

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST-YEAR EXAMINATIONS, 2002

CIVIL PROCEDURE AND PRACTICE 1

(MONDAY, MAY 20, 2002)

Instructions to Students

- (a) Time: 3 ½ 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 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.
- (e) It is unnecessary to transcribe the questions you attempt.
- (f) Answers should be written in ink.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## PART A

### FACTS RELATING TO QUESTIONS 1, 2, 3, AND 4

You are an attorney at-law with Doright & Co of 20 Didgetts Cross, Cornwall.

Your client is Madeline Cooper and a copy of her statement is Document 1.

#### Document 1

Madeline Cooper of 21 Deans St, Kingsway will say –

1. After my divorce in late 1999, I was contemplating purchasing the above property at 21 Deans St, Kingsway, which is a three bed-room house.
2. I consulted Javon Regis a chartered surveyor of 10 Elm Avenue. We agreed in writing on February 26, 2000, that he would carry out a survey on the property and provide a report to enable me to decide whether to go ahead with the purchase.
3. The report together with an invoice for the amount due was delivered to me on March 15,2000. I paid the amount.
4. The report advised that apart from certain minor defects (which were set out in the report) the house was of substantial construction and was structurally sound and in good condition and valued at \$4,500,000.
5. In reliance on the report and valuation, I purchased the house using my share of the funds I received from the sale of the former matrimonial home. The purchase was completed on April 1, 2000.

6. On April 10, 2000, I was sitting watching television in the family room, with my only child, Troy Cooper, when a portion of the roof collapsed. Troy had celebrated his 10<sup>th</sup> birthday on April 2, 2000.
7. Troy was injured as a result of concrete falling on him. He suffered a dislocated left shoulder, two broken ribs and remained in hospital for six weeks convalescing. Troy's hospital bills are \$150,000, medication has cost \$25,000 and there are general practitioner's costs of \$50,000. I have obtained a medical report from the orthopaedic consultant, Mr. Bill James.
8. I had another surveyor's report done, which has revealed that several structural defects were in existence at the date of Mr. Regis' survey. It also reveals that the actual value of the house at the date of Mr. Regis' report was no greater than \$2,000,000.
9. I understand from investigations I have done, that Mr. Regis had taken a young student with him when he was doing the survey, and that the student had in fact inspected the roof when he was clearly not qualified to do so. Mr. Regis relied on the student's finding.
10. I have written several letters to Mr. Regis informing him of the damage that has resulted and I was hoping that we would be able to settle the matter without the need to resort to court proceedings. However, it appears that it is the only way that I will obtain compensation from Mr. Regis.

I believe that the contents of this statement are true.

Signed: Madeline Cooper

Dated: December 12, 2001

**QUESTION 1**

You are now instructed to take proceedings against Mr. Regis. Advise Mrs. Cooper, who visits you with her son Troy, on all the relevant procedural issues you must consider in commencing proceedings.

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**QUESTION 2**

Draft an appropriate statement of claim on behalf of your clients.

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**QUESTION 3**

After the originating document was issued, it was discovered that Javon Regis knowing of this, subsequently left the jurisdiction. Mrs. Cooper has obtained information from a former business associate of Mr. Regis, that he is living in London. However, his exact address cannot be ascertained.

Advise your clients as to the steps you would now take on their behalf. Outline and describe the contents of any document(s) you will prepare on their behalf.

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QUESTION 4

Assume the following –

- that you have served the defendant with the originating document together with the statement of claim
- that an appearance/acknowledgment of service giving notice of intention to defend, has been entered/filed within the time limited for doing so
- that the time within which a defence should have been filed has long passed.

Discuss the steps you will now take on behalf of your clients.

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QUESTION 5

In January 1996, Edward Douglas who owns a garden centre ordered some catalogues from Pilkington Printing Limited. The catalogues which were supplied in February 1996 were very poorly printed and contained several errors. As a result Edward has been unable to use them successfully to market his business.

Edward served a writ/claim form on March 5, 2002, claiming damages for breach of contract.

In April 2002, Pilkington Printing Limited served a defence alleging that the contract was made not with it but with Pilkington Prints Limited, a different company but with the same registered office.

It is now May 2002 and Edward Douglas, wishes to amend his originating document and pleadings to -

- (i) change the name of the company
- (ii) amend his statement of claim to include a claim alleging negligence against the defendant.

Advise him.

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## PART B

### FACTS RELATING TO QUESTIONS 6 & 7

Mrs. Arlene Smith explained that she met her husband about 10 years ago through mutual friends. They got on extremely well and married 9 years ago on St. Valentine's Day.

They had a big white wedding at St Mary's Church in Brighton. They have two children Jack who was born on March 5, 1995, and Jill who was born on October 10, 1998.

Until two years ago, Mrs. Smith thought that she had a happy marriage. Her husband Fred is a Builder. She said her husband started staying late after work, coming home when it was long past the children's bedtime. He was away from the home every weekend and at about the same time he began attending horse racing every Saturday, and she knows that he is gambling heavily, as she sees the betting slips.

Mrs. Smith said she tried to talk to her husband, several times, but he was not interested. However, in April this year, he admitted that he was having an affair

with a female jockey who gives him tips at the races and that they were very much in love and that he was going to move in with her. He left the matrimonial home later that month.

She tells you that Jack has been very traumatised by his father's leaving, and has been heard to say he hates his father and refuses to speak to him. Jill, she says, will not sleep in her bedroom although she used to do so before her father left, and she cries to sleep in her mother's room each night.

Mrs. Smith has been taking the children to see a clinical psychologist, who has been counseling them.

She tells you that she earns \$28,000 per month from her job as a teacher at the Sweet Preparatory School, which both the children attend. She also earns additional income by giving extra lessons to children who are pursuing High School examinations. She earns approximately \$15,000 from this per month. She has the following monthly outgoings -

Mortgage	\$5000
Water rates	1500
Electricity	3000
Telephone	2500
Helper	8000
School fee	10,000 per month (both children).

Mrs. Smith is currently living in the matrimonial home, which is a three bed-room house. Mrs. Smith tells you that the house was a wedding present from her grandmother. The house was registered in Mrs. Smith's sole name. It was very dilapidated and required structural improvements and decoration.

She tells you that Mr. Smith at that time devoted each weekend to improving the house. He completely renovated the kitchen and bathroom and also decorated the house.

Mrs. Smith says that the money for the improvements came out of a joint account, into which she paid the money she received from giving extra lessons and into which Mr. Smith used to put his salary. She tells you that before they separated he earned \$60,000 per month.

She has been told by a surveyor that the improvements have doubled the value of the house, which is now valued at \$4,000,000.

Mrs. Smith says that the parties still have a joint account at the Maybury Building Society, which has a balance of \$200,000. She is concerned that Mr. Smith, because of his gambling and "his young jockey" as she calls her, might withdraw the funds. She tells you that since he left, he has not given her or the children any money.

She tells you that Mr. Smith has recently indicated that he intends to make an application to get his share of the matrimonial home, so that he can buy a place for himself and the jockey. He also believes that Jack should live with him.

#### **QUESTION 6**

Advise Mrs. Smith on the procedure which is likely to be adopted by Mr. Smith in relation to any property dispute. Outline the principles which are likely to guide the court if an application is made.

**QUESTION 7**

Advise Mrs. Smith on the procedure for bringing an application for maintenance for herself and the children and the principles which will guide the court.

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**QUESTION 8**

Draft an affidavit in support of an application for maintenance and custody on Mrs. Smith's behalf.

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