

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
SUPPLEMENTARY EXAMINATIONS, 1981
SECOND YEAR

DAMAGES AND COMPENSATION

Tuesday, August 18, 1981

Instructions to Students

- a) Time: 3½ hours.
- b) Answer FIVE questions only.
- c) *In answering any question a candidate may refer by reference to the law of Jamaica, the Bahamas, Belize or British Virgin Islands, 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.*

QUESTION 1

In June 1978, the Costellos inspected a house in process of being completed by Drain Constructions Ltd. and wished to buy it. Mr. Costello at that time pointed out what seemed to be a crack in the foundation and was orally assured by the manager that it would be repaired and all the workmanship in the house guaranteed for one year from date of purchase. Without any further visit the Costellos bought the house and moved in, in March 1979. Shortly after they did so, several other cracks appeared in the foundation and it became clear that the structure was seriously defective and needed urgent and substantial repair. Drain Constructions Ltd. were un-cooperative when approached and the Costellos delayed carrying out any, even the smallest, repair pending the outcome of litigation. Liability having now been established against them, Drain Constructions Ltd. are faced with an estimate for the cost of repair some 40% higher than would have been the case had no delay in repair taken place. In addition, the Costellos have included a claim for substantial damages in respect of disappointment, physical inconvenience and discomfort suffered as a result of the breach of contract.

Write an opinion on behalf of Drain Constructions Ltd. as the basis for presentation at the hearing for the assessment of damages.

QUESTION 2

Roden belonged to a young reggae group which obtained occasional engagements to play at country dances. Three years ago, while he was riding with other members of the band in the back of a truck rented to them and driven by Bob Carter the truck overturned, while negligently overtaking a car at high speed and Roden was seriously injured. Roden was sitting perched on a box in the back of the truck at the time of the accident, which might have been avoided had the truck's tyres not been worn and mismatched.

Roden suffered severe damage to the brain tissue which caused post-traumatic epilepsy. He spent 7 weeks in hospital and has been unemployed since the accident. He had never established himself in any steady occupation prior to joining the group but had worked at unskilled jobs for limited periods. The group was still establishing itself and had supplemented their income by jobs as barmen/waiters, etc. whenever they could. Roden was put on a careful drug regime which controlled the seizures but fear of seizure, which he still suffered from time to time, effectively prevented him from seriously seeking employment. He had suffered no other disfigurement or loss of expectation of life.

Roden was 19 at the date of the accident, the father of a 3-year old child, with whose mother he was on good terms. He had irregularly contributed to the child's keep and had also given occasional sums of money to his own mother, with whom he now lives. The band was his major interest and, since his withdrawal from contact because of his anxiety about recurrence of epileptic fits, he has become increasingly violent of temper and will probably have to be hospitalised.

Outline the principles on which any compensation payable to Roden will be settled.

QUESTION 3

"I find it difficult to apply those principles universally to all cases of contract or to all cases of tort, and to draw a distinction between what a man 'contemplates' and what he 'foresees'. ... I cannot swim in this sea of semantic exercises... especially when the cause of action can be laid either in contract or in tort."

- Lord Denning, M.R. in Parsons v Uttley Ingham & Co. Ltd. (1978)
1 ALL E.R. 525.

Discuss the development of the rules governing remoteness of damage in contract and tort in the light of the above observation.

QUESTION 4

John Johnson was a self-employed builder earning between \$500 and \$900 per week. On 1st April last year, John and his friend, Peter Kerr, decided to race Simon James the length of the new Norman Manley highway. About ten miles from the end of the highway, Simon tried to overtake John and in doing so forced him off the road. John was seriously injured and despite the efforts of his doctors eventually died in hospital four months later. Simon was convicted of causing John's death by dangerous driving.

John, aged 34 at the time of the accident leaves a widow, Janet aged 35 and their adopted son, James, aged 4. John also has two other children, Gloria, aged 14 and Steven, aged 12 both of whom he supported and both of whom he had promised would be sent to complete their education in the U.S.A. when they reached age 16. Janet worked as a hairdresser and with her earnings paid the mortgage instalments on their house, for domestic help and for many of her personal needs. John's contributions usually managed to cover general living expenses but he had a number of expensive personal tastes. Indeed, Janet had little idea of his actual earnings or of his financial dealings with his two other children, though she did know he never paid income tax as he often boasted of this. She has received \$50,000 from an insurance policy that John purchased on his life when they were first married. She now works only three days a week, does all her own domestic chores and says she intends to marry again as soon as any likely man asks her.

You are requested to advise Janet:

- i) as to the prospects of success in a claim for damages in respect of her husband's death;
- ii) as to the quantum of damages likely to be recovered on full liability.

QUESTION 5

Mr. Hugh Oliver is the owner of a 1925 model Austin motor car in which the Duke and Duchess of Kent travelled in 1936 during their visit to the West Indies. He spent a considerable sum of money on maintaining the comfort and efficiency of the car. He checked the engine regularly and replaced worn parts and personally polished the car.

On his way home from work one evening, a public transport corporation bus, being negligently driven away from a bus terminal, collided with Mr. Oliver's car. Substantial damage was done to the right rear and front doors, the right fenders and the radiator and grille. Mr. Oliver was badly cut on the face but refused an anti-tetanus injection and spent an extra two weeks in hospital when the cut turned septic: he now also has a most unsightly scar as a result.

The transport corporation admitted liability and their insurers informed Mr. Oliver that the repairs would be done at the garage of the corporation at a cost of \$1,500. Mr. Oliver did not accept that offer, but instead, by telephone calls to England, obtained second-hand parts which were delivered by air freight. The parts cost \$900, insurance and freight \$700 and he paid \$900 for labour to restore the car to its original condition. The pre-accident value of the car was \$2,000.

The corporation has refused to pay the bill submitted by Mr. Oliver for the total cost of restoration of the car and disputes the special damages claimed in respect of Mr. Oliver's injuries.

He now consults you as to the measure of damages he is entitled to recover.

Advise him.

QUESTION 6

Hugh Sinclair Churchill Smith-Brown is President of the Senate of Lilliput. On 2nd June, 1980, the following paragraph appeared in the 'Lick-Mout' column of the Lilliput Times:

"We hear that the drug mafia have been very generous to a certain top person in the form of the price of a piece of millionaires row. He can now live like a Churchill but the deal was done by a Smith!"

Mr. Smith-Brown has recently acquired a beautiful, restored colonial-style mansion on Top Hill. He and his family have been distressed by a number of anonymous telephone calls by persons who clearly connect him with the newspaper

item. He understands that a firebrand member of the House of Representatives has asked a Parliamentary question about his change of abode in which its link with drug money repeated from the press was scarcely veiled.

Mr. Smith-Brown seeks your advice about instituting action in respect of the newspaper item and on the measure of damages likely to be recovered.

Advise him.

QUESTION 7

Groove Insurance Ltd. hired a car for the month of March from Britax Rentals Ltd. It was for the use of one of their section managers whose company car was being repaired following an accident. On the evening of February 7, he lent the car to his good friend Roots McCalla who used it to transport ganja to a private airstrip. Roots was caught by the police, convicted and imprisoned. Britax's car was badly battered during the chase to apprehend Roots and by the nearly four months it has spent in the police pound where it remains. But new car imports are severely restricted and Britax can scarcely keep pace with the demand for rental cars.

Advise Britax of the remedies available to them in respect of their vehicle.

QUESTION 8

Lucille Small is the tenant of rent controlled premises and lives with her daughter, Doreen, aged 8 years in a room in a barrack-type building for which she paid a weekly rent of \$50.

The landlord, Victor Bully, has recently purchased the property for the purpose of demolition to erect a commercial building. He successfully induced many of the other tenants to deliver up possession; but he ^{had} failed in an application to the Court to obtain an order for possession against two of them including Lucille Small.

One day while Miss Small is walking home from work she is knocked down and injured and hospitalized for two weeks. She was not in arrears of rent when the collision occurred and arranged for her reputed husband to move in with the little girl and pay the rent. On Friday, February 15, Victor Bully and his rent collector went to Lucille's room to collect the rent as usual. Only the little girl was there waiting for her father. Bully and his man terrified the little girl with their shouting about arrears, entered the room, rapidly flung out

Lucille's belongings and locked the door. The very next day they returned and demolished that part of the building.

Advise Lucille Small who came out of hospital to find that half her belongings had been pilfered and the rest of them and her daughter had been deposited with an unwilling neighbour. She has still not found satisfactory alternative accommodation.
