

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1985

DAMAGES AND COMPENSATION

Friday, May 24, 1985

Instructions to Students

- a) Time: 3½ hours.
- b) Answer FIVE (5) 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

Bill was the manager of a department store earning \$4,000 per month. One evening in March, 1984, he met Arthur at a cocktail party and in the course of the evening they began to discuss business. Arthur stated that he had a small tile business but wanted to expand it and was looking for a suitable partner to introduce \$100,000 in the business. Bill who was himself wearied of working for employers thought that was a good opportunity for him and expressed an interest.

Bill sought legal advice and later he entered into an agreement with Arthur. In the course of their discussions, Bill told Arthur he was borrowing the \$100,000 from the bank. The attorney drew up an agreement between Bill and Arthur whereby Bill received fifty per cent of the shares for a consideration of \$100,000 and he was made joint managing director with Arthur at a salary of \$5,000 per month. Bill then resigned from his job.

Almost immediately things began to go wrong. Arthur spent most of his time in laying down tile floorings which he took as sub-contract work from various builders. In one such undertaking from Nathan and Joseph Limited who were building for Tay and June, the floor was defective and cracked soon after it was laid and it had to be relaid by the couple, causing them much embarrassment and distress.

Bill had also imparted to Arthur confidential information about tiles manufactured from local clay which he had developed while he was in his former job. Arthur used the information and went into business with Simon Crete Co. which soon set up a tile factory and proceeded to make clay tiles which were very well received by the public and from which Simon Crete Co. made some handsome profits.

About the third week in June, 1984, the true position about Arthur's tile company began to emerge. It appeared from documents that came to light that Arthur had sold the shares in his company time and again before he met Bill and eventually in December, 1984, Arthur was tried and convicted at the Assizes for fraud in respect of the said sale of shares to Bill and others. He was sentenced to a term of imprisonment.

Bill is now impecunious and seeks to bring an action against Arthur claiming the return of his \$100,000 and all damage resulting from the misrepresentation including the interest of \$11,500 on the bank loan, damages for loss of employment and general damages for deceit or breach of contract. He also wants to ask for exemplary damages for his injured feelings. Further he wishes to be advised as to the measure of damages, if any, he can claim in respect of the confidential information in respect of the clay tiles. June and Tay also consult you. They inform you that Nathan and Joseph Ltd. are bankrupt and wish to know what redress is possible against Arthur.

Advise Tay, June and Bill.

QUESTION 2

Joey, a mechanical engineer, had been a long serving employee of Bath Estates Ltd. and was considered a valuable and loyal member of the staff. He received a salary of \$48,000 per annum and was in a position of some responsibility as head of the engineering department. The directors had considered purchasing a company house for Joey and they asked Peterson, a surveyor, to report on the proposed house which they had offered to buy.

In reliance on Peterson's report that it would be a sound buy for \$75,000 the company bought the house in July, 1983. On taking possession they found that the house had serious defects which Peterson had not mentioned in his report. They communicated with Peterson who, after some time, wrote in December, 1983, denying liability for failing to point out the defects.

By January, 1984, Joey had got into some misunderstanding with the company. He had asked for an increase in salary in addition to an increase six months previously. As a result the Managing Director transferred Joey to another department to a position of lesser responsibility. Although his salary of \$48,000 was unaffected, his duties were extremely vague and neither the head of that department nor any one else told him what he was supposed to do.

The directors changed their minds about housing Joey and left the house unattended and only repaired the defects in December, 1984, at a cost of \$23,000. They now wished to sell the house and approached Alvin Winston, an estate agent, to find a purchaser willing to pay \$92,000 "subject to contract." None of the other terms of the contract was given. For his services, Alvin was to receive a five per cent commission on the purchase price. Alvin found a wealthy widower who was prepared to pay the price on any reasonable terms.

Subsequently in February, 1985, the company changed its mind about selling, preferring to keep the property for occupation by their overseas associates when they visit and has so informed the parties concerned. Alvin has demanded his commission and the company consults you. The company also seeks your advice as to recovery from Peterson of the sum of \$23,000 spent on the house.

Meanwhile, Joey has become very frustrated and has been suffering from periods of sickness and depression which have necessitated medical care. He had to stay away from work for three weeks during which time he received a letter from the Managing Director of the Board informing him that after long and painful deliberation, the company had decided to terminate his services. The letter was accompanied by a cheque for three months' salary in lieu of notice. Joey has now threatened to sue the company for wrongful dismissal and/or breach of contract.

Advise Bath Estates Limited.

QUESTION 3

In 1979, Elma and Nye bought a lot of land, part of a large estate overlooking the sea in their joint names. There was a restrictive covenant affecting the estate which forbade buildings and construction within twenty feet from the boundaries of each lot. Elma and Nye built a large bungalow on their lot with a verandah facing the sea.

By January, 1983, very few houses were built in the area although most of the lots were sold. Nye therefore decided to purchase a few lots with a view to their development. He entered into contracts with Londen and Sebastien to buy their respective lots which were adjacent to his.

Londen agreed to sell his lot for \$20,000, completion to be effected on May 31, 1983. He had a mortgage on the lot for a loan of \$9,000 taken from the Workers' Bank and by completion date he was unable to give Nye an unencumbered title. On June 3, Lite expressed a desire to buy Londen's lot for \$25,000. Lite indicated that he would pay off the mortgage of \$9,000 immediately and pay the balance of the purchase price on completion. Londen accepted and sold to Lite on June 30, 1983.

Sebastien also agreed to sell his lot to Nye for \$24,000 but subsequently a dispute arose as to the area of land in question and Sebastien refused to complete the sale. On December 9, 1983, after several attempts to resolve the dispute, Nye commenced an action for specific performance and damages for breach of contract. The matter was heard by Judge Frankey on February 27, 1984, who found in Nye's favour and ordered a decree of specific performance but made no order as to damages.

Meanwhile Nye had already constructed three houses on the other lots he had purchased and each was being rented at \$2,000 per month. Indeed, several other houses were being built in the area. One such house was being constructed by Andrew on a lot next to Elma's and Nye's bungalow much to their annoyance and only twelve feet away from the boundary, but Nye had himself only recently constructed a swimming pool eighteen feet away from the said boundary.

Nye consults you. He is dissatisfied that Judge Frankey did not award damages against Sebastien, indignant with Londen for selling to Lite instead of to him and is in a quandary as to his rights against Andrew. Elma is not keen on litigation.

Advise Nye as to any rights which he may have and the likely measure of damages he may be awarded.

QUESTION 4

In October, 1983, Brian sustained very serious injuries when his car came into collision with a jeep owned by Ashley and Sons Ltd., and driven by their employee, Charles, in circumstances where Brian was one tenth responsible for the accident. Charles died as a result. Brian became completely paralysed from his neck down. Other injuries such as a broken leg were comparatively insignificant.

At the time of the accident, Brian was aged 34 and was employed by Harris and Co. Ltd., furniture makers, as a foreman earning \$3,500 per month. He was a hard worker and had good prospects with the company. Dr. Mitchell has stated that his expectation of life is now sixteen years.

It so happened that three months before his death, Charles had an altercation with Brian's wife at the market. Charles is alleged to have assaulted Mrs. Brian and slandered her in the presence of a large crowd. Mrs. Brian was very hurt and embarrassed.

Brian has now left the hospital but will be confined to a wheelchair for the rest of his life. He cannot be left alone. He needs to be looked after, fed, turned, bathed, dressed, lifted and have his bowels evacuated. Mrs. Brian is an executive officer in the Ministry of Works and Drainage and must retain her job since she is the only bread winner of the family. Their only daughter, Judy, is 13.

Because of Brian's injuries, his wife has now bought a house for \$110,000 with the help of a mortgage company and has made a number of alterations to include a swimming pool and a specially equipped bedroom downstairs to accommodate Brian. The alterations cost \$25,000. There is need to spend extra sums to maintain the additional facilities. Previous to the accident, Mr. & Mrs. Brian rented a government flat in a multi-storeyed building.

Mrs. Brian consults you as to the measure and quantum of damages for which she can claim on Brian's behalf. She is particularly concerned that she should obtain an adequate sum to take care of Brian in these inflationary times. She also wishes to be advised about her own claim against Charles whose family, she thinks, must pay dearly for his insulting behaviour towards her.

Advise Mrs. Brian.

QUESTION 5

A entered into a contract with B Co. to construct a house on land belonging to A's mother and which land adjoins A's house. The consideration was \$100,000, including all material and labour.

A's mother, at present, reside with A. She has recently been discharged from hospital where she was operated on for a very serious disabling injury to her spine and knee and she is very anxious to move to her own quarters where she would employ a special nurse on a live-in basis, and cease to be a bother to A's wife. A is also concerned that his mother gets full-time specialist nursing care as soon as possible and that the added domestic pressure on his wife, who is pregnant, be relieved.

A discussed the construction of the house in great detail with his mother's doctor, his architect and B Co. and it was agreed that in view of the nature of the mother's injury, and the requirements of her recuperation, the specifications regarding the stairways and doors should be strictly complied with.

The contract provided that if from any cause, B Co. failed to complete the construction on time (the time was fixed in the contract) B Co. will pay "by way of liquidated damages" \$1,000 for each day of delay. Further, that if B Co. failed to construct the house according to specifications, they will pay, again by way of liquidated damages, \$20,000.

B Co. completed the building twenty days late. One week after A's mother moved into the premises, she fell whilst trying to ascend the stairs. It was discovered that the stairs were not constructed according to specifications and A's mother's fall resulted from this.

A's mother's injuries were aggravated by the fall and A has moved her back into his house where she can be closely observed. The increased pressure and inconvenience that this has caused A's wife has left her with a mild nervous breakdown, but the doctors have stated that her pregnancy is not in danger.

Advise B Co. as to the damages, if any, for which they may be liable.

QUESTION 6

(a) Glen was driving home from a party on the night of 20th December, 1984. He had had too much to drink and negligently forced Trevor's minibus off the road and into a lightpost, the latter impact immediately disrupting electricity supplies in the mainly commercial premises in the area.

Trevor's minibus which carried passengers from downtown to uptown was laid up for repairs for 16 weeks and the repairer has explained that the delay was due to the difficulty of obtaining the necessary spare parts. Trevor did not have the means to hire another van during this period and had to borrow money from friends to meet his domestic expenses during the period. Slippery Joe did offer him the use of his minibus on a profit-sharing basis but Trevor refused. Slippery Joe had often raced him on the road in a reckless manner and Trevor was not therefore kindly disposed towards him.

Your clients are the insurers of Glen's motor vehicle and they have asked your opinion as to the principles on which damages will be assessed against their insured. Advise them.

Dome Supermarket Ltd. have also sent to your clients a letter claiming payment of \$50,000, the value of meat and vegetables which they claimed were spoiled during the period of disruption of electricity supply caused by the damage to the lightpost. Advise them.

(b) Sonnyman owned a front-end loader which he hired out from time to time. The equipment had been booked by Thompson Construction Co. for a project which they intended to start on the 10th April, 1984, and Sonnyman had collected in advance fifty percent of the hireage charge.

On 3rd April, 1984, Arthur who had previously been Sonnyman's partner, persuaded Sonnyman to lend him the equipment for one day to enable him to complete on time, some work he had already started.

Arthur used the equipment for the one day but instead of returning it to Sonnyman, moved it to another construction site in another parish where it is reported, he is making a handsome profit from its use. Sonnyman does not know where to find the equipment and Arthur has ignored his repeated demand for its return. Arthur has contended that Sonnyman has failed to pay him monies due him on the dissolution of their partnership and that he is holding the equipment against that debt. This contention is entirely without foundation.

Sonnyman has had to pay Thompson Construction Co. \$2,000 as damages for breaching his agreement with them.

Advise Sonnyman as to his rights against Arthur and the principles on which damages, if any, will be assessed.

QUESTION 7

Suave is Chairman of the Peanut Export Council, a government regulatory body set up to regulate the industry and to arrange and monitor export marketing of the product. Suave holds a high university degree, is involved in various service organisations and generally has a high social profile.

Nalty is a peanut grower with a medium-sized farm and a member of the Peanut Growers Association of which Suave is an ex-officio member. He is a forthright and plain-speaking man, and at various Association meetings, he has had heated clashes with Suave regarding his stewardship of the Council. Specifically, Nalty has criticized Suave for being too soft in negotiations in foreign markets regarding the price of the product and in negotiating on behalf of growers, better production incentives.

Recently, Nalty met Lester at a function and casually told him that he heard that Suave was accepting a kick-back from the major outlets abroad in return for keeping the export price of the product down. Lester, as Nalty knew, was editor of "Your Daily Bread", a daily newspaper with a circulation of about 5,000 focussing largely on agricultural, trade and investment matters as well as gossip regarding the leading personalities in these areas.

On the following day, the headline of "Your Daily Bread" read: "COUNCIL HEAD ALLEGEDLY ACCEPTING BRIBE" and goes on to say that it has been reported that the head of the Peanut Export Council has been accepting a bribe. The article severely criticized Suave for what it referred to as an unpatriotic and shameful act.

When Suave's wife saw the article, she suffered shock and had to be hospitalised. She was discharged after one day, but has had to be kept on medication and anti-depressant drugs.

The allegation against Suave is wholly untrue. Suave has learnt that Nalty was the source of the information in the article and two days after the publication, consults you as to the principles on which a Court would assess damages, if any, for injury to his reputation and injury to his wife's health, against whom the damages would be awarded and whether there are any mitigating steps open to the person or persons liable which may reduce the quantum of the awards.

He tells you that the owners of "Your Daily Bread" are substantial peanut growers and would like to see him resign so that, by exerting their influence, they could have JB appointed to the position. JB is a person closely identified with the interests of the owners of "Your Daily Bread" and would, as head of the Council, promote their particular financial interest above that of other growers.

Advise Suave.

QUESTION 8

On July 30, 1984, Allan, a 30-year old Attorney-at-Law, was killed in an accident in front of his office on Duchess Street. He is survived by his widow, Cupid, aged 25 and two children, Natasha, aged 7 and Allan, Jnr. aged 4. Natasha is not the child of Cupid, but of Miss Ambitious, with whom Allan was friendly before he got married. After his marriage, Allan continued to be very friendly with Miss Ambitious and apart from the generous contribution he made towards Natasha's maintenance, gave her expensive gifts and paid for her trips abroad from time to time.

In 1983, Allan's earnings from his practice was \$60,000 and that was the best year he has had in his five years at the Bar. Just two months before his death, he had been negotiating with four of the other Attorneys who had chambers in the same building with him to form a firm with a view to reducing expenses and cornering some mortgage work from financial institutions, but no agreement had been reached.

Cupid worked as an interior decorator but gave up the job about a year ago to look after Allan, Jnr. and the new house which Allan had purchased in their joint names. Since Allan's death, she has had to go out to work to supplement the household income, part of which is comprised of interest from the investment of the proceeds of an insurance policy which became payable to her on Allan's death. Allan's uncle, a 'wheeler-dealer' in the USA has, since Allan's death, been sending her US\$250 per month to help her out so things are not financially too bad with Cupid, though every night she weeps with grief at her husband's death and is now fearful of a nervous breakdown.

Allan, Jnr. who was born with a hearing defect and who has for the past 15 months been enrolled in a school for children with that handicap, also cries every day and his teachers say that since his father's death he has been most uncooperative and has lacked the motivation to overcome his disability.

Cupid, who is the Administratrix of Allan's estate, and Miss Ambitious, have consulted you for advice on damages for themselves and their respective offspring. Advise them.
