application that you could make on Harry Chance's behalf in order to have his case tried.

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**QUESTION 3**

The Statement of Claim set out below was served on you as the attorney-at-law on the records for the defendant. You are required to draft an appropriate Defence to be filed and served on behalf of the defendant who instructed you as follows -

"My name is Royland Khani. I reside at 30 Lower Mark Way, Kintyre. I own and operate a dry goods store at 25 Donmair Street, Kintyre.

On Monday, January 6, 1997, Joe Swift attended at my store and he and I made a written agreement. By the terms of that agreement, I was to supply him with 10,000 metres of green khaki cloth which he needed to make military uniforms. In return Joe Swift agreed to pay me \$150,000 for the cloth on delivery.

I delivered the 10,000 metres of green khaki cloth on Monday, January 20, 1997 and I was paid \$150,000.

The khaki cloth that I supplied met the specifications agreed to in the contract and was not inferior in quality.

I have fulfilled the terms of the contract. I am not in breach of contract. I supplied what was ordered. I owe the plaintiff no money.

Kindly defend this action on my behalf.

Signed:

Royland Khani."

**STATEMENT OF CLAIM**  
**(Insert usual heading)**

**BETWEEN**                      **JOE SWIFT**                      **PLAINTIFF**

**AND**                              **ROYLAND KHANI**                      **DEFENDANT**

1. The Plaintiff is and was at all material times a merchant tailor residing at 90 Orchid Path, Padmore and carrying on business at 40 King Street, Kensington.
2. The Defendant is a dry goods merchant with business establishment at 75 Queen Street and residing at 30 Lower Mark Way, Kintyre.
3. By a written agreement made between the Plaintiff and the Defendant, on Monday, January 6, 1997, the Defendant agreed to supply and deliver and the Plaintiff agreed to accept delivery of 10,000 metres of green khaki cloth of a specified quality suitable for the making of uniforms for the military.
4. In consideration for the said khaki cloth the Plaintiff agreed to pay to the Defendant \$150,000 on delivery thereof.
5. On Monday, January 20, 1997, in pursuance of the aforesaid agreement the Defendant delivered to the Plaintiff 10,000 metres of green khaki cloth and the Plaintiff duly paid the sum of \$150,000 in return.

6. It was an implied term of the aforementioned agreement that the khaki cloth supplied would be in accordance with the agreed specifications and be suitable for making uniforms for the military.
7. In breach of the said agreement the Defendant supplied khaki cloth of an inferior quality to that specified in the contract to which the Plaintiff will refer at the trial for its terms and effects.
8. By reason of the foregoing matters the Plaintiff was unable to supply the uniforms to the military and has suffered loss and damage.

**PARTICULARS OF SPECIAL DAMAGES**

(i)	Cost Price of 10,000 metres khaki cloth	\$150,000
(ii)	Loss of Profit on 200 uniforms (\$200 each)	<u>\$ 40,000</u>
	<b>TOTAL</b>	<b><u>\$190,000</u></b>

**AND THE PLAINTIFF CLAIMS -**

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

Dated the 27th day of February, 1997.

Settled:

Per : Scrooge

PLAINTIFF'S ATTORNEY-AT-LAW

FILED by Marley, Scrooge & Co. of 60 Chancery Lane, Georgetown, Attorneys-at-Law for and behalf of the Plaintiff herein.

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**QUESTION 4**

The Plaintiff is an employee of Central Manufacturing Company Limited.

On October 15, 1995, he suffered severe injuries to his face, chest and arms during the course of his employment when a boiler exploded in the company's factory.



In January 1997, the Plaintiff issued against his employers a Writ of Summons indorsed as follows -

"The Plaintiff claims against the Defendant to recover general damages for personal injuries and \$30,500 special damages and costs."

The Writ of Summons was duly served on the Defendant who entered an unconditional appearance/acknowledged service and took no step within fourteen days to challenge the validity of the writ.

The Plaintiff's attorneys-at-law then filed and delivered to the Defendant, within the time allowed for him to do so, a Statement of Claim in which he alleged that the Plaintiff's injuries were caused by the Defendant's negligence and or breach of statutory duty.

The Defendant then took out a summons to strike out the Statement of Claim alleging that it had introduced a cause of action which was not disclosed in the indorsement on the writ.

You have been instructed to appear on behalf of the Plaintiff to oppose the Defendant's application.

**Prepare a draft of the submission that you would make on the Plaintiff's behalf in support of the validity of the Statement of Claim.**

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**QUESTION 5**

Thelma, an 84 year old widow, is the tenant of an apartment owned by Simon.

Six months ago, Simon informed Thelma that he would soon require the apartment for his son who, accompanied by his girlfriend, was returning from studies abroad.

Thelma told Simon that she had no intention of removing, whereupon Simon told her that he would throw her out if he had to. Two weeks later Simon disconnected the electricity and water supply to the apartment. He told Thelma that if she did not vacate the apartment within two weeks, he would throw her out.

Thelma comes to your chambers this morning and tells you that this is the day that Simon is due to evict her. She further informs you that she only felt safe leaving the apartment this morning because her grandson who is a policeman, is staying there until she returns.

**Describe the procedural steps that you would take to prevent Thelma's eviction, describing the contents of the document(s) to be used in such steps.**

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

Juliet Firstly was aged 23 years, a dazzling beauty and very proud indeed of her figure. She had good cause: she had won many beauty contests. She was wooed by Joe Kool, a wealthy talk-show host and coffee-planter, about 10 years her senior. Eventually they were married on April 1, 1993, a few months after they first met. Prior to the marriage, she raised no objections to having children but she knew that her husband simply adored children. He often told her that with her beauty and his brains, they would just produce marvellous offspring.

After the marriage, Juliet insisted on the use of contraceptives. At first, Joe reluctantly consented to use them but later Juliet went on the pill. Joe attempted to persuade Juliet to agree to have a family but she made various excuses and avoided discussion on the subject as far as possible. On several occasions she taunted him with his desire for a family by saying "you only want to prove your manhood" or "little Tiddy wants to be a father". By 1996, as a result of Juliet's adamant refusal to have normal sexual intercourse, their relationship had become strained. In April of that year Juliet for the first time definitely refused to have children, saying, "no, never, I want to be free to have my liberty. Why would I want to spoil this beautiful body?" On May 1, 1997, the parties separated. At that time Joe was in a bad state of health as a result of Juliet's persistent refusal to have children.

Joe consults you as he wishes to re-marry and have a family.

**QUESTION 6**

**Draft an appropriate petition (notice to appear not required).**

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**QUESTION 7**

On the basis of such of the above facts as are material, assume these further facts -

After the separation, Juliet returned to her parent's home. Only her mother is alive. Juliet leaves shortly for Miami, Florida, U.S.A., where she is known to have relatives but this address is not known to Joe. He suspects her mother knows of her whereabouts but will not disclose them.

Prepare an appropriate application seeing that personal service is not possible.

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**QUESTION 8**

Assume that Juliet after the separation is living with her mother but lives off the bounty of her friends. During the course of the marriage she was well maintained by Joe who provided her with a Subaru Legacy and Visa Monte Carlo credit card but these he reclaimed when they separated. She wishes to obtain maintenance from Joe at once.

**Draft an appropriate affidavit to support such an application.**