

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

**LEGAL EDUCATION CERTIFICATE
FIRST-YEAR EXAMINATIONS, 2003**

CIVIL PROCEDURE AND PRACTICE I

(MONDAY, MAY 26, 2003)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

PART A

Questions 1, 2, 3 and 4 are based on the following facts.

On December 17, 2002, Jane Day purchased a gametoy set for her 13 year old son, Joey Day, as a Christmas present from Playland Inc. which is owned by Harry and Sue Barton. Jane presented the set to Joey on Christmas Day and he immediately began playing with it.

Joey plugged in the set in the living room and after about three hours of use it began to spark and a surge of electricity shocked Joey throwing him onto the wall where he hit his head and then fell.

A spark fell on the antique rug on which Joey was playing and it caught fire which quickly spread to the Christmas tree. Substantial damage was done to the living room area. The gametoy was completely destroyed.

Joey was taken to hospital where he was treated and was found to have suffered a severe concussion and had to be hospitalised for one week.

On investigation Jane found out that Playland Inc. had suffered a severe flood in their store room basement the week prior to her purchase of the gametoy set due to the unusually heavy rainy season and she feels that the flood had affected the particular set which she bought.

Jane also submitted the defective set to Oliver Thompson, a mechanical engineer who, after subjecting the set to a thorough examination, has provided a written report that there was an inherent defect in the electronic design of the set. He has also reported that the set had suffered some water damage which had affected the electronic circuit and that either or both defects could have triggered the malfunctioning of the set.

The gametoy set was manufactured by Funtimes Entertainment Ltd. of 1322 Eastern Boulevard, New York City, NY11102.

Jane tells you that she incurred the following costs -

Gametoy	\$ 15,000
Soft furnishing	\$ 18,500
Furniture	\$150,000
Antique Rug	\$250,000
Redecoration	\$ 10,000

In addition, the medical costs for Joey's hospitalisation amounted to \$70,000 and Jane lost a week's earnings as a freelance interior decorator, which she says is \$25,000.

Jane has instructed you to commence proceedings on behalf of Joey and herself.

QUESTION 1

Advise your clients in relation to the matters you will consider before issuing proceedings.

QUESTION 2

Assuming that Playland Inc. is a limited liability company, draft an appropriate statement of claim/particulars of claim.

QUESTION 3

Describe the procedure you will take to effect service on the proposed defendant(s).

QUESTION 4

Recently, John Brown, an employee of the firm has told Jane that all the Christmas stock in the basement was subject to water damage and was placed on the shelves after the flood when Sue Barton instructed him to do so. Although Playland Inc. have entered an appearance/acknowledged service giving notice of intention to defend, they have not filed a defence although the time for doing so has expired. Discuss the procedural options that are now available to you on behalf of your clients.

QUESTION 5

You are consulted by Percy Blake today. He is the managing director of Gay Gardening Centre of Merry Orchard, Downside, St Ann and he tells you as follows:-

"In March of this year, we received an order from Nancy Greenhands one of our regular clients, who asked us to install a greenhouse at her premises complete with heating systems, for the purpose of keeping hothouse plants.

She paid the initial deposit of \$100,000. We installed the greenhouse and arranged for our usual electrical contractors Felix Dopp & Co. to wire up and connect the heating systems.

We invoiced her for the balance of \$350,000 but to date we have not received payment for the balance.

On Monday, May 19, 2003, we were served with proceedings. In the particulars of claim/statement of claim, Miss Greenhands alleges that she had made it known the purpose for which she required the greenhouse and that as a result of broken panes on the greenhouse and a defective heating system, she suffered losses of \$500,000 for loss of profits on the plants, repairs to the greenhouse and heating system.

I immediately discussed the situation with Felix Dopp & Co. and it is obvious that the heating system they had installed was from old stock which had accumulated dust and particles which caused a short circuit. As a result of the overheating the green house panes cracked.

As a result of our usual business arrangements with Felix Dopp & Co. the companies have contracts with mutual terms to indemnify each other."

Percy hands you a sum on account of costs in this matter and instructs you to take whatever steps you think necessary to protect the company's position.

Advise Percy Blake how you will proceed outlining the contents of the necessary documents.

PART B

Questions 6 and 7 are based on the following facts.

Hugh Porr & Mini Porr who are citizens of your country were married in Toronto, in Canada, on April 10, 1970.

Mr. Porr who wanted to return to the Caribbean persuaded Mrs. Porr to sell the matrimonial home in Canada which had been registered in their joint names. Mrs. Porr placed her half share of the net proceeds of sale in a savings account in the Toronto Midland Bank, Toronto. Mr. Porr took his share.

They lived in rented premises for a while. The marriage deteriorated with Mrs. Porr accusing Mr. Porr of forcing her to sell her beautiful home.

As soon as he could take early retirement in August 2001, Mr. Porr left for the Caribbean he said, " to cool the tension between them."

Mrs. Porr was in fact the registered owner of a lot of land in the Caribbean, which she had acquired before the marriage and the title was in her sole name.

Mr. Porr commenced construction of a house on the said parcel of land, convinced that once Mrs. Porr saw "the dream retirement" home she would agree to come home. Mrs. Porr came to the Caribbean for Christmas holidays but returned to Canada at the end of the season. On her return she sent Mr. Porr a total of Cdn \$80,000 towards the construction of the house which is estimated to have cost a total of Cdn \$100,000.

Mr. Porr supervised the construction, built a retaining wall at his own expense around the premises and did landscaping on the property.

Mr. Porr had placed the funds received from Mrs. Porr in a joint account locally from which he drew cheques to pay construction expenses.

Mr. Porr recently started a liaison with a young lady. On hearing of this Mrs. Porr resigned her job and arrived in the Caribbean on New Years Day, 2003.

She took up residence in the house which is now completed and has asked Mr. Porr to leave "her house" because the marriage is over. She says she is willing to compensate him for his services for supervising the construction which she considers is a minimal amount.

The joint account currently has a balance of Cdn \$15,000.

Mr. Porr consults you to claim an interest in what he regards as the matrimonial home and the joint account.

QUESTION 6

Draft an affidavit to support an application to claim an appropriate interest in the property and the account.

QUESTION 7

Mr. Porr believes that his wife who is a Roman Catholic will never divorce him, but that she will take steps to effect a permanent separation from him, and also

to obtain maintenance from him. Mr. Porr receives a pension from Canada. Advise Mr. Porr on the steps his wife might take.

QUESTION 8

You are consulted by Albert Ray. He tells you that he is married and living with his wife, Ann-Marie Ray. The couple is childless.

He also tells you that two years ago, he had a liaison with Puncy, a waitress at the restaurant where he regularly had lunch, and that on February 3, 2003, she gave birth to twins, a boy Dino, and a girl, Dina.

He tells you that he has not been going to the restaurant since he discovered her pregnancy in or about October last year, but that just around that time he gave her \$10,000 and told her "to buy something for the babies." He says he has never had a discussion with her about whether the children are his although he suspects they are.

He wants to know whether there are any proceedings that Puncy could bring against him.

Advise Albert Ray, describing any appropriate procedure.
