

NORMAN MANLEY LAW SCHOOL  
Council of Legal Education

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1982

DAMAGES AND COMPENSATION

Thursday, August 19, 1982

Instructions to Students

- a) Time: 3½ hours.
- b) Answer FIVE questions only.
- 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.

QUESTION 1

On May 15, 1981 whilst Sergeant Ernest John was on mobile patrol in police vehicle XY327 along with Constable Williams G at approximately 5:15 in the afternoon, he observed Mary Andrew at the Canal Road junction in tears. He inquired of her what was the matter and she told him that while she was standing at the corner waiting for a taxi a young man wearing a blue beret came up to her and threatened her with a long sharpened knife, grabbed her watch which she was wearing on her wrist and made off on a red cycle towards the Southern Main Road.

Sgt. John invited Mary into the police car and they proceeded in the direction to which Mary had pointed. After travelling some 100 yards Mary pointed to a red cycle which was being ridden by a young man with the blue beret and told the policemen that this was the same person who had just robbed her. The police blew their siren and gave chase to the rider, who on looking back and presumably seeing the police car increased his speed. The police called on the rider to stop and upon seeing no response, Sgt. John removed his service revolver from his pocket and fired several shots in the direction of the man on the cycle. The cycle eventually veered right into a deep trench on the eastern side of the road and the rider was thrown off some fifteen yards from where the cycle finally came to a stop.

The police car was soon brought to a halt and Sgt. John, still with his revolver in the hand, got out of the car and fired two more shots at the man who was then lying on his back on the road all covered with blood. Sgt. John proceeded to the spot where the man lay and placed his foot on the man's chest and threatened to finish him off. The man was later placed in the back seat of the police car and taken to the public hospital approximately 15 miles away where he was admitted.

The doctor who treated the young man who was later identified as Phillip Crabtree, aged 19, found that there were eight entry wounds in different parts of the body, namely, the shoulders, thigh, back and hip. Phillip required immediate surgery in the course of which one of his kidneys was removed. He remained at the hospital for three months before he was discharged on August 17, 1981.

In October, 1981, Phillip was experiencing difficulty of movement of his right shoulder. He did not return to the free public hospital to complain about his shoulder, but instead visited a surgeon specialist at his private office where he was treated and for which service he paid the sum of \$200. In December, 1981, Phillip visited the hospital for a further check-up. The doctor who had performed the surgery earlier in May attended to him. He found that Phillip had no serious complaints then, and apart from the scars of surgery he seemed to have had no specific disabilities. In his report, however, he stated that the injuries were of a very serious nature and Phillip was fortunate to have survived.

At the time of the incident Phillip had not been working for three months but he is a mason by trade who earns an average \$200 a week when he is working. Phillip consults you about the bringing of an action against the appropriate parties.

Advise him as to the principles which the Court would apply in awarding damages for the injuries inflicted.

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QUESTION 2

In August, 1981, Thomas while driving his 1972 Buick collided with Peter in circumstances where the latter was wholly to blame. Thomas had acquired the car second-hand for \$5,000. In March, 1981, he had had it extensively repaired at a cost of \$850.

As a result of the damage to his vehicle Thomas had an estimate prepared in regard to the repairs amounting to \$3,500. Peter admitted liability and the issue between the parties is that the insurance adjusters, on behalf of Peter, stipulate that it would be uneconomical to repair the vehicle since they estimated the pre-accident market value at \$2,000 and salvage at \$250.

Thomas consults you on the matter. He informs you that he is very attached to his car and he was the only person who had driven it since he acquired it. He also stated that the car was peculiarly suited to his needs because of his great height and size and of a previous injury to his back. Further, his job as road supervisor demanded a lot of travelling and because of the aforementioned facts he needed to travel in a comfortable car.

You make further inquiries and with the consent of your client you consult Isaac Henry, a leading automobile engineer who has wide experience in estimating the cost of repairs for various insurance companies. Henry tells you that although it would be difficult to obtain a second-hand Buick on the local market, it is possible to obtain a Dodge of comparable size and age as Thomas' Buick for \$2,500 and could not approve repairs at \$3,500. Thomas is informed of Henry's opinion and he admits that a Dodge of comparable size would be just as suitable to his needs but he prefers to have his Buick and since Peter was wholly to blame he should be made to pay for the repairs. Thomas values his car before the accident at \$4,000 and in the meantime has hired another vehicle to perform his duties at \$25 a day.

Advise Thomas as to the likely award of damages, including loss of use that he could obtain from the Court.

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QUESTION 3

Felix was appointed the manager of one of the AB Co's chain of stores which was situated at Crown Point at a weekly wage of \$200. He had been in the employment of the company for the past fifteen years and had risen to his present position from his first position as a messenger. He has no written contract with the company.

About March, 1980, business went into a general decline and numerous problems developed with staff at the Crown Point store concerning their discipline and their work. In October, 1980, the company set up machinery for a full scale audit and in November, 1980, it was discovered that there was a shortage of \$10,575.37; consequently the company suspended Felix by letter dated November 29, 1980, with effect from December 1, 1980, until further notice.

The police were called in soon after to investigate. From time to time during his suspension Felix tried to contact the Managing Director of the company to find out what was his position but nothing emerged from his inquiries. On June 6, 1981, he wrote a letter to the Managing Director but received no reply.

The police investigations and the audit checks revealed that the cashier and one of the clerks may have been responsible for the shortfall but there was no indication which suggested that the loss incurred arose from any failure whatever on the part of Felix to carry out his functions. Felix wrote a further letter to the Managing Director early in December, 1981, but again there was no reply.

On February 1, 1982, Felix consults you about the matter. He informs you that he has received no emoluments from the date of the suspension and was compelled to take a job at a hotel as from March 1, 1981, at \$100 a week to assist in feeding his family and was still in that job at the same wage. At the store Felix was paid travelling allowance of \$20 per week but he now had to pay his own fares from his wages to get to and from work.

Felix is now 47 years old, married with two infant children. He did not attend secondary school. He is desirous of suing the company but wants to know what are his chances of success and the basis on which he may be able to obtain damages.

Advise Felix.

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QUESTION 4

On June 15, 1980 while Jane was working at the defendant's factory, the foreman was so negligent in the operation of a machine that Jane sustained a fracture of the right forearm. Jane was taken to the hospital where she remained for six weeks before her discharge. For approximately a fortnight after the accident she experienced intense pain and for the next 12 months thereafter she continued to suffer some degree of pain not as acute as at first but with diminishing intensity over that period. The fracture eventually healed but the range of movement of the hand was limited to 15 percent. In addition arthritis set in and was likely to get worse.

Jane was no longer able to play netball for her club where she was regarded as a top player and she had sometimes represented the island in international competitions.

At the time of her injury Jane was 25 years of age earning \$750 per month as assistant foreman and she was being groomed to take over the foreman's job in about six months time. The foreman's salary was \$1,000 a month. But for her disability resulting from the accident Jane would have been promoted to the job, but instead her junior got the foreman's job and Jane was placed in another position at a salary of \$850 per month which was more than that job was really worth.

At the trial of her action against the foreman and the defendant, Jane was awarded \$5,000 general damages, and half of the \$10,000 she had claimed as special damages. Jane feels that the general damages awarded are inadequate and a wholly unrealistic estimate of the injury sustained by her. The defendant's legal representatives hold the view that it was not open on the pleadings for any regard to be paid to Jane's loss of pecuniary prospects since she had made no averment therein specifying her occupation, her job prospects and the extent to which they had been affected.

How is the Court of Appeal likely to rule on these points and what consideration is it likely to bear in mind in arriving at its decision?

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QUESTION 5

Until May 1981, when they became estranged and the wife left the matrimonial home to live with her sister, H and W had been living together for several years in the matrimonial home with three children. The first child Mary, aged 20, was a high school teacher while Peter and Harry, both aged 19, were at the University expecting to graduate in physics and chemistry, respectively, in the next two years. Mary and Peter were the lawful children of H and W, but Harry was the illegitimate son of a maid who lived and worked with H and W and who had died at childbirth. Harry lived with H and W from the time he was born and grew up with them in exactly the same way as the other two children.

On September 9, 1981, about midnight while returning from a call, H's car got into a collision with an unlighted truck owned and driven by Leo and H was killed. By his will dated May 15, 1979, H appointed his brother Cecil as the sole executor. He left his dwelling house and furniture to W and the remainder of his property to be shared equally among his three children.

In January 1982, Cecil brought a "survival" action against the defendant Leo on account of the latter's negligence resulting in H's death.

Leo settled his claim in the sum of \$2,000. Three months later, W and the children took proceedings against Leo under the Fatal Accidents Legislation. The claim was for loss of maintenance, grief and suffering and for the cost of a marble tombstone for the deceased's grave.

At the time of his death H was fifty, a senior medical specialist, attached to the general hospital and a keen tennis player. W was not so healthy and experienced serious bouts of asthma occasionally.

After H's death, his father who was a lumber dealer made a weekly contribution of \$200 to W who had by then returned to the home.

Leo entered a defence to these latter proceedings. He denied that W is entitled to any claim since she was not being maintained at the time of H's death and in any case she had now benefitted by obtaining the matrimonial home as her own property. As regards the children Leo maintains that they are beneficiaries under H's will and further their action is barred because of the action already brought by their uncle and settled.

Advise W and her children on these defences and other aspects of their claim.

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#### QUESTION 6

Sunshine Holiday Maker Ltd. carry on business as travel agents and organisers of holidays in Rubago. In June 1980, they published a booklet in which they promised inter alia "Unequaled holiday in the paradise of the Windes. Lots of attractive facilities, both sporting and social. Come and enjoy our breath-takingly beautiful coral beaches. Hotel rooms overlooking the clear, calm, greenish-blue Caribbean sea. There will be plentiful supply of sea-foods and inexhaustible amounts of delicate passion-fruit punch."

Denis went to the company's office in town and booked a holiday for two weeks during the month of August to be spent at Rubago in accordance with the advertisement in the booklet. On August 3, Denis proceeded to Rubago as planned. He was met on arrival by a gentleman who introduced himself as the representative of Sunshine Holiday Makers Ltd. The gentleman took hold of his baggage and placed it in a landrover and invited Denis to sit next to him as he drove away. The landrover proceeded to a remote part of Rubago over rough terrain and about 2000 feet above sea-level to a newly built hotel. Denis was assured that he would be only spending the night at the hotel, but in fact never saw the driver of the landrover again.

The hotel was occupied by some weird-looking persons who described themselves as naturalists. There were no beaches, no yachts, no seafood or passion-fruit punch as advertised nor was there any form of sport or entertainment in the hills.

Denis became depressed; there was no one at the "cottage" with whom he could speak or do anything to pass the time away. He was unable to get out of the area because communication between the cottage and the centre of activities was almost non-existent.

At the end of the first week, a jeep came to the cottage with new guests and Denis decided that he would leave his "confines" at all cost. He contracted with the jeep driver for a fee of \$100 to take him to a hotel near the sea where there was more action.

In the course of the journey at about 7.15 in the evening, over the difficult terrain and while the driver of the jeep was negotiating a corner, the jeep got out of control and overturned in a ditch a few feet below. Denis suffered severe injuries to his hip joint. He was rushed to the general hospital in Rubago where he remained for five days until he was strong enough to be transferred to the hospital in his home town for further treatment.

Denis consults you. He states that he never saw a beach in Rubago and that his holiday was a complete ruin and worse than no holiday at all.

Advise Denis as to the courses of action open to him as a result of his experiences in Rubago.

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QUESTION 7

On March 1, 1981, X Co. Ltd. employed David to do some excavation work on its land adjoining the property of Y Oil Refiners Co. Ltd. where underground pipes through which refined oil is fed to a depot, the property of Z Co. Ltd. some 25 kilometers away. The oil which was carried through the pipeline is the property of Z Co. Ltd., but not the pipeline; and the terms of the arrangement provided that the risk of loss or damage rested with the refiners until the oil arrives at the depot.

In the course of the performance of the excavation work, David negligently crossed the boundary line between the properties of Y Co. Ltd. and X Co. Ltd. fracturing the pipeline and uprooting portions of it from the ground. Z Co. Ltd. had to make other arrangements which were more costly to get their refined oil to the depot while repairs were being effected to the pipeline which could not be used. They incurred expense for this purpose in the sum of \$10,000. Y Oil Refiners Co. Ltd. also paid a sum of \$3,000 for repairs to their pipeline.

Both companies submitted claims to X Co. Ltd. for the amounts incurred. X Co. Ltd. repudiates both claims; firstly as to the claim of Y Co. Ltd., they allege that the damage was too remote and secondly as to Z Co's claim, they state that this was a pure economic loss and therefore not maintainable.

Advise Y Oil Refiners Co. Ltd. and Z Co. Ltd.

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QUESTION 8

On June 2, 1981, Borboy was seated in a Toyota van belonging to Carpenters Ltd. and driven by David, an employee of the company, when the van speeded through the intersection of a road with the highway and was hit by a passing mini-bus. As a result of the collision, Borboy suffered the following injuries as found by the hospital doctor:

- (a) a fracture of the left scapula with bruising and swelling over the area of the left shoulder;
- (b) the right knee was swollen and tender with movements at the right knee joint restricted;
- (c) a fracture of the left knee over the upper tibia.

Borboy was treated at the hospital. The left arm was put in a collar and cuff sling while the lower limb was placed in a plaster of paris cylinder cast. He was later mobilized on crutches and discharged on June 9, 1981. There were follow-up examinations at the hospital. Borboy's left leg was in plaster for a total period of 21 weeks - 15 weeks during which time he had to use crutches plus a further six weeks after the plaster cast was removed. By December 1981, Borboy was fully weight-bearing in respect of his left leg. The last medical report dated December 29, 1981 showed that his leg was good, he had full squat and full movement of his left shoulder. His permanent partial disability was estimated not to exceed 5% of his left lower limb and 5% of his left upper limb.

At the time of the accident, Borboy was employed by Carpenters Ltd. as a labourer at a weekly wage of \$200. He was not a full time worker with the company and in fact for the four months immediately prior to the accident, he did not work every week. He was employed from time to time when he was needed and when he was not so needed he earned whatever he could from a little "cutlassing" here and there.



After the accident, Carpenters Ltd. paid Borboy three weeks wages and he also received a sum of \$500 for accident insurance, the premiums for which were paid on his behalf by his sister. Borboy had to incur expenses of \$120 for transportation to the hospital for frequent check-ups during the period of his immobility.

It has been established that David is wholly to blame for the collision. Borboy consults you on taking proceedings against David and Carpenters Ltd.

Advise Borboy as to his entitlement arising from the above-mentioned facts.

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