

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1999

CIVIL PROCEDURE AND PRACTICE I

(Friday, August 13, 1999)

Instructions to Students

- (a) Time 3 ½ 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 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 territory
- (e) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED

PART A

QUESTION 1

Deswin Gayle, a reputable building contractor, has had long and continuous business dealings with Smith Wilson, a firm of hardware merchants. The firm comprises sisters, Elizabeth, Colleen and Marcia. The following has now occurred:

- (a) A consignment of bath tubs supplied by Smith Wilson for use by Gayle in his last project, turned out to be grossly defective with the result that Gayle lost about \$300,000 of the contract price of the project.
- (b) Smith Wilson claimed to have purchased the sinks from Eze Incorporated Limited, who manufactured them, and Smith Wilson have so far made no satisfactory response to Gayle's claim for compensation.
- (c) On April 20, 1999, while Gayle was visiting on business at the firm's premises at 10 Southbank Road, one of the firm's clerks, Clovis Hunter, reversed the firm's delivery truck in Gayle's Mercedes Benz pick-up extensively damaging its front. Gayle angrily rushed out to remonstrate and Hunter drove the truck straight at him causing him to jump aside so hastily that Gayle stumbled, fell and injured himself. He spent five days in hospital and has an unsightly scar on his forehead. The pick-up cost \$40,000.00 to repair. Smith Wilson disclaim liability for Hunter's action.
- (d) A year ago, Elizabeth engaged Gayle to add a family room to her private residence at 10 Orange Mews. Elizabeth agreed that on satisfactory completion, Gayle would be paid \$98,000.00. The family room has been satisfactorily completed and certified, but Elizabeth has been unwilling to settle this account.

Relationships between Smith Wilson and Gayle have completely broken down and he has decided to litigate on these matters.

Advise Gayle whether he can:

- (i) join all parties and causes of action on one writ;
- (ii) whether all or any of these causes of action may be specially endorsed upon a writ.

QUESTION 2

On February 27, 1992, Alka Aluminum Company Ltd. (Alka) delivered 100 tons of aluminum components to Sunshine Manufacturing Company Limited (Sunshine). Sunshine paid Alka's invoice, but subsequently alleged that the components were too soft and useless.

There has been voluminous correspondence between the parties and attorneys-at-law have been instructed by both sides. Alka claim that the soft aluminum identified by Sunshine have come through another supplier. On December 6, 1997, Sunshine informed Alka that they had issued a writ on 1st November 1997. In a letter dated January 8, 1998, Alka's attorney-at-law replied:

"While it is denied that the soft aluminum came from our client, our client accepts that there is prospect of a Court finding that in fact it did. We are at present seeking authority from our client as to proposals for settling the dispute and would be grateful if you would consider postponing service for the time being so as to avoid unnecessary costs being incurred."

It is now May 25, 1998. The writ has not been served and the parties have been unable to agree terms despite a number of offers and counter offers.

How would you advise Alka Aluminium Company Limited ?

QUESTION 3

Claudia Sal issued a Writ of Summons against Bailey Taylor in which she sought to recover \$135,000 for rent.

On March 5, 1997 the writ was properly served on Bailey Taylor who did not enter an appearance/acknowledge service.

On March 30, 1997 Claudia Sal had a judgment in default of appearance entered in her favour against Bailey Taylor for the sum of \$135,000 and costs.

Bailey Taylor consulted you on April 13, 1999, and sought advice as to what steps, if any, could be taken to set aside this default judgment.

He informed you that he is a tenant of Claudia Sal, but that he owes her no rent. He produces for your inspection the receipts for rent, which sufficiently covered the period for which Claudia Sal issued proceedings.

Bailey Taylor tells you that he did not enter an appearance/ acknowledge service because he did not know what it meant and also he knew that he did not owe the money.

Advise Bailey Taylor on:

- (i) what steps he should take to have the default judgment set aside;
 - (ii) the principles that will be applied by a Court in arriving at a decision whether or not to set aside the default judgment.
-

QUESTION 4

Patrick Daley, who was an employee of Peter's Electrical Company, suffered personal injuries during the course of his employment, when a boiler exploded in the factory on August 17, 1991 and caused him severe burns. He then issued against his employers on August 16, 1997, a Writ endorsed as follows:

"The Plaintiff claims against the Defendant to recover damages for personal injuries and \$326,000 special damages and costs".

To this the defendant company entered an unconditional appearance/acknowledged service giving notice of intention to defend. The attorney-at-law for the plaintiff then filed a statement of claim within the time required for so doing, in which it was alleged that the injuries were due to the defendant's negligence and/or breach of statutory duty.

The defendant has issued a summons to strike out the statement of claim on the grounds that it introduces a cause of action not disclosed on the Writ.

Advise on the chances of success of the defendant's application.

QUESTION 5

Garth Harry purchased from Harrods Autos, a second hand Pajero for \$950,000. He took delivery of the vehicle and paid by cheque. The cheque has been dishonoured by the Bank and returned to Harrods Autos marked "account closed-refer to drawer".

Charles Dodd the Manager of Harrods Autos, tells you that he has already seen an attorney-at-law who has issued and served a specially endorsed Writ suing upon the dishonoured cheque. He tells you that Garth Harry has entered an appearance acknowledged service giving notice of intention to defend. In addition Garth Harry has written to the attorney -at-law indicating that a defence will be filed on the basis that the car was in fact defective.

Dodd tells you that Garth Harry has his own mechanic check over the car and that the first they received complaints about the car is in the recent letter, which was sent since proceedings were issued and served on Garth Harry.

Dodd says that his small auto business cannot afford to be out of funds for any significant period, and has asked you to assume control of the matter. He wants you to see whether the case can proceed quicker than the five years he hears it takes to get cases heard in Court these days.

Advise him on any step (s) you might make on his behalf in light of his instructions, listing and summarising the contents of any documents you might need to prepare.

PART B

QUESTION 6

Chantalle, the 14 year old daughter of Brandy Winehead and his wife Lorna, was expelled from school on the ground of persistent fighting with other pupils. Mrs. Winehead considered the disciplinary measures appropriate whereas her husband, a doting father, blamed the school authorities for resorting to action which he thought was totally unjustified. He said he would not send Chantalle back to school and told his wife that if she enrolled her in a school he would simply remove her. There was great tension in the family.

On May 24, 1999, former school friends of Chantalle visited her at home at Winehead Manor and they played records, danced and smoked. Mrs. Winehead returned home and ordered the youngsters to turn down the music, but Chantalle defied her mother and encouraged her friends to make fun of her. Mr. Winehead, who had spent the entire day having alcoholic drinks at his Club, came home and heard the commotion. He was angry with his wife and ordered her to stop molesting the children and indicated with the aid of abusive and insulting language that he would slap her if she did not leave Chantalle and her friends alone. Mrs. Winehead muttered that he was a "drunken old fool." Infuriated, Mr. Winehead threw her to the floor, removed his loaded firearm from his waist and pointed it in his wife's face. Chantalle was able after about five minutes to persuade her father to replace his firearm, and he did so and slumped off to sleep in front of the sofa.

Mrs. Winehead locked herself in her bedroom that night, and is at your office first thing this morning saying that she needs to obtain an injunction and to get Mr. Winehead out of the house.

(i) Advise Mrs. Winehead on the steps she can take against Mr. Winehead.

(i) Would your advise be any different if Mrs. Winehead and Mr. Winehead lived together as husband and wife but were not in fact married.

QUESTION 7

Mrs. Winehead (the wife referred to in Question 6 above) is very bitter about her husband's behaviour. She is a 50 year old woman and throughout her marriage had been entirely engaged in looking after the house and entertaining Mr. Winehead's business colleagues. She travelled with him extensively overseas, and received a generous housekeeping allowance from him, from which she was able to save and buy expensive jewellery for herself. Mrs. Winehead has instructed you to seek maximum maintenance/alimony for her. She states that her husband's current income is in excess of \$3 million per annum and his assets exceed \$20 million.

Advise Mrs. Winehead on her entitlement to maintenance/alimony.

QUESTION 8

Chantalle (the daughter above) referred to in Question 6 above, is still not interested in attending school. Mrs. Winehead tells you that she has managed to arrange for Chantalle to attend the 4th form class at Hiloy High School. Chantalle, however, is not intereted in attending school. She is supported by her father, who has told Mrs. Winehead that he never had much education, and that education is quite overrated. He says the only thing Chantalle needs to learn is how to make money, and if she lives with him, she will learn that . He is planning to take Chantalle to New York on his next trip, and although Mrs. Winehead has told him she will not consent to this, the trip is planned for September 30, 1999.

Draft an affidavit for the signature to Mrs. Winehead to ground an application for custody of Chantalle.
