

FOR REFERENCE ONLY

D10

NORMAN MANLEY LAW SCHOOL  
COUNCIL OF LEGAL EDUCATION  
MONA, KINGSTON 7, JAMAICA

NORMAN MANLEY LAW SCHOOL  
Council of Legal Education

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 1984

DAMAGES AND COMPENSATION

Friday, May 25, 1984

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

Josh, a 21-year old cane-cutter, was crushed by a tractor negligently manoeuvred by a fellow employee. He was admitted to the nearest public hospital where he underwent treatment for a fractured skull and broken ribs. He was discharged after four weeks, but continued to suffer from severe headaches and depression. On the request of his wife, June, his employers S. Producers Ltd. agreed in August 1983 to pay for the cost of further treatment at an exclusive private hospital. Despite this further treatment, Josh's condition deteriorated. He was discharged from the hospital in October 1983.

He is now unable to speak coherently and has developed a violent temper which doctors say is caused by depression. S. Producers Ltd. are willing to continue to employ him at his pre-accident wages of \$150 per week, but because of his condition, his family has decided that it would be safer for him to stay at the family home and assist with the growing of food crops for family consumption.

S. Producers Ltd. are anxious to avoid litigation and consult you with a view to settling the damages. They inform you that Josh is living with his parents, but that June has decided to move to an apartment in a neighbouring town, where the prospects of employment are better since she is unable to cope with Josh's condition.

Advise S. Producers Ltd.

---

## QUESTION 2

Tony, aged 35, was an engineer employed with Building Construction Ltd., and from time to time had been required to supervise construction work out of town. In April 1981, whilst on one such assignment Tony was driving a motor-cycle along a public road when it became involved in a collision with a motor car negligently driven by the defendant. Tony suffered severe head injuries including multiple fractures of the skull. He suffered intense pain for about three to four days after which he went into a coma and died intestate, shortly afterwards.

On hearing of the accident, Tony's wife Muriel, aged 30, without any request from the attending surgeon, flew over to the hospital to be at her husband's bedside. Muriel stayed in a posh hotel near the hospital for approximately two weeks and only returned home the day after the inquest into the death was completed. One week after her return, the company made a death gratuity payment of \$15,000 to Muriel.

At the time of his death, Tony earned an annual salary of \$50,000 and made an annual contribution of \$24,000 to the household expenses. Tony and Muriel had no children of their own, but Sandra, aged 19, her deceased brother's daughter and a third year medical student, lived with the couple. Three years before his death, Tony had purchased a house and he personally did a considerable amount of repairs and renovation to the house. Tony did not have an excellent record with his employers, but the construction industry was quite active so his prospects were good.

Prior to his death Tony has incurred certain debts amounting to \$7,000. Six months after his death, Muriel expended \$3,000 for repair work done to the home. She had also paid \$1,000 for funeral expenses and \$750 as costs in taking out letters of administration of the estate of the deceased.

S. Producers Ltd. are anxious to avoid litigation and consult you with a view to settling the damages. They inform you that Josh is living with his parents, but that June has decided to move to an apartment in a neighbouring town, where the prospects of employment are better since she is unable to cope with Josh's condition.

Advise S. Producers Ltd.

---

QUESTION 2

Tony, aged 35, was an engineer employed with Building Construction Ltd., and from time to time had been required to supervise construction work out of town. In April 1981, whilst on one such assignment Tony was driving a motor-cycle along a public road when it became involved in a collision with a motor car negligently driven by the defendant. Tony suffered severe head injuries including multiple fractures of the skull. He suffered intense pain for about three to four days after which he went into a coma and died intestate, shortly afterwards.

On hearing of the accident, Tony's wife Muriel, aged 30, without any request from the attending surgeon, flew over to the hospital to be at her husband's bedside. Muriel stayed in a posh hotel near the hospital for approximately two weeks and only returned home the day after the inquest into the death was completed. One week after her return, the company made a death gratuity payment of \$15,000 to Muriel.

At the time of his death, Tony earned an annual salary of \$50,000 and made an annual contribution of \$24,000 to the household expenses. Tony and Muriel had no children of their own, but Sandra, aged 19, her deceased brother's daughter and a third year medical student, lived with the couple. Three years before his death, Tony had purchased a house and he personally did a considerable amount of repairs and renovation to the house. Tony did not have an excellent record with his employers, but the construction industry was quite active so his prospects were good.

Prior to his death Tony has incurred certain debts amounting to \$7,000. Six months after his death, Muriel expended \$3,000 for repair work done to the home. She had also paid \$1,000 for funeral expenses and \$750 as costs in taking out letters of administration of the estate of the deceased.

Muriel consults you. She admits that since her husband's death she has had boyfriends and at present there are two who show very keen interest in her. During 1982, Muriel had consulted attorneys concerning her deceased husband's estate. She paid \$1,500 as a fee for these services. A date for trial has been set for June 17, 1984.

Muriel seeks your advice on the quantum and likely heads of damages which may be awarded against the defendant. She informs you, in particular, of the sum of \$1,500 paid in 1982 to attorneys for consultation with regard to the estate, the funeral and administration expenses, and the sums for repairs to the home which she has had to pay since her husband's death but which she would not have incurred if he were alive.

Advise Muriel.

---

QUESTION 3

On March 11, 1982 Arthur who is employed with J.B. Phillips and Co. Ltd., hardware merchants as an accountant had an altercation with Bernard, a pensioner, who lived 250 meters away. Two days later, Bernard who had just drawn his monthly cheque and had "fired a few" met Arthur in the market place and hailed at him, calling him a bully and promising to teach him a lesson with his fists. Arthur called him in return a dirty old drunkard whereupon Bernard walked up to him and slapped him firmly on the shoulder.

Arthur then got hold of an old cricket bat and dealt Bernard several blows about the body whereupon the latter fell to the ground. Not satisfied with this, Arthur got hold of a pail of muddy water and dashed the water all over Bernard's face and body saying that this would revive the 'bastard'. Soon after, Bernard with the help of two boys got to his feet by which time a small crowd which had gathered began to laugh at his muddy appearance.

Sergeant Johnson then arrived on the scene and seeing the behaviour of the crowd and Bernard's condition formed the impression that Bernard was misbehaving in a public place and took him into custody. Bernard was transported to the police station where he was detained for three hours. Sergeant Johnson then preferred a charge against Bernard for disorderly conduct. He was taken before the Magistrate who remanded him in custody till the following morning.

The next day, Arthur got word that Bernard was thinking of taking legal action against him. He quickly arranged with two of his friends to concoct a story that on March 9, 1983 about 2:30 p.m. Bernard met him on the highway and assaulted him. Arthur speedily brought an action to this effect in the civil court. When Bernard received the summons he was so surprised that he fainted and became ill. The doctor was called in and he was treated for shock. The matter was heard on March 29, 1983 and the case was dismissed with costs of \$250 awarded to Bernard.

On April 10, 1983 Bernard met Arthur on the public road and called him "a wicked liar and thief of the worst degree who never pays your house rent". At the scene were several friends of Arthur's including Clem who was also employed with J. B. Phillips and Co. Ltd. The next morning Clem reported to the Managing Director of the Company what Bernard had said to Arthur. The same afternoon, just before closing time, the Managing Director called Arthur and told him what he had heard about him and that as a result he was dismissing him with effect from April 12, 1983.

Arthur consulted his attorney. On May 17, 1983 Bernard received a writ issued on behalf of Arthur alleging slander against him by Bernard on April 10, 1983. Bernard consults you on the above-mentioned facts, asking ~~among other things whether he has any remedies and against whom.~~

*Advise Bernard as to the damages he may be able to obtain and against whom.*

QUESTION 4

Lavender Productions is a large well established manufacturer of electronic equipment. Recently the company brought on the market an inexpensive, multi-faceted computer "Solve-all" which they believe will put all their competitors out of business because of the uniqueness of its design. The computer was sold to various institutions subject to a covenant that no manufacturer of electronic equipment other than Lavender Productions would be given access to the machine whether for maintenance, repair or any other reason.

Z Consultants Ltd. who were experiencing financial difficulties, were persuaded by Fairplay to enter into an agreement with Fairplay for maintenance, at a nominal price, of the computer they had purchased from Lavender Productions.

Fairplay having had access to the "Solve-all" were able to study the design and one year later put on the market a cheaper computer "Save-all" which they advertise as unique.

Lavender Productions have just begun to break even on the cost of production and promotion of "Solve-all". They are very distressed by Fairplay's introduction of "Save-all" into the market and consult you as to the damages they may be able to obtain against Fairplay. They inform you in addition that 10% of their annual income is earned from maintenance of equipment which they have sold and that several of their customers are now looking around for cheaper maintenance contracts.

Advise Lavender Productions.

---

QUESTION 5

All-Yu-Want advertised in a local news brief a fourteen-day holiday in Paradise, a sea-side resort. The cost of the holiday which was to include the return air-fare from Lionel Bay, accommodation, food and entertainment was advertised as \$2,500 per adult and \$1,700 per child.

Leslie, an expatriate residing in the country on a one-year contract, thinking that this would be an ideal opportunity to see the country, consulted with Travelrise, a reputable travel agent, as to the credibility of All-Yu-Want. One of the firm's travel consultants informed her that All-Yu-Want was a well established company which was accredited by the Tourist Board. Leslie arranged for a consumption loan at 15% interest and sent the money to All-Yu-Want to cover the cost of the holiday for herself and her two children.

Leslie, having received an acknowledgement from All-Yu-Want, purchased train tickets to Lionel Bay for herself and her two children at the cost of \$96, and on the day scheduled for the commencement of the holiday arrived at Lionel Bay airport. On making inquiries at the Tourist Information Desk she was informed that All-Yu-Want had been struck off their list because of sharp practices and that there was no flight at all to Paradise. Leslie immediately tried to contact All-Yu-Want but was informed by the operator that the company's telephone had been disconnected because of non-payment of bills.

Leslie resigned herself to two weeks at home but her children became very morose and uncooperative since they had looked forward to getting away from the heat of the city.

Advise Leslie who consults you as to the damages she may be able to obtain and against whom.

---

QUESTION 6

Farm Fresh Ltd., wholesale distributors of chickens, contracted to deliver 50 cartons of chickens to Davies, a restaurant proprietor, on December 15. Davies intended to use the chicken in the preparation of lunches which he had contracted to supply on December 22, to two large institutions for their seasonal celebrations.

On December 21, Davies' kitchen staff on unpacking the cartons, which had been stored in Davies' freezer unopened, discovered that they contained chicken necks and backs and not whole chickens. Davies immediately contacted the manager of Farm Fresh Ltd., but was informed that all the chickens had been sold and that Davies would have to do his best with the necks and backs. Davies informed him that he had no intention of using them, and that Farm Fresh Ltd. should arrange for their collection immediately. To avoid spoilage, Davies requested his staff to store the cartons in the freezer.

In order to fulfil his contracts, Davies sent an agent out of town to purchase as many chickens as possible. The agent was only able to purchase half the required quantity of chickens. Since these were "country" chickens and not roasters, the barbecued chicken was tough. The quantity was inadequate.

Davies informs you that with the approach of the Easter festivities he was anticipating good business, but that none of his regular clients have approached him. He still has the cartons of necks and backs in storage despite repeated requests to Farm Fresh Ltd. to relieve him of them.

Advise Davies as to the measure of damages he may be able to recover from Farm Fresh Ltd.

---

QUESTION 7

Reuben was the driver of a Chev motor car which he had purchased two years previously for \$17,500 and which he operated as a taxi. In March 1983, he left his taxi unattended on the M1 motorway near a construction site on the highway. Owing to the negligence of a crane operator a piece of sheet piling which was being lifted at the time fell on Reuben's car, thereby making it virtually unroadworthy.

Up to that time Reuben had an unblemished record and had never made a claim on his insurers. He consulted a legal practitioner who sent off a letter demanding compensation from the owners of the crane for the loss of his car. The owners of the crane seemed willing to settle, but their legal advisers were advising caution because they had not yet heard from their client's inspector who was investigating the circumstances of the accident.

Reuben employed Claude, a reputable mechanic to make an assessment of the repairs. Claude reported that it would cost \$18,750 to put the car back on the road. Reuben also made inquiries about a replacement and found he could have got one for \$18,550. However, he neither purchased that car, nor did he give the go ahead for repairs to be done on his car because he could not raise the money to do either.

Reuben had always been very careful with his cars. He changed them approximately once every three years and, at the time of the accident, was on the look out for a new car. He had his eyes on a second-hand Peugeot which the owner had promised to sell him for \$19,800 in about nine month's time. Things dragged on and after two months of waiting without word from the owners of the crane, in order to carry on his taxi business he hired the only car he could get which was less economical to run than either the Peugeot or the Chev. He used the hired car for seven months and later bought the Peugeot.

Reuben has sued the owners of the crane and claims damages for:

- (a) cost of the Peugeot;
- (b) loss of profits for the two months he was without a car;
- (c) loss of profits in the operation of the hired car;
- (d) loss of his no-claim bonus from his insurers.



You have been briefed as counsel for the defendants.

Advise the defendants on the merits of the plaintiffs' claim.

---

QUESTION 8

In October 1983, Alfred contracted to purchase Basil's dwelling house. Basil was moving out of town and contracted to purchase Celia's house which was near his new workplace. Celia contracted to purchase an apartment in town from Donald.

Donald was unable to complete the conveyance to Celia by July 31 as contracted. He informed Celia that when he agreed to purchase the apartment three years previously, the vendor had merely given him a receipt and that the title was not registered in Donald's name. Donald did not appreciate, until he approached a lawyer to assist him in his transaction with Celia, that he did not have proper title. Donald eventually obtained good title and conveyed the premises to Celia on September 31.

Celia informed Basil that she would not be able to complete on October 1 as they had agreed, because she could not afford to move to alternative accommodation pending the completion of her purchase of the apartment from Donald.

Basil, nevertheless, in compliance with his contract with Alfred conveyed his house to Alfred and incurred expenditure in the storage of his own furniture and temporary accommodation for his family.

Basil is now claiming compensation from Celia. Advise Celia as to the damages she may have to pay Basil for late completion and whether she can claim an indemnity from Donald.

---