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Council of Legal Education

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LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1982

DAMAGES AND COMPENSATION

Wednesday, May 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

In August last year, just 2 months after her marriage, Diane Stuart, aged 28, was negligently killed in a collision with a van owned by P.M.K. Bros. She was 25% to blame for the accident. Diane, before her death, was in full-time employment as an insurance clerk, a job she had held since aged 18. Her net earnings were \$9,000 per annum and would have risen to \$12,000 in January 1982. She ran her home, and out of her earnings bought food and other household goods for herself and her husband and at her own expense ran a car which was used to take them both to and from their places of work, for shopping expeditions and social outings. She was a shrewd and thrifty woman who in the years before her marriage had saved steadily and had therefore not only bought the car but also a freezer, video recorder and other modern appliances for the matrimonial home and had paid part of the cost of the honeymoon. She had also paid for the support and schooling of a daughter which she had borne at aged 15, and who had lived from aged 3 months, with an aunt in the country. Diane's husband, Weeklin, is aged 40 and had always had considerable difficulty in establishing relationships with the opposite sex. Since her death, he has had to fend for himself: (he lived with his mother till marriage) not being a driver, he has to rely on friends and public transport and his performance at work, where he earned much less than his wife, is poor. He had recently discovered about Diane's daughter and now finds that the apartment, into which he had moved with her and to the cost of which he contributed \$200 per month has to be vacated in the next 3 months. He admits that he was preparing to leave Diane once he discovered about the daughter.

Weeklin consults you about recovering compensation for his wife's death. Advise generally.

QUESTION 2

"It can hardly be disputed that the public conduct of a public man might be discussed with the fullest freedom..... But... if a false and unwarranted attack is maliciously levelled at an individual who holds high office, designed not only to discredit him, but to encourage disrespect for his office through allegations of disreputable conduct in that capacity, damages must be suitably assessed to be a sufficient demonstrative mark in the vindication of his reputation, clothed as it may be with the garb of that office." Jagan v Burham (1973) 20 W.I.R. 96 at 111 per Luchkoo, C.

Examine, by reference to recent West Indian decisions, how the above sentiments have been reflected in assessment of damages for injury to reputation.

Does the statement run the risk of causing the usurpation of the principles of exemplary/aggravated damages?

QUESTION 3

In December 1975 architect Jonathan Black and his wife took their son, Ben, then a bright and lively 2-year old, to Goodbury Hospital suffering from symptoms of croup. In the course of an attempt by a doctor, employed by the hospital, forcibly to examine Ben's throat he suffered cardio-respiratory arrest. His heart stopped and the blood stopped flowing to his brain. Though he was put in intensive care and brought back to life the cardiac arrest destroyed his brain beyond repair. He is blind, spastic, paralysed in all four limbs, cannot stand or talk and has to wear nappies constantly as he is doubly incontinent. He is totally dependent for everything upon his mother, whose voice he knows and shows he loves her as would a baby of about one year old. While there's no hope of any improvement, his body grows just as if he were a normal boy, though the doctors put his expectation of life at 40 years. Mrs. Black, a teacher, has given up her position and lost some pension

rights in order to take care of her son. Her husband contributes the little he can, a neighbour voluntarily relieves her 2 afternoons per week and for the past 3 years Ben has been taken to a day school for the disabled and can attend till he is aged 16.

The hospital authorities have admitted liability and damages now fall to be assessed.

Critically examine the principles on which these will be awarded.

QUESTION 4

In May 1980, the workmen of Hi-Store Ltd. were burning some rubbish in an alleyway abutting the property of Grabtree Developments Limited. When they failed properly to control or extinguish the fire, it spread and gutted a disused bingo hall and a disabled 1969 BMW car parked for several months for lack of vital spare parts, all property of Grabtree Ltd. The area was an area of potential redevelopment and Grabtree held it for this purpose and had no intention of using the hall for bingo. They had to pay the cost of removing the fire debris, but saved some \$10,000 on the costs of clearing the site which would have been necessary before the land was redeveloped. They also had to pay the costs of certain remedial work on the boundaries of their site and to make the premises safe and secure against trespassers.

Advise Grabtree Ltd. on the correct measure of damages likely to be recovered for the destruction of their property.

QUESTION 5

Draft legislation currently before the U.K. Parliament makes provisions for:

- (a) A claim for damages for bereavement to be fixed at a conventional sum and awarded to a spouse for the loss of the other spouse and to parents for the loss of a child.

- (b) The courts to make a provisional award of damages where a medical prognosis was uncertain.

Comment critically upon these two proposals.

QUESTION 6

Consider the proper approach to compensating the following:

(a) Mrs. Green, a 34-year old housewife suffered injuries to her shoulder, which after extensive medical treatment left her with little movement in that shoulder impairing to a considerable degree use of her right arm. She was unable to perform such household tasks as ironing, vacuum-cleaning and bed making. She was also restricted, inter alia, in gardening, driving, cycling and washing her own hair. The depression which she suffered as a result of her injuries made it more difficult to supervise her children aged 10 and 11, and affected her marriage. Her hopes of increasing her family were rendered impracticable and her inability to write with her right hand diminished her opportunities of returning to paid employment.

(b) Dunderhead was guard on a passenger train which Councillor Howard tried to board while it was moving out of Ipswich station. Train regulations required guards in an emergency to signal the driver to stop or apply the emergency brakes or both. Dunderhead attempted to signal the driver to stop but gave the wrong signal and the train accelerated away. Dunderhead then tried to grab Councillor Howard who fell off the train pulling Dunderhead with him. Dunderhead seeks damages against Councillor Howard for the personal injuries he received.

QUESTION 7

"My Lords, I understand your Lordships to be at one holding that both of these appeals must be dismissed. I am of the same opinion - reluctantly, because I do not think that this outcome is either sensible or just." Gammell v Wilson (1981) 2 W.L.R. 248 at p 250 - per Lord Diplock.

Comment on the above statement in the light of a careful examination of the issue raised and determined in Gammell v Wilson.

QUESTION 8

On what principles will measure of damages be settled in the following cases:

(a) While Ram, a stevedore was assisting in unloading goods on the dock, his finger was pierced and poisoned by a projecting nail. His fellow employees had been negligent. Many years previous to this injury he had contracted an ulcer on his right eye affecting 50% of its sight. A medical consequence of the pricked finger was another ulcer of the eye, rendering him blind in that eye.

(b) Godfreys Photos Ltd. was engaged by Miss Helena Fairfax's parents to take pictures at her wedding and at the reception held afterwards. The photographers unjustifiably failed to attend at the wedding with the result that no pictorial record was obtained. Helena and her mother suffered considerable mental distress and disappointment because of this and seek to recover damages for this injury.
