

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2018

LAW OF REMEDIES

(AUGUST , 2018)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **FIVE** questions.
- (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.
- (e) Answers should be written in black or dark blue ink. Erasable pens are not allowed.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Joan is a young school teacher who lives on Halifax Road. On January 14, 2018 at about 2:00 p.m., a party of policemen, headed by Inspector Johnson, came to Joan's house and informed her that they had a warrant for her arrest. Inspector Johnson indicated that the police had information linking her with the drug-trade in the area, and that she would be charged with a number of offences in connection therewith.

Joan, who was preparing to attend a job interview, protested her innocence. Ricardo, a friend who had come to transport her, pleaded with Inspector Johnson that there must have been some mistake as he was sure that Joan was never involved in drugs. However, Inspector Johnson merely ignored him. Ricardo then told Joan not to go with the police and held on to her, whereupon two of the other police officers present pulled him away and dealt him a few blows about his body.

Inspector Johnson told the officers to desist, as their behaviour was unnecessary, as the man was unarmed. However, Inspector Johnson told Ricardo that he was obstructing police officers in the execution of their duty and that he too would be arrested. Both Joan and Ricardo were handcuffed and taken to a waiting police car, in full view of the neighbours. They were both kept at the police station until 2 o'clock the following morning, when they were released. No charges were laid against them. While at the police station, they were offered refreshment in the form of sandwiches and lemonade, but they declined.

It subsequently transpired that the police had made a mistake. The warrant had in fact been issued for the arrest of Joanna, who lived in the same area as Joan, and bore some resemblance to her. Joan, who is a highly-strung person, suffered considerable mental anguish as a result of the ordeal and was forced to seek medical attention. She has lost her job, and so has Ricardo. Also, Ricardo's car has been stolen.

Joan and Ricardo consult you for advice on the above.

Advise them.

QUESTION 2

Raj Construction Ltd (Raj) is in dispute with Economy Mart Ltd. (Economy) in respect of two breaches of a building contract, in which Raj agreed to construct a building to accommodate Economy's latest supermarket.

Breach number one arose because Raj, as a result of labour union problems, completed and handed over the building 30 days late. According to the contract, Raj is required to pay "*\$50,000 per day as a penalty for every day the breach continues*".

The second breach is in relation to Raj's "*failure to comply with specifications contained in the architectural drawings*". According to the contract, such failure requires Raj "*to pay the sum of \$3,500,000 as compensation*". As it turned out, the storeroom is three-quarters the size it should have been.

Economy has, by letter, which has been hand-delivered at Raj's head office on July 15, 2018, drawn Raj's attention to the two breaches of Raj's primary obligations and the consequences. Accordingly, Economy demanded that Raj should pay the sum of \$2,500,000 as penalty for the first breach, and \$3,500,000 as compensation in relation to the second breach. Raj is required to pay these sums within 14 days of the date of the letter, which is actually undated. There is a threat that failure to comply will result in legal action.

Mr Rajnath, the managing director of Raj, consults you. He accepts that Raj is in breach of the building contract on the two counts indicated in Economy's letter to Raj. However, he needs advice on the option open to his company in relation to the demands made by Economy in the letter.

Advise Mr Rajnath.

QUESTION 3

Answer both (a) and (b)

- (a) In the Law of Remedies, the compensatory measure of damages is accorded a well-deserved priority.

With reference to decided cases, indicate the accuracy, or otherwise, of the above statement.

- (b) One year ago, Rani, an attorney-at-law, was employed by EQF & Co., a firm of lawyers with chambers in each parish in your jurisdiction. Her contract has a residue of two years to run. This contract contains a term that *“all information obtained in the course of employment with EQF & Co. is confidential and I promise not to use or release such information without the written consent of EQF & Co. signed by the senior partner”*.

Rani copies every file she works on, every opinion she writes, and every pleading she drafts, to her private email. She has compiled a list of every client whose business is handled by her department. She has copied this list to her private email and updates it from time to time.

Unknown to Rani, the firm has knowledge of all that she has done. Two days ago, the managing partner, Mr A G Silver, visited her office for, as he said, *“a friendly chat”*.

During the *“friendly chat”*, Mr Silver said that the firm has evidence that she was breaching the terms of her contract in a serious way, and that she was also breaching the implied terms of trust and confidence, and the obligation of fidelity. He also said that the firm has accepted her repudiation of the contract and, as a result, her contract of employment is at an end with immediate effect. Mr Silver asked her to return all the files, the list of clients she has compiled, as well as, the opinions and other drafts she has done and stored. Mr Silver bade her goodbye and warned her to *“proceed with caution because the firm was considering whether to initiate legal proceedings and/or disciplinary proceedings, against her”*.

Mr Silver summoned a trusted office attendant to usher Rani out of the office and escort her to a security guard who was holding a box containing Rani's personal effects. The security guard escorted her out of the building. She handed Rani the box.

Rani consults you. She says that her *"vexation and distress are beyond measure"* because she has not in any way breached her contract. She insists that she has been wrongfully dismissed, and she wants a court order to restrain the firm from breaching her contract of employment.

Advise Rani.

QUESTION 4

Jos Wynter owned a 1940-model car. He inherited it from his father who chose to bequeath it to Jos because, as a boy, Jos had eagerly and faithfully helped him to clean and polish it. When Jos became the owner, he continued his father's tradition of high-quality maintenance and care of the car, which was named "Treasure".

Jos, like his father, held membership in Vintage Car Owners' Association. Jos used "Treasure" for his own private purposes. In addition, "Treasure" was hired for weddings, transporting tourists, and as a prop by film-makers, and a few local singers who made video recordings of their songs. "Treasure" was a very busy vehicle.

Six months ago, "Treasure" was severely damaged by Al Ternet, who, while negligently driving his van, collided with "Treasure" which was being lawfully driven along Main Street by Jos himself. The collision was reported to the police, and Jos has received a letter from Al Ternet's attorney-at-law, indicating their client's intention to settle the matter by negotiation or mediation. In the letter, the lawyer reminds Jos that he (Jos) has a duty to mitigate.

During the collision, Jos, who was thrown forward, received a cut on his face. This has resulted in a scar. Jos, who is very disturbed because of the stress from the disfiguring impact of the scar and the damage to "Treasure", says that he is in no mood for mitigation, negotiation, mediation or "what have you", he wants justice. He wants the judge, or whoever, to see the scar on his face and hear of all the troubles and grief he has experienced, as a result of it. Further, he wants enough compensation since he believes he will be wearing the scar for the balance of his life.

Advise Jos on his rights and obligations and the approach to assessment of compensation that a court would take.

QUESTION 5

Julie and Joe own Flower Vale, a horticultural farm in your jurisdiction. Joe, a descendant of three generations of horticulturists inherited Flower Vale from his father, Joseph Crosdale. He had promised his late father to devote Flower Vale to nothing but horticulture. In any event, he himself wanted to be a horticulturist.

A year ago, a real estate dealer named Arlie, visited Flower Vale and made an offer to buy Flower Vale. Julie and Joe declined the offer. Six months ago, Arlie visited again. This time Arlie declared that he had already agreed to sell Flower Vale to a well-known housing developer, and would be in breach of contract if Julie and Joe did not agree to sell. He told the couple that he, Arlie, would be liable to pay the developer for his lost profits if he was unable to acquire Flower Vale. Arlie also suggested that Julie and Joe should consider carefully their decision to refuse. Joe politely and firmly repeated his refusal.

Last month, while Joe was abroad on business, Arlie, and two men armed with guns, entered Flower Vale. They were followed by three men on bulldozers. Arlie directed the men to start working and to clear the site for building. Julie protested but to no avail. The police were

summoned, but they arrived three days later, by which time the three-bedroom house and outbuildings on the farm had been demolished, the site already cleared, and the top soil carted off.

Arlie was arrested and is facing charges for aggravated trespass/malicious destruction of property. Joe and Julie's employees have been without work until now and are only receiving half pay. Joe and Julie and their two children are being accommodated in a guest house.

Advise Julie and Joe on their rights, how they should prepare to prove their loss, and the likely approach a court will adopt in assessing damages in their favour.

QUESTION 6

Jill suffered injury to her spine two years ago when she fell as a result of slipping on a wet floor at her workplace. At the time, Jill had seen the floor cleaner at work. She had also seen the usual cautionary sign in place. Further, the cleaner had verbally warned her not to walk on the wet floor. Jill had shrugged and said *"no problem, rule mek fe bruk"*. Jill walked on the wet floor, slipped and fell. She had to be lifted and was taken to the sick bay on a stretcher. From there she was taken to the Accident and Emergency Unit of the People's Hospital. There she was examined and was diagnosed as having a broken spine.

It so happened that, on this occasion, the cleaner had used too much of a new type of cleaning agent, and the floor surface was unusually slippery.

At present Jill is unable to walk, and is confined to a wheelchair. On further orthopaedic examination, it was discovered that at the time of the injury, Jill had a latent spinal defect which would have manifested itself at about age 50 and which would have resulted in 100% spinal disability.

Jill is 28 years old and her retirement age is 60 years.

Advise Jill on:

- (i) any cause of action maintainable against her employers; and
- (ii) the considerations that may be relevant in any assessment process and their impact.

QUESTION 7

Josh and Celia Quinn employed Excellent Video Service Ltd. (Excellent) to video record their daughter Elsie's wedding ceremony and reception, and to furnish a product of a satisfactory quality. Elsie was a party to the contract.

Excellent sent Harri to do the work and Harri duly attended at the church and reception site. It appeared that Harri was recording the proceedings throughout. It turned out that Harri had paid scant attention to the bridal party, and had concentrated his attention on recording the movements of Trace, a female friend of his, who was a guest at the wedding. The video footage, it turned out, was mainly of Trace.

When the video was delivered and the Quinns viewed it, they were very dissatisfied. Elsie was so upset that she fainted and had to be hospitalized for two days. The Quinns decided to restage the wedding and reception without the overseas guests. The cost of this effort amounted to \$2,500,000. The soloist and musician cost \$45,000 and the master of ceremonies was paid an *ex gratia* sum of \$10,000.

The Quinns consult you in relation to the above. They seek advice on their rights against Excellent.

Advise them.

QUESTION 8

You were recently hired as an associate in a firm of lawyers. You are on three months' probation. The managing partner has asked you to prepare a list of questions that should provide guidance when interviewing a client claiming remedies, in circumstances involving wrongful death.

Prepare the list, indicating the relevance of each question.

END OF PAPER