

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1991

CIVIL PROCEDURE AND PRACTICE II

(Monday, May 27, 1991)

Instructions to Students

- a) Time: 3 1/2 hours
- b) Answer THREE questions from Part A and TWO questions from PART B
- c) Questions selected from PART B must be answered on a separate sheet
- 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.

NORMAN MANLEY LAW SCHOOL LIBRARY
COUNCIL OF LEGAL EDUCATION
MONA, KINGSTON, 7. JAMAICA

PART A

QUESTION-1

Upon granting a decree of divorce against Jim Brown, the respondent and husband of Jane Brown, the petitioner, the court ordered that:

"the abovenamed respondent do pay or cause to be paid to the abovenamed petitioner permanent alimony at and after the rate of \$200 per month for herself, such payments to commence on June 1, 1991".

The order was duly entered on May 15, 1991.. The respondent now wishes to challenge the order on the ground that permanent alimony can relate only to a decree of judicial separation and consequently the order is a nullity. The petitioner contends otherwise and indicates that the court had always intended to make an order for monetary payments to Jane in accordance with the law by way of permanent maintenance.

Write an opinion as regards the contention of the parties concerning the order and indicate what steps are open to the petitioner to give effect to any conclusions at which you may arrive.

QUESTION 2

On 18th September 1985 Tom Burns was knocked down and injured by a car owned and driven by Bill Jones in Jamesville.

Burns has sued Jones for damages for his injuries and in the Writ of Summons Burns is stated to be resident at 1125 Kennedy Place, Ferndell, California, U.S.A.

You are the attorney-at-law for Bill Jones.

State the procedure which you would adopt on his behalf and draft the necessary documents.

QUESTION 3

(a) There are several bases on which costs may be allowed by a court. Discuss these bases.

(b) Write notes on:-

- i) reserved costs;
 - ii) costs in the cause;
 - iii) plaintiff's costs in the cause;
 - iv) costs thrown away.
-

QUESTION 4

Discuss THREE methods of enforcing a judgment for the payment of money.

QUESTION 5

A sues B for damages in negligence. In his Statement of Claim A pleaded inter alia - (a) particulars of B's negligence
(b) "Res Ipsa Loquitur"
(c) Breach of Statutory Duty.

On the action coming on for trial you are attorney-at-law for the Defendant B.

Attorney-at-law for Plaintiff A, in your opinion, has failed to prove any of the pleadings (a), (b) and (c) above.

The matter is being heard by a judge alone.

(a) State how you would deal with such a situation and describe the procedure you would adopt in so doing.

(b) Would your dealing with that situation be different if the matter was being heard by a judge and jury?

If so, describe the procedure.

PART BQUESTION 6

What are the rules of the Supreme/High Court relating to legal proceedings:

- a) by and against a members' club;
 - b) by and against a firm?
-

QUESTION 7

Outline the procedural steps for any THREE of the following:

- a) voluntary liquidation of a company registered under the Companies Act;
 - b) removal of a director of a company registered under the Companies Act;
 - c) expulsion of a member from a club;
 - d) distribution of the profits of a company registered under the Companies Act;
 - e) change of name of a company registered under the Companies Act.
-

QUESTION 8

Answer either (a) or (b)

(a) Draft the constitution of a sports club for the employees of XYZ Limited.

(b) Outline how practitioners deal with the inadequacies of the forms set out in:

- i) Part II of Table A of the Companies Act;
- ii) Table B of the Companies Act.

QUESTION 9

Re-draft the following document for immediate filing:

SUIT NO. C.L. M 210 of 1991

IN THE SUPREME COURT OF JUDICATURE

IN COMMON LAW

BETWEEN	MARY MOFFET	PETITIONER;
AND	DONALD DAVE	DEFENDANT

THE HUMBLE PETITION of MARY MOFFET sheweth:

1. That on the 17th day of January, 1990 your petitioner was induced by the Defendant to invest \$40,000 CREME & MILKS LIMITED on the understanding that your petitioner would be given:

- a) 60% of the shares of the said company;

- b) a Debenture for the remainder of \$38,000;
 - c) the post of Co-Managing Director.
2. That on the 10th day of January, 1990, relying on the abovementioned inducement your Petitioner paid the Defendant the sum of \$30,000.00
 3. That up to the end of March 1991 your Petitioner and the Defendant managed the business of the said company and made a profit of about \$500,000.00
 4. That on the 1st day of April, 1991, at a Director's Meeting of the said company your Petitioner and Defendant had a quarrel over the Sales-Manager, one Daisey Flowers who was present at the meeting.
 5. That since then your Petitioner has been excluded from the management of the said company by the Defendant and the said Daisey Flowers and your Petitioner has discovered the following facts:

PARTICULARS

- i) The Annual Returns show that only 3 shares have been issued, one to your Petitioner - though he has no Share Certificate - one to the Defendant, and one to the said Daisey Flowers.
- ii) The said Daisey Flowers is being paid a salary of \$100,000.00 as Managing Director.

iii) During 1990, they have gone on several trips abroad at the company's expense.

iv) The Debenture has not been registered.

6. In the circumstances, your Petitioner submits that the affairs of the company are being conducted in a manner oppressive to him. Your Petitioner has lost faith in the commercial integrity of the said Daisey Flowers and the Defendant. It is therefore just and equitable that an Order should be made with view to bringing to an end the matters complained of by your Petitioner.

FILED etc.
