

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST-YEAR SUPPLEMENTARY EXAMINATIONS, 1998

**STATUS, RIGHTS AND OBLIGATIONS  
OF THE LEGAL PROFESSION**

(Thursday, August 13, 1998)

**Instructions to Students**

- (a) Time            3½ 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

In August 1995, a firm of attorneys-at-law, Maverick and Mason, were entrusted with the sum of \$1,500,000 by their clients, Caribbean Insurance Company, for payment to Ibis Commercial Bank. The sum was not paid.

In April 1996, the Company withdrew its instructions and demanded immediate repayment of the \$1,500,000. However, despite repeated verbal and written requests, the firm failed to repay the amount.

On March 3, 1998, the Company filed a writ of summons against the firm, claiming, *inter alia*, wrongful conversion of the Company's money and repayment of the said amount together with interest thereon.

On April 21, 1998, the Company obtained summary judgment against the firm for the sum claimed. The application was heard before Mr. Justice Richards.

Write an opinion as to the course of disciplinary action which can be taken against Maverick and Mason in respect of these proceedings.

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### QUESTION 2

Nancy retains Michael, an attorney-at-law, to prepare her will. Among the gifts she wishes to make by her will is a devise of certain premises to Raphael and Gloria as joint tenants. Raphael and Gloria, who are husband and wife, are friends of Nancy and live in the same house as her.

Michael receives his instructions, prepares the will and sends it to Nancy. It is signed by Nancy and attested to by two witnesses, one of whom is Raphael, and returned to Michael for safe keeping.

There is a provision of the statute dealing with wills that states, *inter alia*, that "if any person shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise ..... shall thereby be given ..... then such devise to such person or wife or husband shall be utterly null and void".

Nancy dies and when Raphael and Gloria go to Michael for the will he advises them that the gift to them is null and void as Raphael attested to the will.

Raphael and Gloria seek your advice as to whether any proceedings can be taken against Michael.

Advise them.

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### QUESTION 3

In 1994, Ada, an attorney-at-law, was found guilty of conspiring to pervert the course of justice and of perjury. On appeal, her conviction was overturned on a technicality. There was however abundant evidence to show that she was guilty of the crimes. The Disciplinary Committee would like to take disciplinary proceedings against Ada.

Advise the Disciplinary Committee.

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**QUESTION 4**

Advise on the propriety of the following -

- (i) Lex Bookal, an attorney-at-law, permits his photograph and a statement by him to be published in a law journal recommending certain law books.
- (ii) Bourne Toulouse, an attorney-at-law, during an election in which he is a candidate, places a political advertisement in a newspaper in which he is described as "Bourne Toulouse, Attorney-at-Law".
- (iii) Broadman Biggs, an attorney-at-law, causes a sign six feet long and four feet high to be put over the front door of his office reading "LAW OFFICE OF DR. BROADMAN BIGGS, LL.B., B.Sc., ATTORNEY-AT-LAW".
- (iv) Teleman Phoney, an attorney-at-law, causes a listing to be placed in the "Yellow Pages" of the telephone directory giving his name and address and describing him as an attorney-at-law and notary public.

Give reasons for your advice.

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**QUESTION 5**

"It may be that a solicitor [attorney-at-law] who tries to act for both parties puts himself in such a position that he must be liable to one or other whatever he does....."

Scrutton, L.J. in Moody v. Cox and Hatt [1917] 2 Ch 71 at 91.

Discuss the above statement and explain and illustrate by referring to decided cases and other sources.

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**QUESTION 6**

John, an attorney-at-law, has been instructed by Tom, a long standing client, to prepare his will.

In the instructions, Tom wishes to make a gift of a substantial amount to John as a token of his regard and appreciation for his past services.

Advise John on the steps he should take to avoid any challenge to the gift to him.

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**QUESTION 7**

Tom Owen has represented Ian Freeman in several suits in the Supreme Court/High Court. Fees are due and owing to Owen for work done in connection

with these matters. Several letters have been written by Owen to Freeman requesting payment of the fees. Freeman has ignored the letters.

Owen filed a writ in the Supreme Court/High Court against Freeman to recover the fees.

Freeman consults you and seeks your advice -

- (i) as to whether Owen is entitled to commence suit against him;
- (ii) the factors to be taken into consideration in determining the fees to be paid to Owen.

Advise Freeman.

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### QUESTION 8

Charles is charged with murder and you have been retained to represent him. He informs you that he did commit the crime but does not wish to plead guilty.

- (i) Can you properly represent Charles and if so, what are the restrictions, if any, on your conduct of his defence?
  - (ii) Would your advice be any different if Charles had made the confession at the hearing of the matter?
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COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1998

**LEGAL DRAFTING AND INTERPRETATION**

(Monday, August 10 , 1998)

**Instructions to Students:**

- (a) Time: 3½ 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

Section 10 of An Act to provide for the Control of Narcotic Drugs reads as follows -

- “ 10. A peace officer may, at any time
- (a) without a warrant enter and search any place other than a dwelling-house, and under the authority of a writ of assistance or a warrant issued under this section, enter and search any dwelling-house in which he reasonably believes there is a narcotic by means of or in respect of which an offence under this Act has been committed;
  - (b) search any person found in such place; and
  - (c) seize and take away any narcotic found in such place, any thing in such place in which he reasonably suspects a narcotic is contained or concealed, or any other thing by means of or in respect of which he reasonably believes an offence under this Act has been committed or that may be evidence of the commission of such an offence.

The accused owns and operates a small grocery store. One day, when the accused was in the store, a peace officer entered and told the accused he was searching for prohibited drugs; he had no writ of assistance or warrant. After searching the store and finding no drugs, he attempted to search the accused. The accused objected and forcibly ejected the peace officer from the store and locked the door. A charge of resisting a peace officer in the lawful execution of his duty was laid against the accused. At the trial the peace officer admitted on cross-examination that he had no grounds whatever to believe that the accused had any prohibited drugs in his store or on his person.



It is conceded that if the attempted search of the accused was illegal, the charge should be dismissed; but if the attempted search was lawful the accused should be convicted.

What is your judgment? Give reasons.

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## QUESTION 2

For one week in March 1998, Mark left an Austin A40 motor car owned by him on the street in front of his house. He had bought the car for \$1,000 as scrap and having sold various parts, subsequently advertised it for sale for \$2,000. The engine was in a rusty condition, incomplete and did not work; the car was jacked up as the four tyres had been sold. There was no gear box or electric parts and so the car was incapable of moving under its own power having been towed to Mark's house.

The car was unlicensed; there was no policy of insurance in force in respect of it and there was no certificate of road worthiness.

Mark was charged with keeping on a public road a mechanically propelled vehicle for which a licence was not in force, contrary to section 15 of the Road Traffic Act, and with using a motor vehicle on the road without an insurance policy, contrary to the Motor Vehicles Insurance Act.

Before the charges were laid, Police Corporal Jones, having seen the car parked on the road and having ascertained that the owner was Mark, pointed out to him that the car licence had expired. Mark replied that it was not a car as it could not be driven, the engine was rusty, the gear box missing, it had no tyres

and that he was waiting for a tow truck to take it away. Jones, however, was of the opinion that the car could be moved by pushing it on the rims.

Section 1 of the Road Traffic Act provides -

"1. In this Act "motor vehicle" means a mechanically propelled vehicle intended or adapted for use on roads;"

Section 15 provides

"15. If any person uses on a public road any mechanically propelled vehicle for which a licence under this Act is not in force he shall be guilty of an offence and shall be liable to a penalty not exceeding five hundred dollars."

The magistrate before whom the matter was heard found Mark guilty as charged and stated - " a motor car did not cease to be a mechanically propelled vehicle on the mere removal of the engine, tyres and gear box . The absence of an engine therefore was not conclusive."

Mark wishes to appeal this decision and has sought your advice.

What is your advice? Give reasons.

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### QUESTION 3

Sara Early, a bright university graduate, made her Will (without legal assistance) in December 1985. She appointed her sister Agatha Tough, to be her sole executrix and directed that her just debts and funeral and testamentary expenses be paid by her executrix. The dispositive part of her will stated as follows -

"I GIVE AND BEQUEATH to my daughter Ann-Marie Button who now resides in the United States of America the following -

- (1) the proceeds of life insurance policy number 2121 with Mutual Life Insurance Co. Ltd.,
- (2) Realty in property at Lot 11115 Overboro subject to -
  - (a) payment of mortgage and interest thereon to the Bank of Nova Scotia;
  - (b) payment until maturity of the premiums payable on life insurance policy number 1373 with British American Life Ins. Co. on the life of the above-named Ann-Marie Button;
  - (c) creation of a fund to provide a life interest to my Mother Mrs. May Good.
- (3) To my Mother the said Mrs. May Good -
  - (a) all my shares and other interest in the Churches Co-op. Credit Union Ltd.;
  - (b) all my shares and accruing interest in the Civil Service Mutual Thrift Soc. Ltd.;
  - (c) Life interest in property at Lot 1115 Overboro and on the death of my Mother the life interest hereby created shall revert absolutely to my daughter Ann-Marie.
- (4) I hereby give and bequeath to my Father Michael Jackson and his wife Precious half proceeds from my Mutual Growth Insurance Policy number 5095

- (5) To my nephews Mark and Phillip Tough in equal portions the other half of the proceeds from the Mutual Growth Insurance Policy number 5095.

The rest and residue of my estate I GIVE AND BEQUEATH to my daughter Ann-Marie Button.

For the faithful execution and administration of this my last Will and Testament I direct that my sister Mrs. Agatha Tough be allowed five percent of the Cash Proceeds on realization of my personal property and of any income accruing from property held on Trust."

Sara died last year and her mother a retired teacher on a small pension who was living in rented premises moved into the house at 1115 Overboro.

Last month, however, probate of the will having been recently granted, Mrs. Tough, the executrix, told Mrs. Good that she should vacate the house as she was about to sell it as required by the terms of Sara's Will.

Mrs. Good has sought your advice.

Advise her giving reasons

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#### QUESTION 4

Agricultural Products Company Limited was incorporated a few years ago and has been carrying on the business of retailers and wholesalers of a wide variety of goods.

The objects of the company according to its memorandum of association are:

- (a) Buying, selling, bartering, taking on consignment-dealing in and packing fruit, fodder and other farm produce, spraying materials and all kinds of insecticides and fungicides, power spraying outfits, hand pumps and all other commodities or material incidental to the use of the same, nails, pulp heads, paper and all materials necessary for the purpose of packing fruit and farm produce, flour, feeds and all milling produce, artificial fertilizers of all kinds, seeds, farming implements, tools and wagons and all manner of merchandise.
- (b) Buying, selling, leasing erecting, improving, managing and operating stores, storehouses, warehouses and other buildings which may be incidental or conducive to purposes of the company, and carrying on the business of storekeepers and warehousemen, in connection therewith."

Mr. Troublesome and four other shareholders have brought a minority action against the company for operating contrary to the memorandum of association - to wit carrying on the business of a general store.

As the judge presiding in the action what judgment would you give?

Give reasons.

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QUESTION 5

Mr. Lon Trapper, the monthly tenant of residential premises owned by Mrs. Alexi Leech was given notice to quit the premises by March 30, 1997. At the top of the notice was the caption -

"Reason for Notice - Premises are for sale".

In May 1997, an agreement for sale was signed between a Mr. Poole as purchaser and Mrs. Leech. By this agreement the date for completion of the sale was August 30, 1997, which was also the date of possession. The premises were to be handed over with vacant possession.

Mr. Trapper, however, refused to vacate the premises and argued that the notice to quit was not valid as it was not based on any of the grounds stated in section 16 of the Rent Restriction Act on which a court was empowered to make an order for possession.

Mrs. Leech therefore sought and obtained an order from the court for him to vacate the premises by July 30, 1997. In his reasons for granting the order, the magistrate made it clear that he agreed that under section 16 an order for possession could not be made where the reason given was that the premises were up for sale. However, he went on to say that in his view section 16 was not to be considered exhaustive -

"In my view section 16 does not exclude a jurisdiction to make an order for possession in the circumstances before me since it must have been an oversight on the part of the legislature in not making specific statutory provisions to cover the case in point. Where fetters are apparently imposed by the legislature on the rights of an owner to deal with his property as he considers fit, if such fetters are shown to be too onerous then it must be assumed that it was never so intended by the legislature".

Mr. Trapper successfully appealed this decision. The decision of the Court of Appeal was handed down by Mr. Justice Wise who said inter alia -

"...the true legal principle is that if the legislature by clear words imposes fetters, however, onerous on the disposition of property by individuals it must be construed as a matter of policy originated by the executive and given expression to by the legislature. It is not part of a Court's function to say that the fetters are onerous and because they are onerous there resides in it an inherent power not to give effect to the clear legislative intent."

Mrs. Leech is very unhappy with this decision and has therefore sought your advice with a view to appealing to the Privy Council.

What is your advice? Give reasons.

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### QUESTION 6

- (a) How does an interpretation act assist in the interpretation of legislation?
- (b) Harry recently purchased a lot of land for which he received a registered title under the new land registration system. Last week Monday he completed the fencing of the lot as he planned to keep a few cows in it. When he returned to the land on Thursday, however, a section of the fence on the northern and southern boundaries had been removed. On making enquiries from the neighbours, his neighbour on the northern boundary, Miss Ifill, told him that she had removed part of both fences as

she claimed she had a right of way over Harry's lot in order for her to reach the main road from her land.

Harry's title, however, has no such easement noted on it and is therefore of the view that Miss Ifill's right has been extinguished under the new land titling system.

The preamble to the Land Titles Act states as follows -

"whereas it is expedient to give certainty to the Title to Estates in Land and to facilitate the proof thereof and also to render dealings with Land more simple and less expensive be it therefore enacted...."

Section 55 of the Act provides -

"Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise which but for this Act might be held to be paramount or to have priority the proprietor of land or of any estate or interest in land under the operation of the act shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be described or identified in the certificate, and to such incumbrances as may be notified on the folium of the Register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that may by wrong description of parcels or boundaries be included in the certificate of title instrument evidencing the title of such proprietor not being a

Preferential and prior rights defeated in favour of registered proprietor.



purchaser for valuable consideration or deriving from or through such a purchaser.

Provided always that the land which shall be included in any certificate of title or registered instrument shall be deemed to be subject to the reservations, exceptions, conditions and powers (if any), contained in the patent thereof, and to any rights acquired over such land since the same was bought under the operation of this Act under any statute of limitations, and to any public rights of way, and to any easement acquired by enjoyment or user, or subsisting over or upon or affecting such land, and to any unpaid rates and assessments, quit rents or taxes, that have accrued due since the land was brought under the operation of this Act, and also to the interests of any tenants of the land for a term not exceeding three years, notwithstanding the same respectively may not be specially notified as incumbrances in such certificate or instrument."

Advise Harry as to whether Miss Ifill's right has been extinguished.

Give reasons.

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### QUESTION 7

Your client, Mr. Joe Bloggs, has recently suffered a stroke. As a result he is unable to manage his affairs. He owns four properties and a restaurant which he managed with the assistance of Mark O'Kief.

As a result of his incapacity Bloggs asked O'Kief whether he would manage the business and his properties. O'Kief readily agreed, but told him that he. Bloggs, would have to give him legal authority in writing, to which Bloggs agreed. Bloggs then instructed an attorney-at-law who prepared the power of attorney set out below which he then duly executed and registered/recorded.

**"POWER OF ATTORNEY**

I, JOE BLOGGS of "Fairhaven" St. Peter, Businessman, Hereby Appoint MARK O'KIEF of 22 Windy Way, St. Johns Businessman, to be my true and lawful Attorney for me and in my name and for my use to act and conduct and manage all my affairs as he may think fit with power to execute all documents of all kinds, to commence, prosecute or compromise legal or arbitration proceedings of all kinds to compromise claims of all kinds and to deal with and manage any property of whatever kind or wherever situated in anyway whatever.

This power of Attorney shall be irrevocable for a period of five years from the date hereof.

AND I HEREBY AGREE AND UNDERTAKE to ratify and confirm all and whatsoever that my said Attorney shall lawfully do or cause to be done by virtue of this Deed.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Seal this 10th day of March, 1997."

In early May 1998, Bloggs' bank manager telephoned him seeking his confirmation that O'Kief was authorised to withdraw a large sum of money from Bloggs' account. Bloggs told the manager that this was not the case. Bloggs

then tried to contact O'Kief but was told that he had gone to Florida for a few days. The following day Bloggs received two telephone calls from a person who stated that he had recently contracted to purchase two houses from O'Kief but on investigating the titles discovered that they were owned by Bloggs.

Bloggs, in a very agitated state, has come to see you. He tells you that it was never his intention that O'Kief would be able to operate his personal bank account or be able to sell his properties all of which were tenanted. What he had intended was for him to be able to do the day to day management of the restaurant business and manage the properties.

He now therefore seeks your advice with respect to the Power of Attorney he executed.

Advise him, giving reasons.

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### QUESTION 8

Your client Morton Phillips was convicted on July 15, 1998 of unlawfully and carnally knowing a girl named Kelly Green on March 1, 1998 when she was fourteen years and eleven months old - contrary to section 5 of the Criminal Law Amendment Act 1985 as amended by section 7 of the Prevention of Cruelty to Children Act 1998.

Section 5 of the Criminal Law Amendment Act provides -

"Any person who unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any girl being of or above the age of thirteen years and under the age of sixteen years shall be guilty of an offence.

Provided that prosecution shall be commenced for an offence under this section not more than three months after the commission of the offence."

By section 7 of the Prevention of Cruelty to Children Act 1998 which came into effect on May 25, 1998 -

"The limit of time mentioned in the proviso to section 5 of the Criminal Law Amendment Act 1985 shall be six months after the commission of the offence."

At the trial it was submitted by Tuck Priester (who was then counsel for Phillips) that

"Where a section is ambiguous it must be interpreted in favour of the prisoner. Section 7 of the Prevention of Cruelty to Children Act in extending the time within which proceedings for offences created by section 5 of the Criminal Law Amendment Act does not assume to affect offences which had been committed before the Act came into operation. It seems to be a very strong thing to hold that a defence which was open to a man at the time he did the act complained of has been taken away by the retrospective operation of a subsequent statute. Here to hold that section 7 is retrospective will take away the defence that was open to the accused - namely that proceedings had not been taken within three months of the offence."

Your client now wishes to appeal. Advise him on the merits of an appeal.

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COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST-YEAR SUPPLEMENTARY EXAMINATIONS, 1998

LANDLORD AND TENANT

(Friday, August 14, 1998)

Instructions to Students

- (a) Time            3½ 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.**
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### QUESTION 1

In March 1994, Arthur leased 0.25 hectares of land on High Street to Krispy Fried Chicken for a period of fourteen years at a rental of \$12,000 per annum for the first seven years; thereafter increased rental to be agreed between the parties.

Between April and October 1994, Krispy erected a restaurant and car park at a cost of \$1,000,000. On completion of the restaurant and with effect from November 1, 1995, Krispy entered into an agreement with Arthur to manage and operate the restaurant on the terms and conditions as therein set out.

This agreement contained various clauses dealing with the operation and maintenance of the restaurant and provided, *inter alia*, that the licensee should pay an annual licence fee of \$60,000 for the use of the restaurant, that he should have quiet enjoyment thereof and that the agreement could be terminated for any cause whatever by either party giving to the other one month's notice in writing to that effect.

Last month Arthur received a letter from Krispy giving him one month's notice to quit with effect from August 30, 1998. The notice, the letter said, was in accordance with Clause 6 of the agreement. Clause 6 states as follows -

"This Agreement may be terminated for any cause whatever by either party hereto on giving to the other one month's notice in writing to that effect such notice expiring at the end of the calendar month."

Arthur has consulted you with respect to his rights in this matter.

Advise Arthur.

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## QUESTION 2

- (a) Sponge occupies on an oral monthly tenancy, a super studio apartment in a complex owned by Coral Ltd. (The apartment is not subject to rent restriction/control legislation.) Sponge has been erratic in the payment of his rent and is now \$20,000 in arrears, representing three months rent. Coral Ltd. has properly commenced action for recovery of possession, arrears and mesne profits.

Sponge's defence is that he has been withholding rent because of structural defects to the adjoining apartment which have caused damage to his belongings.

Advise Sponge on the validity of this defence.

- (b) In June 1997, Joe leased a two-bedroom cottage for five years from Doe under a lease which provided *inter alia* that the tenant was "not to sublet or part with possession of the premises without the landlord's previous consent in writing which shall not be unreasonably withheld".

In April 1998, having been relocated by his employer to another country, Joe assigned the lease to Bowe, but without first obtaining the landlord's consent.

Doe has therefore sought your advice. Advise him.

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### QUESTION 3

In 1992, Annan leased a house at 10 Bacolet Row to Oniel by deed for seven years at a rent of \$8,000 per annum payable quarterly. In the lease, Oniel covenanted, *inter alia*, not to use the property for any purpose other than residential.

In June 1993, Oniel assigned the lease to Chelsea who nine months later sublet to Delia for the remainder of the term, less one day. In 1995, Annan conveyed the reversion to Rob who has now discovered that the rent is two years in arrears and that Delia has started to operate a club and discotheque in the house.

Advise Rob.

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### QUESTION 4

In 1994, Cory leased premises on Deen St. from Paradise Ltd. He uses the premises for the manufacture of straw items. The rent of \$1200 is payable



on the first day of each month, in advance, and Cory is also responsible for payment of all utility bills.

On December 21, 1997, Paradise served Cory with notice to quit for non-payment of rent that he agrees has been in arrears for three months. He claims, however, that the premises have been in a bad state of repair for years and that during recent heavy rains, water seeped in through the defective roof causing damage to the inside walls and flooring and to straw which he stored on the premises for his business. As a result, he decided to withhold the rent. He also wishes to claim compensation from Paradise who has denied liability.

The Company states that it is an express term of the lease that the tenant should maintain the premises in a tenant-like manner, fair wear and tear excepted. Cory is of the view that the landlord is responsible for all repairs although this is not expressly stated in the lease. Directors of the Company from time to time have visited the premises in order to purchase straw items and are therefore aware of the disrepair. Cory, who is being sued for repossession and arrears of rent, seeks your advice.

Advise him.

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#### QUESTION 5

On September 25, 1992, Welcome Properties Ltd. let "Moonhill" (which is not subject to rent restriction/control legislation) to Brown for ten years on their standard terms of lease which included -

- a covenant by the tenant to keep the interior and exterior of the premises in good tenantable repair;
- a covenant by the tenant to permit the landlord, upon giving three days' notice, reasonable access to inspect the premises;
- a proviso for re-entry for breach of covenant or arrears of rent.

Three months ago Welcome inspected the property and found a number of dilapidations affecting the windows, water pipe, and floor panels. They immediately served a notice to repair on Brown. To date there has been no response from him. Welcome now seeks your advice as to their rights to re-enter and forfeit.

Advise Welcome.

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### QUESTION 6

Advise Black on the validity and effect of the notices to quit in the following cases -

- (a) He was let 14 Arcadia Drive on a tenancy agreement for one year from March 25, 1990 with option on giving three months notice to continue on a quarterly tenancy. The tenancy was so continued until near the end of 1997. On December 20, 1997, the landlord served notice to quit in the following terms -

"I hereby give you Notice to quit 14 Arcadia Drive on or before 25th March next."

- (b) In August 1992, he took premises at 10 Hyatt Avenue on a lease determinable by three calendar months' notice at any time. He has now been served with a notice to quit dated July 21, and delivered by post July 24, stating -
- "I hereby give three months' notice of termination of the lease you hold on 10 Hyatt Avenue."
- (c) He had made a quarterly letting of premises used as a motor repair shop to Hinge and Bracket who have now written to him stating -
- "We wish to give notice of our intention to leave at the end of the next full quarter if we find cheaper premises."
- 

### QUESTION 7

Patsy is a tenant of a building with an annex let to her by Carlos Ryce at a monthly rent of \$3,000. She uses the premises partly as a residence and partly as a dental office. She rents the annex to Kimba, a nurse at the dental office, for \$800 per month which includes meals. The rent for the last two months has not been paid by Patsy.

Yesterday, at 6.00 a.m., a bailiff entered the premises through the back door, which was shut but not locked. On seeing Patsy who was attending to a patient named Lisa sitting on the dental chair, he said - "I have come to levy distress for arrears of rent". He then requested Lisa to get off the dental chair and seized it along with a stroller she had brought on the premises. He further seized and carried away a washing machine, a bed and a refrigerator.

He then forced open the door to Kimba's place and carried away her bed and dressing table. He then left but returned one hour later and drove away with Lisa's car that was parked on the roadway in front of the premises.

Advise Patsy, Kimba and Lisa.

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### QUESTION 8

Saleem, who lived in Toronto for many years, recently returned home with his wife to spend his retirement years. Shortly after he returned from Toronto, he purchased a house intending to convert it into his retirement home. The house is presently tenanted but Saleem says it is in need of substantial repairs, both internally and externally, as the tenant had failed to carry out any repairs. Saleem plans to convert the house to two self-contained apartments. Thereafter, he plans to occupy one of the apartments and rent the other. He now discovers that the house is subject to rent restriction/control legislation. He therefore seeks your advice and wishes to know -

- (i) whose responsibility it is to carry out the necessary repairs in the absence of a written lease;
- (ii) what procedure he must adopt in order to have the present tenant, who is a monthly tenant, vacate the premises;
- (iii) whether the apartment he intends to let will be governed by such legislation.

Advise Saleem.

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**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE**

**FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1998**

**LAW OF EVIDENCE AND FORENSIC MEDICINE**

**(Monday August 10, 1998)**

**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 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.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

**QUESTION 1** (Compulsory)

(a) The Abortion Act requires that two registered medical practitioners acting in good faith agree that the termination of a pregnancy is justified on four grounds.

Name two of these grounds.

(b) State the medico-legal importance of the presence of rigor mortis.

(c) What is the meaning of spontaneous abortion?

(d) As an Assistant at the D.P.P.'s Office you are asked to make a ruling on a case submitted by the police regarding a controversial shooting involving two security guards. The police report states that guard "A" was handing a .38 revolver to guard "B" when the weapon allegedly went off accidentally killing guard "B". The postmortem report states that "An entrance gunshot wound surrounded by a **circular patterned abrasion** is noted on the forehead of the deceased with a significant amount of gunpowder residue in the subcutaneous tissues."

(i) In your opinion what caused the circular patterned abrasion?

(ii) What was the range of fire?

(iii) A brief opinion

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**QUESTION 2**

Sam was arrested on Sunday morning last for robbery at Lo-Hi Stores during the course of which a number of electronic items were stolen. It was alleged that the robber threatened the victim with a 9mm pistol in effecting the robbery.

When arrested Sam was questioned over a period of several hours and was given no refreshment. He was not advised of his right to an attorney. On Monday morning, Sam gave a statement to the police in which he admitted the offence and told them where the goods could be found. The police went to the place in question and retrieved a quantity of electronic items which were subsequently identified as the property of Lo-HI Stores.

- (i) The prosecution wish to tender the statement as evidence on the basis that it has been proved reliable since the items were retrieved. Advise prosecuting Counsel
- (ii) If the statement is not admitted can the items be admitted as evidence?
- (iii) Advise prosecuting Counsel whether the prosecution may tender a 9mm pistol found by the police at the home of Sam's mother the day after the robbery, in the course of with a warrant.

**QUESTION 3**

- (a) Frank wishes to sue the Hopeful Maternity Hospital for negligence as a result of the death of his wife arising from complications after a caesarian operation at the hospital. Frank tells you that apart from his wife, he knows of four other instances occurring in the last

year where women have either died or become seriously ill after receiving caesarian operations at the hospital.

Advise Frank as to whether he can call this evidence in his action against the hospital.

- (b) Sara is charged with burglary of Value Electronics where it is alleged she stole 10 Olympus cameras. A hidden video camera filmed Sara as she broke into the store around 10:00 p.m. using a special card to bypass the security. At the time she was dressed in black tights, black shirt, boots and wore surgical gloves. She also had a large handbag.

The police have had reports of breakings in three other nearby stores in which expensive camera equipment was stolen. Although there was no direct identification in each case, there is evidence that just before the burglary, a woman of Sara's age was seen in the vicinity of the store and at the time was dressed in black and carrying a bulky handbag. There is also evidence that the security system was rendered useless in each case.

- (i) Advise the prosecution whether the videotape is admissible in evidence on the charge of burglary.
- (ii) Assuming that the videotape is admissible evidence, what use can the prosecution make of it in respect of the three other reports?.
-



**QUESTION 4**

- (a) Esau is charged with importing Chiquita bananas from the United States contrary to the provisions of a local statute. Esau claims that the bananas are imported from Guatemala (which is not contrary to the law) as he stated in his customs declaration form. The attorney-at-law for the Customs Department wishes to tender into evidence a container in which the bananas came that bears the label "Goods ex USA".
- (i) Advise the magistrate whether a defence objection to this course has merit.
- (ii) Is Esau's declaration form admissible in evidence for either the prosecution or the defence and, if so, for what purpose?
- (b) Flynt is charged with inflicting grievous bodily harm on Soffy by hitting him on the shoulder and the back. When he struck, Soffy fell forward and did not see his assailant. He, however, heard a male voice say, "Is Flynt who hit the man with that jackhandle on his hand". Soffy looked up in time to see Flynt walking on the other side of the street carrying a jackhandle.

Advise as to the admissibility of the following -

- (i) the evidence of what the unidentified male voice said.
- (ii) a jackhandle found in Flynt's home on the day after the incident following a legal search by the police.
-

**QUESTION 5**

Amy and Christie are charged with conspiracy to export cocaine and trafficking in cocaine. The prosecution alleges that the cocaine was found in several Alo Face cream containers found in the suitcases of both women.

Amy's defence is that she had no knowledge that the containers had anything other than face cream and that they must have been substituted. In this regard Amy's lawyer wishes to introduce evidence of a polygraph test which she took, contending that the polygraph examiner is an expert. The magistrate says that the examiner may be an expert but he will not allow the evidence.

- (i) What is the basis for the magistrate's ruling?
- (ii) Amy's lawyer also wishes to call evidence that an accused man, Joshua, when pleading guilty to cocaine possession in another court, had told that other court that he was the person who assisted Christie in packaging the cocaine for export.

Advise Amy's lawyer on the proposed course of action.

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**QUESTION 6**

- (a) Gayle is charged with indecently assaulting three boys, ranging in age from 9 to 13. The two older boys give sworn evidence while the youngest is permitted by the judge, after a voir dire, to give unsworn evidence pursuant to the applicable statutory provisions.

Advise on the issue of corroboration generally. Would it make a difference if all three boys give unsworn evidence?.

- (b) Assume that in (a) above, one of the boys tells the judge on the voir dire that "no talk of God is permitted in our home". The judge is, however, very impressed by his level of intelligence and allows him to give sworn evidence.

Advise on the propriety of this ruling.

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### QUESTION 7

- (a) Mikey is charged with the murder of his wife, Angie. His defence is a plea of insanity.

Advise on the burden and standard of proof.

- (b) On a charge of wounding with intent, Nick's defence is that he acted in self defence. In directing himself the magistrate says the following -

"I have to bear in mind that the only burden borne by the accused is that of making self-defence a live issue, fit and proper for my consideration. Once he has done this on a balance of probabilities, then it is my duty to examine the case for the prosecution to see if the case has been proved against him".

Nick is convicted and seeks your advice on whether the magistrate misdirected himself in the passage above.

Advise him.

- (c) Pat, an attorney-at-law, has been brought before the Disciplinary Committee for alleged misuse of a client's funds. He denies the allegation strenuously.

Advise on the standard of proof in proceedings before the Committee.

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### QUESTION 8

Dick is charged with indecent assault, the offence having allegedly been committed during a train journey, in which he and the complainant, Maud, were the only passengers in a forward compartment.

Advise the prosecution what use can be made of Dick's two previous convictions for dishonesty in the following circumstances -

- (i) where he calls a witness to testify to his reputation for good behaviour with ladies generally.
  - (ii) where, in an unsworn statement from the dock, he denies the allegations and says that Maud, who he describes as "a well known loose woman" who in fact offered him a sexual favour for a fee, which he refused.
  - (iii) where, in the course of his sworn evidence, he asserts his "impeccable character".
-

**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE**

**FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1998**

**CRIMINAL PRACTICE AND PROCEDURE**

**(Tuesday, August 11, 1998)**

**Instructions to Students:**

- (a) Time: 3½ 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**

J. Jake and B. Blake were seen by two constables, F and S running from certain premises towards a motor car which they entered; Blake getting into the driver's seat and Jake into the passenger seat. As the car reversed Constable F. called out "Police, Stop".

Jake put his head out of the window, pointed a firearm at the constables and fired two shots at them.

The car continued to reverse and crashed into a light pole. Jake and Blake and two other occupants C and W ran from the car. The constables gave chase and as they did so Blake spun around pointed a gun at them and fired two shots at them.

Blake and Jake were later arrested and charged.

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

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**QUESTION 2**

(a) Sonny appears for his trial at the Supreme/High Court. When called upon to plead he remains silent. The Judge requests your assistance as prosecutor as to the correct procedure which should now be followed.

What are your submissions?

(b) Joy and Maya are being tried together for robbery. After the close of the prosecution's case and during the case for the defence Joy absconds after she has been cross-examined by the prosecutor. The latter urges the trial Judge to continue with the trial in Joy's absence. The Judge invites you as attorney-at-law for co-accused Maya to address him.

What would be your response be in the circumstances?

---

### QUESTION 3

(a) John is being tried at the Supreme / High Court for burglary. After an overnight adjournment one of the jurors fails to turn up for the continued hearing. The judge adjourns the matter for enquiries to be made. During the course of the day a telephone call is received at the Supreme / High Court purportedly from the juror in which she states that she was offered a bribe to give a certain verdict and did not know what to do.

As trial judge what would you do?

(b) Assume on the facts above that the juror is discharged, the trial proceeds and the jury retires. At the end of the statutory period of time which must expire before a majority verdict is acceptable the jury is sent for. The trial judge asks the foreman whether the members of the jury have arrived at a verdict on which they are all agreed. The foreman replies that they have not. The judge then says "Retrial ordered". The foreman then states that if given more time they may agree. The judge consents and the jury retires. The jury returns twenty minutes later with a verdict of 5 in favour of guilty, 1, for not guilty.

Are there any irregularities in the delivery of the verdict?

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#### QUESTION 4

Sam appears before the magistrate charged on three separate complaints with the offences of assaulting Tom, resisting arrest and assaulting a police officer in the execution of his duty. The offences are all alleged to have occurred on March 20, at Joshua's bar during the course of a fracas in which Tom was allegedly injured by Sam.



The magistrate informs Sam that he intended to hear the matters together. Sam objects but the magistrate allows the joint trial. The hearing continues but Sam refuses to say anything in his defence. He is convicted on all three complaints. Sam is dissatisfied with the magistrate's actions and wishes to appeal.

Advise him.

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#### **QUESTION 5**

Charlo who is 18, is charged summarily with the offence of possession of marijuana. On the first day of hearing of his case, Charlo is unrepresented and when the charge is read to him he says "Guilty" with an explanation. He then tells the magistrate that he had been handed a cigarette by a man called Boyo at the street corner where a group of young men were gathered. He only realised it was a marijuana cigarette when the police patrol pounced on them and seized the cigarette.

The prosecutor informs the court that Boyo is well known to the police as a drug user and Charlo is new to the area. Charlo then requests an adjournment to obtain counsel.

The magistrate refuses and says, "So you are involved with bad company?" Without further ado and without asking Charlo anything more she proceeds to sentence him to three years imprisonment.

Advise Charlo as to possible grounds for an appeal.

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### QUESTION 6

At a preliminary enquiry into a charge of murder against Courtney the prosecution calls several witnesses including Carol, an 11 year old.

The magistrate takes sworn evidence from Carol without enquiring as to her competence. At the end of the prosecutor's case the defence makes a no case submission. After the prosecution has established a case" The caution is then administered to the accused who on the advice of his counsel says nothing. The counsel then informs the magistrate that based on what he said in overruling the submission he had already made up his mind to convict the accused for trial thus denying him a fair trial.

Courtney is committed to stand trial and the following week the newspapers carry various stories to the effect that Courtney, brother of well known convicted murderer and drug baron Chad, is to stand trial for murder. Chad is presently in Death Row having been convicted for two murders.

Courtney's trial is listed for the Supreme / High Court and on the first date of hearing his counsel proposes to take certain preliminary points.

Advise as to what these points are likely to be and their respective merit.

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### QUESTION 7

Maggs, a taxi driver, was convicted of causing the death by dangerous driving of a racing cyclist, who was taking part in a timed event. The Crown suggested that Maggs had either fallen asleep, having driven for long periods or momentarily lost concentration when he collided with the cyclist. The accused did not give evidence, but a written record of his interview with the police was put before the jury. In that interview he had said that as he was driving along the cyclist suddenly veered towards the middle of the road. The accused had to take evasive action to avoid hitting the crash barrier so he swerved to the left, the cyclist did the same thing, hence the collision.

This account was not supported by the forensic examination of the car and the cycle, which suggested that both car and cycle were travelling straight at the moment of impact, and the cycle was not hit at an angle. The jury had a plan of the locus in quo and, after retiring they asked for a tape measure. There being no objection from either side they were provided with a police surveyor's tape which was the only one available.

Maggs was convicted.

Write an opinion as to whether or not the compliance with the jury's request was irregular.

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**QUESTION 8**

(a) At the start of the preliminary enquiry into a charge of murder against Kevon the charge is read out him. Kevon is alleged to have stabbed his girlfriend in a fit of jealous rage and even though he is told that he is not required to plead Kevon say, "Ah guilty, don bother with a trial, ah ready to dead".

The magistrate is in a quandary as to how to proceed.

Advise the magistrate as to the procedure to be followed.

(b) Zeke is convicted of assault occasioning actual bodily harm at the Magistrate's Court, He is fined. Two days later the victim, Kim is taken to the hospital and X-rays show a blood clot in her brain. Medical evidence reveals that the blood clot was caused by the injury inflicted by Zeke.

Kim later becomes seriously ill and is slipping in and out of consciousness. The police are of the opinion that Zeke has escaped too lightly and wish to be advised as to the possibility of any further charges.

Advise the police.

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**COUNCIL OF LEGAL EDUCATION**  
**NORMAN MANLEY LAW SCHOOL**  
**LEGAL EDUCATION CERTIFICATE**  
**SUPPLEMENTARY EXAMINATIONS, 1998**

**CIVIL PROCEDURE AND PRACTICE I**

**( Wednesday, August 12 , 1998)**

**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 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 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 AQUESTION 1

In 1980 Larry bought certain lands from Tom which formed part of a large estate that Tom had subdivided for sale. In order to gain access to his land Larry had the use of a common right of way which was expressly described in the contract for the sale of the land. However, in purporting to convey the property the right of way described in the deed was not properly located. In fact, the true right of way remained on the parcel of land belonging to Tom who sold it in 1985 to Barbara.

Barbara informs Larry that he can no longer use the right of way because he is trespassing on her land although he shows her the contract of sale, the deed of conveyance and even brings Tom to confirm that a mistake was made.

Larry comes to you for advice on possible legal proceedings to protect his interests. As this is his first brush with civil litigation, he wants you to explain to him what the process entails and how you will go about seeking redress for him.

Describe briefly the factors (excluding any pre-litigation steps) that you will take into consideration to initiate legal proceedings and outline as far as you can the various procedural steps that are involved in this process.

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**QUESTION 2**

On January 12, 1998, Furniture Supreme enters judgment in default of defence against Dianne Dearing in respect of a claim of \$155,000 towards the purchase of furniture and household appliances bought from them. She now consults you and instructs you to make an application to the court to have the default judgment set aside. She further instructs you as follows -

That she did, in fact, purchase furniture from Furniture Supreme valued at \$155,000. However, as a longstanding customer of the store, the manager agreed to give her a discount of 25% on that price and further agreed to 24 monthly installments instead of the regular 12 monthly installments usually given the ordinary customers. She dutifully paid the installments as they became due up to the end of October 1997 when she became ill and could not manage her affairs. When she was served with the writ of summons she was only able to instruct her attorney-at-law to enter an appearance/give notice of intention to defend on her behalf. She has just recovered sufficiently to pursue the matter and as her attorney-at-law has since migrated she would now like to instruct you in this matter.

(Continued on page 4)

- (i) Outline the procedure to set aside default judgment, describing the contents of the documents you would use.
  - (ii) Draft the affidavit you would use in support of your application and outline the arguments you advance.
- 

### QUESTION 3

Your client, the first defendant, brings you the statement of claim set out in the appendix to this question. His instructions to you are as follows -

"My name is Hudson Bay and I am a Sales Manager, and I live at 99 Great Line Road, Turnpike.

By a written contract dated December 19, 1995, made between Manley & Sons Limited and myself, I was employed as sales manager at a salary of \$820,000 per annum.

It was an express term of the contract, that I would be paid 1% of the retail value on the sale of all valves and pumps achieved by the area sales department which I managed.



I worked very hard in the company, until November 12, 1996, when I received notice in writing from the ~~Defendants~~<sup>Plaintiffs</sup> that they were delaying paying me the commission. Despite the fact that I wrote to the company several times, I received no further word from them about the commission.

Finally, on March 20, 1997, in disgust I left the company. I was offered a much better job. I estimate the commission due to me between December 1995 and March 20, 1997 is \$1,000,000.

I admit that during my time at the company I had the use of a Suzuki Baleno which belonged to the company. I decided to sell the car to recover at least some of the monies due to me. I sold the car to Codner & Co. Limited for \$400,000, on April 1, 1997. I have retained the money. I understand that the ~~plaintiff~~<sup>plaintiffs</sup> wrote to Codner & Co. Limited about returning the car, but I told Codner & Co. Limited to give them the silent treatment.

Draft an appropriate defence and counterclaim based on your instructions from the defendant Hudson Bay.

## APPENDIX

STATEMENT OF CLAIM

(Insert usual heading)

BETWEEN

MANLEY AND SONS LIMITED

Plaintiffs

and

HUDSON BAY  
CODNER & CO. LIMITEDFirst Defendant  
Second Defendants

1. The Plaintiffs are and were at all material times the owners of and entitled to possession of a Suzuki Baleno Motor car registration 1027 BQ, of the value of \$450,000 ("the car").
2. The first Defendant was until 20th March 1997 employed by the Plaintiffs and in the course of his employment was permitted by the Plaintiffs to have the custody and use of the car.
3. On or about 1st April 1997 the First Defendant, wrongfully pledged and delivered the car to the Second Defendants and thereby converted the same to his own use.
4. By a letter dated 15th April 1997 the Plaintiffs demanded the return of the car from the Second Defendants but the Second Defendants have not returned the car and wrongfully detained it from the Plaintiffs.
5. By reason of the matters aforesaid the Plaintiffs have been deprived of the car and have suffered loss and damage.

PARTICULARS OF DAMAGE

- |     |   |           |
|-----|---|-----------|
| (1) | Value of the car  | \$450,000 |
| (2) | Loss of use of car from<br>20th March 1997 to date hereof<br>and continuing at \$100. per day | \$ 43,300 |

6. Further the Plaintiffs claim interest pursuant to your Act on the amount of damages found to be due to the Plaintiffs at such rate and for such period as the Court thinks fit.

AND the Plaintiffs claim

1. Against the First Defendant damages for conversion.
2. Against the second Defendants, an order for the delivery up of the car or its value, namely \$450,000 and damages for its detention.
3. Against both Defendants, the aforesaid interest pursuant to the aforementioned Act.

Dated 26th day of May 1998

Settled

(Signed)

.....

Plaintiff's Attorney-at-Law

  

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**QUESTION 4**

Mr. Duke Orrett, an attorney-at-law, issued a writ of summons on behalf of his client. After the writ of summons was served on the defendant, Mr. Duke Orrett discovered -

- (a) that he misspelt the name of the defendant on the writ of summons;
- (b) that he omitted to include in the endorsement on the writ, a claim for nuisance of which the plaintiff had told him.

On the day of the trial of the action, the plaintiff supplied Mr. Orrett with additional facts which would require him to include in the writ and statement of claim a new cause of action which by that time had become statute barred under the Limitation Act.

- (i) Outline the procedure to be adopted in making the necessary amendments to the Writ of Summons and Statement of Claim in (a) and (b) above, as well as the inclusion of the new cause of action at the trial;
  - (ii) With the assistance of case law describe the Court's attitude to the granting of these amendments.
-

**QUESTION 5**

Mr. Seamus Grow is a farmer who lives with his family on his farm at Mount St. Hope, Newville.

On May 30, 1996, Mr. Grow obtained a loan of \$250,000 from the Johnson's Credit Bank Limited of 28 Lenders Road, Newville.

Mr. Grow's loan application was processed by Miss Biting Gnat of 10 Unscented Drive, Newville, who is the Bank's loans officer and duly signed by each of them. It was agreed that interest at the rate of 25% per annum would be paid on the loan which should be repaid in equal monthly installments over a four year period.

For the past 2 years, there has been a severe drought, so that production on Mr. Grow's farm has been adversely affected and he is unable to repay this loan and interest. In fact, nothing has been repaid since he entered into the agreement.

Mr. Grow is not disputing the fact that the money is owed, but says he is unable to repay it at present.

Johnson's Credit Bank Limited is anxious to recover the outstanding debt and has consulted you for legal advice and has instructed you to institute proceedings on its behalf.

- (i) Advise your client what steps it should take to recover the loan and interest expeditiously.
- (ii) Assume that you filed your writ in this matter on June 14, 1998 and an appearance notice of intention to defend was filed for and on behalf of Mr. Grow on July 1, 1998, draft the affidavit that would be necessary to see the proceedings through to judgment.

### PART B

#### **(Facts relating to Questions 6, 7 & 8)**

Miss Easie Rumble and Mr. Toni Cockwell, who were living together as man and wife, decided to get married and to move from rented premises into a home of their own. They selected a plot of land at Honeymoon Close which was offered for sale for \$1,185,000. Mr. Cockwell sold his stocks and shares in the Unisex Group Limited for \$1,145,000 while Miss Rumble borrowed \$140,000 from her credit union and they paid for the land from these proceeds.

Just then Miss Rumble qualified for a concessionary 3% mortgage loan from her employers the Treat-you-Right Bank. In order to access this facility, the parties decided that the land should be conveyed into the name of Miss Rumble. This done, she applied for and was granted a mortgage loan of \$2,600,000 with which to build a house. So delighted were Mr. Cockwell's employers at his good fortune in his friendship with Miss Rumble that they decided to do the architectural drawings and to supervise the work free of cost. At Miss Rumble's

directions the bank disbursed the mortgage money direct to Mr. Cockwell who gave all the instructions to the architects and acted as the project manager during the construction of the 4-bedroom, 3-bathroom house.

In April 1992, Miss Rumble and Mr. Cockwell were married and they moved into a lavishly furnished house at 10 Honeymoon Close. As a wedding present, Mr. Cockwell's employers doubled his rent allowance to \$180,000 with a promise to give a 20% annual increase thereon. The mortgage money together with \$175,000 which Mr. Cockwell borrowed on his insurance policies were used to purchase the major items of furniture. The couple received cash gifts as wedding presents amounting to \$200,000 which they used to repair and repaint the wife's 1975 Suzuki Sidekick 4 x 4 motor car.

Mr. Cockwell was uneasy at the huge mortgage which his wife was carrying and so gave her his monthly rent cheque. At his suggestion she insured her life to the extent of \$600,000 with Mr. Cockwell as the sole beneficiary.

Mr. Cockwell provided house money covering all household expenses and the special needs of their son Evergreen who was born before the marriage. He paid the maids and gardeners, and the bills for water, telephone and electricity. The wife paid the mortgage as a deduction from her salary, maintained her car, paid her life insurance premiums, and maintained herself, i.e., paid for all her personal expenses.

In 1993, Mrs. Cockwell sold her Suzuki Sidekick vehicle and bought a Mitsubishi Gallant. She requested of her husband an increase of house money as with the added motor car installments she was unable to cope. He suggested

that she should take a part-time job in the evenings. Already she had been working overtime, but she began to sell cosmetics in her neighbourhood and gained extra money.

Evergreen at age 8 showed promise as a swimmer and at Mrs. Cockwell's insistence, Mr. Cockwell decided to build a swimming pool for recreational purposes and to facilitate practice by Evergreen. The Bank increased the mortgage by \$500,000 at the same concessionary rate and the further \$300,000 needed to construct the swimming pool was borrowed by Mr. Cockwell from his credit union with interest at 15% per annum. In January 1997, the credit union increased its lending rate to 25% per annum.

Mr. Cockwell found that he was unable to keep his payments current. He had been unable to repay any part of the money borrowed from the insurance company and now his interest payments to the credit union have almost doubled.

Mr. Cockwell in a discussion with his wife suggested that as she was getting the rent allowance and full housekeeping allowance she should pay the maids and the gardeners and pay for cooking gas and telephone charges. This infuriated the wife who complained that she had been working like a slave day and night and the husband wanted to place a greater burden on her. She accused him of being without ambition for sitting down as auditor in a firm when as a qualified accountant he could be earning millions on his own account in



private practice. She complained too that the little rent allowance which she received was paid by the firm and not out of his salary so in fact she was getting nothing from him and could well have been living on her own. So bitter was the altercation that the husband left the matrimonial home on April 30, 1997 and has not returned.

In correspondence between the husband and wife, the wife has maintained that the house and the contents are solely hers. She has said that if the bank had not offered her the mortgage based on her years of service, she would have had to pay at least 25% per annum as interest on the mortgage money, plus finder's fee. Mr. Cockwell has now consulted you.

#### QUESTION 6

Advise him by letter as to the claims he may have with regard to the matrimonial property

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#### QUESTION 7

Draft the appropriate documents for an application in respect of the matrimonial property to the High / Supreme Court

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**QUESTION 8**

Whilst Mr. Cockwell tells you he is more concerned with his property claims, he also asks you to draft the documents for his divorce.

(Omit the notice to appear)

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