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COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATION, 2001

CIVIL PROCEDURE AND PRACTICE 1

(MONDAY, MAY 21, 2001)

Instructions to Students:

- (a) Time: 3½ hours
- (b) Answer THREE questions from Part A and TWO from Part B.
- (c) Answer Part A and Part B on separate answer booklets.
- (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****FACTS RELATING TO QUESTIONS 1, 2 AND 3**

You are an attorney-at-law with Dallows & Co. of 15 Market Place, St. Georges.

Your client is Salmon Warehouse Limited, a company in your jurisdiction, whose registered office is at 15 Fishy Place, St. Georges.

Your senior partner has recently had a meeting with Tony Carpe, the managing director of Salmon. She hands you the following documents:-

- 1) The extract of the general endorsement to a writ of summons issued in respect of an action by Agnes Tuna against Salmon Warehouse Limited, which is Document 1.
- 2) The statement of claim which is Document 2.
- 3) A statement he has previously prepared on the dispute which is Document 3.

**Document 1****GENERAL ENDORSEMENT**

The Plaintiff's claim is for the damages for breach of a contract in writing dated January 8, 1995, between the Plaintiff and the Defendant for the storage of antique furniture with the Defendant at their warehouse at 15 Fishy Place St. Georges.

Signed: AB & Co.

Dated: January 6, 2001

**Document 2****STATEMENT OF CLAIM**

(Insert usual heading)

<b>BETWEEN</b>	<b>Agnes Tuna</b>	<b>Plaintiff</b>
<b>AND</b>	<b>Salmon Warehouse Limited</b>	<b>Defendant</b>

- 1) At all material times the Plaintiff was a dealer in Antique furniture and paintings.
- 2) At all material times the Defendant was a company registered in the jurisdiction and operating the business of warehousing.
- 3) By a contract in writing dated January 8, 1995, between the Plaintiff and the Defendant, the Defendant agreed for payment to collect certain goods, the property of the Plaintiff from the Plaintiff's shop at 10 Bayside Way, St. Jeorges and to store the same in the Defendant's warehouse at 15 Fishy Place, St. Jeorges.
- 4) On the said date the Defendant in accordance with the said agreement collected the goods for storage.

**Particulars of Goods Stored**

15 Antique Oak Dining Room Tables  
 300 Antique Dining Room Chairs  
 100 Antique Persian Rugs  
 10 Original 'Lembrandt' Paintings

- 5) In breach of the said contract the Defendant wrongfully stored some of the goods, namely the 10 Lembrandt Paintings (the paintings) at another warehouse at 10 Salt House, St. Georges belonging to the Defendant which was wholly destroyed by fire on 31<sup>st</sup> July, 1995.
- 6) Further or in the alternative, the Defendant negligently failed to keep the goods safely and has failed to take proper care of the goods and as a result they were destroyed.

Particulars of breach/negligence

- i) Failing to store the paintings in a suitable place;
- ii) Storing the paintings in a place other than that agreed between the parties;
- iii) Failing to take due and proper care and custody of the paintings.
- 7) By reason of the matters aforesaid the Plaintiff has suffered loss and damage.

Particulars of loss and damage

i)	value of paintings	\$1,385,000
ii)	loss of profits on goods	\$ 750,000
	Total	\$2,135,000

- 8) Further the plaintiff claims interest pursuant to (the relevant statute) on the amount found to be due to the plaintiff at such rate and for such period as the Court thinks fit.

And the Plaintiff claims:-

- i) Damages
- ii) Interest

Signed: AB & Co.

Dated: January 30, 2001

**Document 3**

Tony Carpe, of 24 West Road, Corntown, St. Georges will say:-

1. I am the managing director and major shareholder of Salmon Warehouse Ltd.
2. The Company operates 2 warehouses. The larger at 10 Fishy Place, St. Georges the company's registered office and a smaller warehouse at 13 Salt House.
3. On January 8, 1995, I met Ms. Tuna and she told me that she needed to store a large quantity of antique goods. I agree these are as set out in the statement of claim. However I did not have a valuation of the goods nor do I know what Ms. Tuna would have been obtained as profit on the sale of the goods.
4. We agreed that the company would charge her \$40,000.00 per month for the storage of the items and I gave her our standard form contract, in which is set out at clause 12 an exclusion clause which reads as follows:  
  
*"Salmon Warehouse Limited is not liable in any circumstances for any loss, damage or detention caused."*
5. There were no terms stating in which warehouse the goods would be stored, although I did take Ms. Tuna to show her storeroom at 10 Fishy Place, in which her goods were initially stored.
6. A few months later some of the items were moved to our smaller warehouse due to space problems.

7. On July 31, 1995, the warehouse at 10 Salt Place burnt down, and all goods placed there were destroyed. One of our workers had been smoking in the building.
8. On August 1, 1995, Ms. Tuna came in to ask that the goods be released to her. I explained to her what had happened, and pointed out that the same terms and conditions applied to both warehouses.
9. Ms. Tuna said she it would be strange if we could exclude liability when our employee had burnt down the building. Ms. Tuna crumpled up the bill I gave to her for our charges of \$280,000.00 and stormed out. I did however allow her to remove the other items, as I felt quite bad about how things had worked out.
10. Shortly after that date, I received a letter from an attorney-at-law acting on Ms. Tuna's behalf. The letter set out a sum for settlement and stated that unless we replied within 14 days proceedings would be issued. The letter also said that they had advised her that the exclusion clause could not stand up in court, at best it covered strict contractual liability but it would not cover negligence.
11. In January 2001, a writ of summons was served upon the company.
12. I dictated instructions to my secretary telling her to write to Salmon's attorney-at- law stating that we would defend the matter.
13. On January 31, 2001, we received the statement of claim.
14. Due to an emergency in my family, I had to go abroad at the beginning of February until early May. I did not get the opportunity to give the attorney-

at-law further instructions and it appears that they did nothing further after entering appearance/acknowledging service on our behalf.

15. A default judgment for damages to be assessed and costs was entered on April 30, 2001. The date for the hearing of the assessment has not yet been fixed.
16. The company wishes to defend the action on the basis that the exclusion clause was incorporated in the contract.
17. Each year our accountants have written to Ms. Tuna about the \$280,000. However we never bothered to issue proceedings. Last year Ms. Tuna wrote back acknowledging the debt, but indicating that she herself would be taking court proceedings against us and so the amount she said, "would come out in the wash."
18. The company wishes to recover the amount due on the bill.

Signed: Tony Carpe

**QUESTION 1**

The senior partner has asked you to consider Documents 1 and 2 and to let her have your opinion as to whether or not an attack can be made on the pleading and the likely outcome of the application.

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**QUESTION 2**

- a) Outline the procedure that Agnes Tuna's attorney-at-law would have had to take to secure the default judgment referred to in Document 3; and
- b) The nature of the application you will now make in relation to the judgment, setting out what you will need to establish and the result you would expect.

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**QUESTION 3**

You are instructed to prepare an appropriate pleading based on your instructions.

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**QUESTION 4**

Tenyson May by written contract dated March 18, 2001, agreed to supply Stefan Hans with 250,000 ceramic tiles at a sum of \$320,000, payment within 7 days of delivery.

On March 25, 2001, Stefan Hans took delivery of the tiles and paid the sum of \$10,000, but has to date failed to pay the balance.

- a) Outline the procedure for obtaining judgment expeditiously.
  - b) Would your answer be different if Hans refused to pay, because many of the tiles were broken.
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**QUESTION 5**

Baden Prince was employed as an outdoor clerk by Rueters Limited, a company registered in your jurisdiction and limited by shares.

In the course of his employment with the company, he enters into one of the open elevators on the 3<sup>rd</sup> floor of the building which is owned by the company. Upon entering the elevator, Prince falls down the open elevator shaft and is severely injured.

It is later discovered that the elevator had been malfunctioning and was in the process of being repaired. The repairs were undertaken by Scafe & Co., who had been engaged by Rueters Limited under a service contract to repair and service the elevator. Scafe & Co. had failed to post any warning signs.

- a) Advise Rueters what steps if any they can take to offset the claim made by Taylor against them as defendants.
- b) Would the same course of action at (a) be open to Rueters if Prince had sued Scafe & Co. as second defendants?

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## PART B

### FACTS RELATING TO QUESTIONS 6 and 7

You are consulted by June Follower. She tells you that she was married to Mr. Tony Follower on April 18, 1972. Mrs. Follower tells you that they were both aged 18 years old when they were married. She was born on February 5, 1954 and her husband on April 1, of the same year. She was at the time a trainee dressmaker and lived with her Aunt Ulika at 10 Mountain Park.

When she met Mr. Follower he had spent the previous year selling ice cones and sweets in the schoolyard at the nearby basic school and was not doing very well. However when she became pregnant with Leroy, who was born on the July 10, 1972, they decided to get married and her Aunt Ulika offered them a room in her house in which to live.

Approximately one month after the marriage, Mrs. Follower persuaded her aunt to lend her and Mr. Follower \$10,000 with which Mr. Follower set up a roadside jerk chicken pan, which he called "Pantucky". At that time Aunt Ulika continued to provide food for both Mr. and Mrs. Follower and also for Leroy when he was born.

In order to repay the loan, both Mr. and Mrs. Follower would give to Aunt Ulika, the money they made each week. This continued for over 3 years, when one evening Aunt Ulika called Mr. and Mrs. Follower together and advised them with great pride that they had repaid the loan. They agreed that they would continue giving Aunt Ulika the money they earned so that she could put it into a savings account for them.

Mr. & Mrs. Follower were hard workers and their delight was to hand over more and more profit to Aunt Ulika. In the first 5 years or so, Mrs. Follower made much more money than Mr. Follower as her dressmaking business grew. However, in the next five years, the Pantucky business took off and Mr. Follower was able to equal the amounts Mrs. Follower gave to Aunt Ulika for saving.

Mrs. Follower became pregnant and had twin sons on the April 15, 1985. Three days later, on their 13<sup>th</sup> wedding anniversary Aunt Ulika advised them that the savings account had just passed the \$100,000 mark, and that she was selling the house in Mountain Park as she was an "old lady" and that although it was valued at \$80,000 she would sell it to them for the amount of \$70,000 and she also advised them to add three rooms to the house, especially now that they had twin sons.

Mr. & Mrs. Follower accepted the offer with gratitude and duly added three rooms to the house with the balance in the account. Careless & Co., Attorneys-at-Law, were then instructed to transfer the property. Upon enquiry about the title, Mr. Follower told Mrs. Follower that as she was so tied up with the twins he had instructed the attorneys to transfer the title into his sole name as she would not have the time to attend their office to sign the documents

One of the rooms was rented in 1986 and Mr. Follower instructed the tenants to pay the rent to him.

Aunt Ulika died in January 2001, leaving a plot of land next to the house to Mrs. Follower absolutely. The savings account in the joint names of Mr. & Mrs. Follower was found in Aunt Ulika's papers and had \$850,000 in it, which included the monies from the rent. Mrs. Follower suggested to Mr. Follower that notwithstanding Aunt Ulika's death they should continue putting their monies into the account as they did before. He agreed, stating that he would now keep the passbook and make the deposits.

A shed was built on the land next door into which Mrs. Follower intended to move her sewing machine and her business. However, Mr. Follower persuaded Mrs. Follower to allow him to use the shed for his business as he claimed he needed to expand. He also took on a young assistant, Pennie, to help him with the cooking.

Shortly after Pennie began working with Mr. Follower, Mrs. Follower says he started drinking alcohol and lazing around. She also suspected they were becoming too close. On Saturday May 19, 2001, she went across to the shed and found Pennie and Mr. Follower locked in an intimate embrace. Mr. Follower smelt of alcohol and accused Mrs. Follower of spying on him and was so furious that he slapped her several times so that she fell to the floor and fractured her arm.

Mr. Follower then told Mrs. Follower that he had no intention of wasting any more time with her, and that if she stayed in his house and provoked him, something serious would happen. He said that she was a good dressmaker and she should go about her business and make life and leave him with his sons so that they can learn to run his business. Mrs. Follower left the house that day and went to stay with her sister.

She went to the bank this morning and has discovered that Mr. Follower had transferred all the monies from the joint savings account into an account in his sole name.

She has come to see you and says she needs to get back in the house and sort out her dressmaking business. She wants to have her property separated from Mr. Follower's as she says she no longer trusts him and she wants no further trouble from him.

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#### QUESTION 6

Draft an appropriate affidavit to ground an application to determine her property rights.

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#### QUESTION 7

Describe the procedure that you would adopt to seek an injunction against Mr. Follower and the orders which you would seek on Mrs. Follower's behalf.

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**Additional facts for Question 8**

Mrs. Follower tells you that after nearly 30 years of marriage she is not sure she wants to start divorce proceedings, but she definitely wishes to have custody of the children.

She tells you that after the assault by Mr. Follower on Saturday, she had gone back to the matrimonial home scribbled a note to the twins, Damian and David telling them that she would call them later from her sister's house but apparently Mr. Follower tore up the note.

Mrs. Follower said she called later and Mr. Follower answered the phone but refused to let her speak to the boys. She said she could hear him taunting Damian who is asthmatic and saying " stop crying Mommy's boy." She became very concerned, she says, because Damian has had to be hospitalised on several occasions because of his asthma and the doctors have said that stress is a factor in his illness.

She tells you that she became anxious and telephoned her eldest son Leroy and asked him to accompany her to the matrimonial home whereupon she found Mr. Follower sitting on the front porch drinking with Pennie. Although he tried to prevent her getting into the house at first, Leroy managed to restrain him.

She says she found Damian very ill and he was admitted to hospital that night and she expects to collect him from the hospital after her meeting with you. David was also very distressed.

She tells you that Mr. Follower has never been close to the boys and has always been aloof. He has never attended their school or helped them with homework which she tries to do. She says his only interest in the boys is for them to grow

up and take over the Pantucky business so that he can retire. The boys have both said that if they were to live with their father they would run away.

Mrs. Follower is very concerned because the boys are due to go into 5<sup>th</sup> Form in September and she says she dreams of them getting into University.

She is concerned as Mr. Follower told her that no court in the land is going to take teenage boys from their father and give them to the mother.

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#### QUESTION 8

Advise Mrs. Follower as to whether she can make an application for custody, describing the procedure you will adopt and the factors that will be relevant before the Court.

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COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST-YEAR EXAMINATIONS, 2001

CRIMINAL PRACTICE AND PROCEDURE

(MONDAY, MAY 14, 2001)

Instructions to Students

- (a) Time: 3 ½ hours
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate 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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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.



**QUESTION 1**

Leach was a tenant of Hale. During the night of January 10, 2001, Leach used a key, which Hale had inadvertently left in the door to his room, to open the door. Leach went into Hale's bedroom. He took \$1,000 from Hale's chest of drawers.

He pulled down the sash of a window which had no fastening and through this window he gained entry into a room occupied by Hale's uncle, Tom. In this room he stole Tom's Rolex watch. He also removed a computer from a desk in Tom's room and was about to leave the room with it when he heard footsteps in Leach's room. He left the computer on Tom's bed and ran out of the room.

The police were summoned. Following upon an investigation Leach was arrested and charged.

Draft an indictment to be presented against Leach in the High/Supreme Court.

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**QUESTION 2**

Answer **TWO** of the following:

- (a) Ms. W is convicted of capital murder. Her counsel tells the court that his client is pregnant. The jury has not yet been discharged. What is the procedure that the court should pursue before sentencing W?
- (b) A statute provides that anyone who contravenes the provisions of section X shall be guilty of a misdemeanour and on conviction liable to 2 years imprisonment. B is charged with an offence contrary to section X of the

particular statute. What is the procedure to be followed from charge to the taking of his plea?

- (c) D is charged summarily with two different offences and two similar offences. In what circumstances may the informations be tried together?
- 

### QUESTION 3

P, G and others were tried together and convicted of conspiracy to defraud. During the trial G, alleged to be at the hub of the conspiracy, absconded. The trial proceeded in his absence. He was recaptured after the prosecution had closed their case.

Further, there was a conversation on a bus between a clerk of P's attorney-at-law and a person whom the clerk discovered later to be a juror. There was a reference to the trial during the conversation. It was alleged that the juror told the clerk that there were too many white-collar crimes. This conversation was brought to the attention of the judge by P's attorney-at-law.

The judge decided following an enquiry and without objection from Counsel that the juror had done nothing wrong and should not be discharged. He warned the jury not to discuss the matter further.

However, subsequently, the juror told the foreman that the original conversation with the clerk was "relevant". The foreman informed the judge of this.

Following a further enquiry in which the jurors all said that they were not influenced by anything concerning the conversation, or by any reference to it, the judge declined to discharge the juror or the jury.

P and G want to know whether or not the judge erred in:

- (i) proceeding with the case after G absconded;
- (ii) declining to discharge the juror or the jury.

Advise them.

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#### **QUESTION 4**

A constable saw that a tyre, which was on the wheel of a bus owned by Woodmill and used by him on a public road, had 3 defects. In respect of each defect an information was laid charging the defendant with contravention of the relevant section of the Road Traffic Act which prohibits the use of defective off side and near side tyres.

These informations were triable by Justices or Magistrates. Each information alleged that the defect occurred in the "rear near side tyre". The informations were heard some 12 months after the date of the alleged offences. The defendant brought the tyre to court. The constable, refreshing his memory from his notebook, gave evidence that the defects were in the "rear off side tyre". The Magistrate acceded to an application by the prosecutor and amended each information by substituting "rear off side tyre" for "rear near side tyre". Woodmill was convicted.

He wants to know whether or not the Magistrate erred in granting the application for the amendment.

Advise him.

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### QUESTION 5

Hunter, a ship's officer, was charged on indictment in the High/Supreme Court with the offence of being knowingly concerned in the importation of cannabis.

During a customs officer's evidence-in-chief about his observations and the position of Hunter's car and of other vehicles on the dock side, the judge intervened to suggest that a visit to the locus-in-quo would be helpful to the jury. The judge was of the view that the jury ought to be given the opportunity to see the position from which the officer's observation had been made. The judge made it clear that he would not, and did not, take part in the view. The jury was accompanied by the clerk, counsel for the defence and prosecution and the witness under examination. Three questions were asked of the witness by Counsel about the ship and a parked vehicle. The witness in his answer demonstrated two positions that he had occupied on the relevant day from which he made his observations.

The group then returned to court. Hunter was ultimately convicted. He wishes to appeal and seeks your advice on the following points:

- (i) whether or not there was any material procedural irregularity;
- (ii) the steps he should take to pursue an appeal.

Advise him.

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**QUESTION 6**

- (a) Johns was charged with exceeding the speed limit. His attorney-at-law stated at the beginning of the hearing that the issue was one of identity. No evidence was given identifying the defendant as the driver. A submission of "no case" was overruled. The defence called no evidence. The Magistrate then allowed the prosecution to re-open its case by calling a police officer who said that the name and address in the driver's driving licence were those of the defendant. Johns was convicted. He seeks your advice as to whether or not the Magistrate was right in allowing the prosecution to re-open its case.

Advise him.

- (b) On the trial of Jolly for rape, during retirement, the jury on their request, was given an almanac which indicated that there was full moon on the night of the alleged incident. The almanac was not an exhibit in the case. Jolly was convicted. He wants to know if he has a good ground of appeal.

Advise him.

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When the jury returned to the court they were asked by the clerk to reply "yes" or "no" to the question whether a unanimous verdict had been reached in regard to the two counts. On the reply of the Foreman, "guilty", the clerk asked "On which count do you find him guilty?" The foreman replied "On both counts." Questioned by the judge the foreman said they found Ali guilty of both counts. The judge did not explain that that was contrary to his direction. Ali was sentenced to two (2) years imprisonment on the first count and admonished and discharged on the second.

Advise Ali whether or not there was an irregularity and, if so, its likely consequence.

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**QUESTION 7**

Saunds was indicted for murder. The jury retired at 11:30 a.m. to consider their verdict, murder and manslaughter having been left for their consideration.

The jury returned at 12:25 p.m. and asked the trial judge to repeat his direction on provocation. The judge obliged and the jury went back. The jury then returned at 1:00 p.m. They made it quite clear that they could not agree upon murder but that they probably would agree on manslaughter.

The judge discharged them from their obligation of returning a verdict on the major offence. He again repeated his direction on provocation and sent them back to consider manslaughter. By a majority of 11:1, Saunds was found guilty. He was sentenced to five years imprisonment and now wishes to know whether or not the judge erred in discharging the jury as he did and subsequently proceeding to accept the manslaughter verdict.

Advise Saunds.

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**QUESTION 8**

Ali was indicted for larceny and receiving. The same goods were the subject of each of the counts which were laid in the alternative. The jury was directed that if they convicted Ali of larceny they need not consider the count of receiving since the counts were "alternative counts and indeed, alternative as between themselves".

COUNCIL OF LEGAL EDUCATION

NORMAN MALEY LAW SCHOOL

FIRST YEAR EXAMINATIONS, 2001

LEGAL EDUCATION CERTIFICATE

**LANDLORD AND TENANT**

**(Friday, May 25, 2001)**

Instructions to Students:

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

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**QUESTION 1**

John Dilhorne consults you and tells you that he is planning to take a job in Kuwait. He plans to relocate to that country for a period of five years. He has been offered a job there for three years with option to renew for another three years.

He is married and has two sons. He is the sole owner of Blackacre which is a valuable piece of real estate but it is subject to a mortgage. His wife Maria and two sons will be going to live in Canada for a while. At a family conference, he, his wife Maria, and their sons, Cedric and Gilbert discussed what should be done with Blackacre. Maria suggested that Blackacre be sold; Cedric, who is planning to study law, suggested creating a licence in favour of some person. He said he was reading a law book and discovered that this was an easy thing to create and terminate. Gilbert was of the view that whatever his father decided was best.

Mr. Dilhorne further tells you that in view of the great confidence that Gilbert has reposed in him he wants to make a wise decision although in his own mind, he has decided to lease the premises to an eligible person. He requires you to prepare a memorandum which he could take to the next family conference. This memorandum should consider all the options and advise him on which course of action is the most beneficial.

Prepare the memorandum.

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**QUESTION 2**

- (a) Outline the main considerations you would bear in mind when taking instructions from the owner for a lease of a dwelling house.
- (b) In 1998, Lester, by deed, leased a house at 15 Rivera Drive to Tennyson Hill for seven years at a rent of \$240,000 per annum, payable quarterly.

In the lease, Tennyson covenanted, inter alia, not to use the premises for any purpose other than residential.

In May 1999, Tennyson assigned the lease to Chambers who nine months later sublet to Dominic for the remainder of the term, less one day.

After the assignment, Lester conveyed the reversion to Robert who has now discovered that the rent is one year in arrears and that Dominic has started to operate a club and discotheque in the house.

Advise Robert.

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**QUESTION 3**

Draft a letter to your client, a prospective tenant, advising him on the meaning and import of the following covenants in a lease:

- i) that the tenant shall not assign, underlet, or part with possession of the demised premises without the prior consent in writing of the landlord;

- ii) that the tenant shall use the premises as a bakery only;
  - iii) that the tenant shall insure the premises for the benefit of the landlord;
  - iv) that the tenant shall have the right of first refusal to lease the demised premises for a further period of seven years.
- 

#### QUESTION 4

(a) Stanley, the freehold owner of 53 Kingsway, leased his premises to Edwardo for two years at an annual rent of \$300,000. A few weeks later, Stanley, who was facing severe financial difficulties, orally agreed to grant Marty a three-year lease of the premises to run concurrently with Edwardo's lease and to take effect in possession in the third year in return for a loan of \$900,000. The oral agreement further provided for an ~~option to renew~~ for a further three-year period if Stanley was unable to repay the loan. Edwardo moved out of the premises at the end of his two-year lease and Marty is claiming that he is entitled to possession.

Advise Stanley.

b) Basil, a retired security guard, occupied an apartment which Tomlin recently constructed behind his house, 10 Marigole Way. Basil paid Tomlin \$350 per week which included cost of utilities. In August, Tomlin went abroad and asked Basil to keep an eye on his house. In return for this service, Tomlin informed Basil that he would forego the rent for the duration of Tomlin's absence.

In January, Tomlin who decided to reside abroad sold 10 Marigole Way to Zachary who took possession in February and informed Basil that he should vacate the premises since his services were no longer required.

Advise Basil.

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### QUESTION 5

On May 1, 1998, Harry leased his house (which is exempt from Rent Restriction/Control Legislation) to Mario for 10 years at an annual rent of \$360,000 payable by equal monthly installments. The lease contained the following covenants by the tenant:

- "(1) to pay the rent reserved at the time and in the manner aforesaid;
- (2) at his own expense to pave the driveway of the demised premises with concrete;
- (3) to keep the demised premises at all times insured against loss or damage by fire;
- (4) not to assign, underlet or part with possession of the demised premises without the prior written consent of the landlord"

Further, the lease contained a proviso for re-entry and forfeiture on breach of any of the tenant's covenants.

On April 10, 1999, Mario sublet a room in the house to Edgar without obtaining Harry's consent. The driveway has not been paved and the house is uninsured although on November 15, 1999 Harry requested Mario to pave the driveway and insure the house.

Mario last paid rent on January 30, 2000.

Advise Harry whether he can forfeit the lease for:

- (i) breach of covenant to pay rent;
- (ii) failure to pave the driveway;
- (iii) failure to insure;
- (iv) subletting,

and if so, the steps he should take in each case to enforce the forfeiture.

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#### QUESTION 6

A broad-based committee is at present considering rent control legislation. Antor, the secretary of a Tenants Organisation, informs you that he has been selected to make a presentation on behalf of tenants to the committee at its next meeting. He instructs you to prepare a resource paper, which his organisation could keep on file and which would be the basis of his presentation to the committee.

Prepare the paper.

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#### QUESTION 7

Dan owns a house and shed, standing on a one-acre parcel of land. On March 1, 1999, he leased the entire premises to Jason, a motor mechanic and

taxi driver, for ten years at a yearly rent of \$360,000 payable in equal monthly installments. From the date of the lease, Jason has been living in the house and using the shed for his motor repair business. Rent has been in arrears for two years. Two weeks ago Dan's bailiff entered the premises and seized and carried away the following:-

From the shed: a taxi owned by one of Jason's customers, a motorcycle and hydraulic jack both owned by Jason, and a car owned by Jason's wife.

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

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

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

Advise Jason.

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### QUESTION 8

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

Three months after she took possession, she often found it impossible to conduct piano lessons. The occupants of the adjoining premises, who were also Laxton's tenants, used their premises as a wedding centre for holding wedding ceremonies and receptions. Mirrie has often complained to Laxton about the noise which has continued unabated. Mirrie eventually told Laxton that if the noise persisted she would have no alternative but to leave the premises. Laxton did nothing; the noise continued. Mirrie left the premises at the end of last month after several semi-nude nuptials were staged at the wedding centre.

Advise Laxton.

(b) Bilton is the landlord of a block of four apartments in Brax 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, Majj and Feleesha, 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 Bilton.

Advise Majj and Feleesha.

(c) Lanse granted a lease of his house for 5 years to Dr. Serius for the purpose of carrying on his profession of physician and surgeon, on all the usual covenants. At the time of the demise, Lanse was in the process of erecting a factory on his adjoining property. For the past month, Dr. Serius has been unable to hear any sound from his stethoscope due to the noise of construction. Dr. Serius consults you.

Advise him.

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COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL  
LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2001

LAW OF EVIDENCE AND FORENSIC MEDICINE

(WEDNESDAY, MAY 23, 2001)

Instructions to Students

- (a) Time: 3½ hours
- (b) Answer QUESTION 1 and FOUR others.
- (c) Answer QUESTION 1 on a separate answer booklet 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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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.



PART AFORENSIC MEDICINECOMPULSORYQUESTION 1

- (a) What is the purpose of FORM "D" in the Coroner's Act as amended?
- (b) Mary Doe, a business woman, was found dead at home, victim of a brutal murder. The Pathologist's postmortem report described several sharp and blunt force injuries including "Defense Wounds". Where on the body are these wounds usually found and what are their significance?
- (c) In the above mentioned case, the victim was investigated for possible rape.
- (i) What samples should be taken from the victim for laboratory investigations?
- (ii) What relevant tests would you expect to be done?
- (d) You are the Crown Counsel in a murder trial in which the doctor stated in his medical evidence that "no gunpowder deposition is noted around the entrance gunshot wound". Having recalled that previous witnesses had stated that the victim was about 8-10 ft. from the assailant when shot with a handgun you now wish to show relevance. You ask the doctor, "What is the significance of no gunpowder around the entrance wound?" To your surprise he responded that it is a "Contact Wound".