

NORMAN MANLEY LAW SCHOOL

Council of Legal Education

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COUNCIL OF LEGAL EDUCATION
MONA, KINGSTON 7, JAMAICA

LEGAL EDUCATION CERTIFICATE

SECOND YEAR EXAMINATIONS, 1983

DAMAGES AND COMPENSATION

Tuesday, May 24, 1983

Instructions to Students

- a) Time: 3½ hours
- b) Answer FIVE questions only.
- c) In answering any question a student 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

Derek and Pike were employed by National Harbour Company as a stevedore and tractor operator respectively. On February 6, 1983 Derek, during his lunch break, with Pike's permission, decided to give the tractor a 'test ride' on the company's premises. Seconds after Derek drove off, Pike had second thoughts and ran after him shouting to him to stop. Derek, distracted by the shouts steered the tractor into the wall of a shed and was killed instantly in the ensuing collision. Pike was also fatally injured in a desperate attempt to leap on to the moving tractor to prevent Derek from going further.

Derek, 17 years of age, died intestate and is survived by his 45 year old mother who is employed but has for the past year relied on Derek's assistance to support her two teenage children at high school. Derek's salary was \$9,700 per year. Pike also died intestate and is survived by his common law wife Maple and by two children - Pike junior, who is 8 years old and attending primary school and Pete who is two years old and requires constant medical attention because of a severe asthmatic condition. Pike had recently passed the mechanical engineering examinations which qualified him for a job in the company's repair workshop at a salary of \$20,000 per annum and a housing allowance. His salary at the time of his death was \$15,300 per year.

The National Harbour Company has advised you in respect of the damages that would be awarded against them in the event they were held liable for the collision.

Advise the Company.

QUESTION 2

Bernard was a clerk in the hardware department of Tyson and Co. Ltd., earning an annual salary of \$24,000. On July 5, 1980 on his way to work in a taxi which was being driven by Tom on the highway at a speed of 21 miles per hour, a mini motor-car driven by Abraham negligently ran across the path of the taxi causing a collision.

Abraham died on the spot. Bernard received severe injuries and had to be taken to the hospital. Diagnosis revealed fractures of the skull and ribs and his brain and nerve tracts were permanently damaged. He remained in hospital for six months before his discharge. There is no chance of his leading a normal life, his life expectancy has been reduced to 10 years and he is able to appreciate his condition. He is sexually impotent and has become very irritable and difficult to live with.

After his discharge from the hospital, Bernard spent \$4,200 for medical treatment and will need future treatment. His wife gave up her job as a teacher in the public service to look after him. At the date of the accident, Bernard had been in the employment of the company for seven years. He enjoyed his job and he had very good prospects with the company expecting to be promoted and to earn a much higher salary.

A few hours after the collision, a motorist who was on the scene of the accident called Bernard's wife at her home and told her what had happened. Mrs. Bernard prepared herself immediately and left for the hospital where she saw her husband lying in a semi-conscious state. She suffered severe and persisting nervous shock as a result.

Mrs. Bernard consults you on a claim on her husband's behalf against Abraham as well as a claim on her own behalf for nervous shock, distress and injury to her health.

Advise Mrs. Bernard on both claims, mentioning the factors to be taken into consideration in computing damages with interest where appropriate under each head.

QUESTION 3

Derek is an inspector of roads in charge of the Western District and he uses a left hand Chev motorcar, 1977 Model, in the performance of his duties. On January 20, 1983 he was involved in an accident with Alvin and his Chev was extensively damaged. Liability for the accident has been admitted. Derek employed Claude, a mechanic, to inspect his car at the place of the accident and to make an estimate of the repairs. The matter went to trial on the issue of damages.

Derek claimed that the Chev is ideally suited to his needs, that he gives it a yearly overhaul and that the left hand automatic drive is most convenient to the slight defect in his right leg. There was no market for similar cars in the island so Derek did not attempt to find a replacement. He eventually repaired the Chev on the basis of Claude's estimate at a cost of \$12,700 for which he produced a receipt from the garage.

In his estimate, Claude found that the scrap value of the Chev after the accident was \$550. It was not disputed that the pre-accident value of the Chev was \$12,000. Derek claimed from Alvin the sum of \$12,700 for repairs, \$500 for payment to Claude for his inspection and estimate and 20 weeks loss of use of his car at \$200 a week.

The judge did not accept the amount claimed for repairs and took the view that a proper sum would be \$11,000. He proceeded to make an award on that basis, but first made a deduction of \$1,000 because the effect of the repairs was to make the Chev more valuable than it was before the accident. He therefore gave judgment in favour of Derek for \$10,000 and costs and commented adversely on the plaintiff's failure in his "duty" to mitigate. ✓

Derek consults you on the chances of an appeal. You notice from the records that no challenge whatsoever was made to the receipt submitted in evidence at the trial.

Advise Derek.

QUESTION 4

T who occupies a self-contained flat at 16 College Crescent, owns a disco 'outfit' and uses every opportunity he has at home to test records for inclusion in his collection. L, his landlord, lives in the adjoining house and has requested T on several occasions to desist from playing his 'raucous' music at least after 6 p.m. in the evening. On March 17, 1983 after a very tense day at work L came home and was met by a crescendo of rockers music emanating from T's flat. L spontaneously turned off the main switch which

controlled the electricity supply to T's flat thereby causing severe damage to T's hi-fi equipment which T claims is worth thousands of U.S. dollars. ✓

The same evening L, a much respected individual, at the local Citizens Association meeting complained bitterly of T's 'irresponsible' behaviour and claimed that it 'is this sort of riff raff that is destroying the character of the Crescent'. The house owners in the area, who were T's main clients and had also helped him to get contracts with their friends and various institutions for providing disco music for parties, decided to boycott him to 'teach him a lesson'. A resolution was also taken in the meeting not to let premises in the Crescent to individuals who carried on similar trades to T and members urged L 'to exercise his rights and get rid of T'.

One week later, L gave T notice to quit at the end of the month. T in despair, knowing that he had little chance of surviving in the Crescent left the premises and went to reside with his mother who has only a one bedroom apartment. T was forced to sell all his hi-fi equipment at a price well below its market value and to sleep on a mattress in his mother's living room. He has not yet found alternative accommodation and is unable to find a job.

In desperation he decides to visit the Legal Aid Clinic. Advise him as to what damages he can claim against L.

QUESTION 5

(a) Mas' T in May 1982 entered into a contract to sell ten acres of land at Four Paths to J.S. who is a large land owner in the area. The title to the land was registered in the name of Blunt, but Mas' T had in his possession a receipt issued by Blunt in July 1976 to certify that he had 'bought' the land from Blunt for \$4,000. No transfer tax or stamp duty were paid at the time of the transaction and Blunt is unwilling to assist Mas' T to finalise his title since he is unwilling to pay any money to the government. After a patient six months wait J.S. decided to rescind the contract and sue for damages.

Advise him as to the measure of damages, if any, he is entitled to claim.

(b) Two months before the 1982 Budget was announced Z contracted to sell his premises which were being used as a workshop for the manufacture of candles, although in a residential area, to Investor who wishes to continue in the same business. The 1982 Budget included tax incentives which were so tempting that Z decided not to go on with the sale. Investor sues him for specific performance and/or damages.

Advise the parties as to the measure of damages which may be awarded.

QUESTION 6

Timber Products Limited advertised extensively the fact that they were about to put new locally manufactured cricket stumps on the regional market. They passed on some of this confidential information about the new stumps to one of their oldest customers, Basil and Co. who soon afterwards exploited the information and made stumps which they supplied for sale to a number of territories in the region. In 1982, the total sale of Basil and Co. for that product was \$50,000.

About the same time, Conrad who had been in the employment of Timber Products Limited as Sales Manager for six and a half years left the company and set up business on his own in products similar to those sold by his former employers using much of the information acquired during his employment with the company.

Conrad sent circulars to the customers of Timber Products Limited worded in a manner capable of creating the impression that he was the successor in business of Timber Products Limited. He also issued a price list of precisely the same arrangement as that of Timber Products Limited although the prices of his products were on the whole cheaper.

Timber Products Limited experienced general loss of business and was compelled to reduce their prices to be able to compete with Conrad.

The Managing Director of Timber Products Limited consults you. He claims that the company's reputation as a manufacturer has been seriously affected and he has been personally humiliated. He seeks your advice on the chances of successful actions against Basil and Co. and Conrad.

Advise Timber Products Limited as to the likely measure of damages.

QUESTION 7

The plaintiffs who operated a store contracted with the defendant wholesalers on January 1, 1982 to supply them with 2,000 cartons of "BOMBA" toilet soap warranted to be in accordance with the mandatory standard which had recently been introduced in relation to that commodity. On January 15, 1982, the plaintiffs contracted with Shand and Co. Ltd. to sell them 500 cartons of the said soap on a similar warranty. The defendants made delivery

to the plaintiffs on January 31, 1982 and on the same day the plaintiffs supplied Shand and Co. Ltd. with the quantity ordered.

On February 2, 1982, Shand and Co. Ltd. communicated to the plaintiffs with regard to complaints from customers that the use of the soap caused mild irritation to the skin. A week later as a result of further complaints Shand and Co. Ltd. returned the goods to the plaintiffs who refused to take them back. Shand and Co. Ltd. commenced an action against the plaintiffs on March 1, 1982 and the plaintiffs duly entered an appearance. The action was set for hearing on May 5, 1982.

On March 5, 1982 an inspector from the Bureau of Standards visited the plaintiffs' store, examined the soap and took a couple of cakes for testing. On March 15, 1982 as a result of certain tests carried out the inspector laid a summary charge against the plaintiffs for having exposed for sale a quantity of toilet soap not in keeping with the mandatory standard. On March 11, 1982, the plaintiffs sold 200 cartons of the said soap to Carter and Sons. On April 1, 1982, Mr. Carter made a complaint to the plaintiffs as to the quality of the soap and threatened immediate legal action. The plaintiffs, with the thought of a case coming up against them in the next few days agreed to settle Mr. Carter's claim in the sum of \$1,000.

On May 6, 1982 the action by Shand and Co. Ltd. was heard and the plaintiffs were ordered to pay damages of \$3,500 and costs of \$500. They gave notice of appeal. On May 10, 1982 the plaintiffs were convicted of the summary charge, fined \$2,000 and ordered to pay \$250 as costs to the Bureau of Standards. The plaintiffs were represented at the magistrates' court.

In July 1982, the plaintiffs' appeal in the action by Shand and Co. Ltd. was heard and the damages were reduced to \$2,500, each party to bear its own costs of the appeal.

The plaintiffs now seek to recover in an action against the defendants:

- (i) The costs and damages involved in the litigation with Shand and Co. Ltd.;
- (ii) the amount for the settlement of Carter's claim; and
- (iii) the amount of the fine in the criminal matter, their own costs and the costs awarded to the Bureau of Standards.

Advise the plaintiffs.

QUESTION 8

Advise your clients who wish to appeal against the following awards of damages:

(i) A, a 23 year old cane-cutter was crushed to death by a tractor which was negligently manoeuvred by a fellow worker. His employers admitted liability and the judge made an award, under the Fatal Accidents Act, based on a multiplier of 13 years and a multiplicand of \$800 which he calculated by deducting A's living expenses from his annual salary. He calculated the multiplier on the basis of contingencies including that cane-cutters are generally accident prone. In making the award on behalf of A's widow and his only child Bill, the judge then scaled down the award by 1/3 to take account of contingencies.

(ii) Following an accident at work Madge was laid off since she was not able to fulfill the job requirements. In an action against her employers Madge was awarded substantial damages for pain and suffering and loss of amenity and a conventional sum for loss of expectation of life. The judge made no award for medical and related expenses nor for loss of earning capacity. His reason for not awarding damages for medical expenses incurred was that evidence was given that the employer had a health insurance scheme with a reputable insurance company which the employer claims covered all medical expenses.

Madge now discovers that the insurance scheme does not cover medical expenses incurred after the employment has ceased.

The Judge's reason for not granting compensation for loss of earning capacity is that the employer has a superannuation scheme under which Madge qualifies for a pension because of her accident at work although she has not reached retirement age. Madge informs you that the pension will not assist her in fulfilling all her obligations since she has two children at school who are totally dependent on her. The pension after tax is almost equivalent to her pre-accident salary but Madge before her accident used to earn extra cash by doing odd jobs at weekends.

(iii) In making an award of damages for pain and suffering and loss of amenity, the judge granted interest at the rate of 2% on the lump sum because, as he stated, although the plaintiff had been kept out of money he ought to have had six years ago, that is not the fault of the defendant, but arises from inefficiency in the administration of justice. Moreover, he stated, because of inflation the award at the date of judgment is 25% more than it would have been six years ago.
