

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2013

LAW OF REMEDIES

(TUESDAY, AUGUST 13, 2013)

Instructions to Students

- (a) Time: 3 ½ 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Mrs. Marjorie Baker is a secretary who runs a partner scheme, the membership of which includes co-workers, neighbours and friends. Alice, a new worker in Mrs. Baker's office, applied for membership two months after she joined the staff on January 2, 2012. Mrs. Baker asked her to furnish a 'reference of reliability'. Alice did so. The reference was signed by Sonia Jilkes and contained statements that Alice was "a reliable person who was honest and upright in all her dealings." Mrs. Baker is the 'banker' for the partner scheme, and each person throws a 'hand' of \$10,000 monthly.

Immediately after Alice was admitted, she requested a draw for the next month. Her request was facilitated because she had convinced Mrs. Baker, that she (Alice) had been faced by a "sudden emergency". The draw she received amounted to \$120,000 which includes two hands that she had contributed. Since her receipt of the draw, Alice has not made any monthly payments.

Advise Mrs. Baker.

QUESTION 2

In June 2012, Josh, who was 25 years old, was crushed by a tractor which was being 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 eight weeks, but continued to suffer from severe headaches and depression. In August 2012, on the request of his wife, Rega, his employers Producers Ltd., agreed 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 when the consultant neurosurgeon, Mr. Dalby, certified that Josh had reached the point of maximum recovery, and would only need medication to deal with the continuing symptoms.

Josh is unable to speak coherently, and is abusive and violent. This, the doctor says, is caused by depression. Producers Ltd. are willing to continue to employ him at his pre-injury wages of \$4,500 per week. Rega, feeling unable to cope with Josh's condition, left and moved into an apartment in a neighbouring town, where the prospects of employment are better. As a result, his parents decided that it would be safer for him to stay at their family home, and assist with the growing of food crops for family consumption. Producers Ltd. are anxious to avoid litigation and their Managing Director, Mr. Simms, consults you.

Advise Mr. Simms.

QUESTION 3

Bennie and Kennie are twins. They own, as joint tenants, real estate called Yves Pen which they inherited from their father, the late Kenward Ben Yves.

Bennie is minded to sell the property to Shand, a real estate dealer. Kennie, on the other hand, is "opposed to the idea of selling to anyone". During a heated discussion of the topic, Bennie casually said that he saw no reason whatever for keeping "the old place". Kennie accused Bennie of showing "disrespect and disregard for family loyalties".

After this exchange, Bennie went ahead and agreed to sell Yves Pen to Shand for the price of \$6.5M. Shand paid the deposit of 10% of the price to Bennie's attorney-at-law. The agreement for sale, dated January 2, 2013, was exchanged between Bennie and Shand. The transaction was to be completed within ninety days from the contract date. Shand reminded Bennie that Bennie would need his brother's signature on the transfer in order to complete the sale. Bennie repeated the assurance that his brother was "very big on family loyalty and would certainly come around".

Bennie, through his attorney-at-law, wrote several letters to Kennie encouraging Kennie to join in the sale "in the name of family loyalties". Kennie still refused.

Shand has issued a Claim Form and Statement/Particulars of Claim seeking specific performance, and in the alternative, damages for breach of contract. Shand has also claimed loss of profits on a subcontract for the sale of Yves Pen for \$8.5M. In any event, a valuer employed by Shand had valued Yves Pen at \$9.5M.

Advise Shand on the likelihood of obtaining specific performance, and in the event of any refusal to enforce the contract specifically, the approach likely to be adopted to assess damages in his favour.

QUESTION 4

Distinguish additional damages, account of profits and vindicatory damages, and indicate, making reference to decided cases, the circumstances which will give rise to, and the purpose of, each of these pecuniary reliefs.

QUESTION 5

Van, aged 35, was employed as an accounting clerk in a department store. He earned a salary of \$25,000 per month. On New Year's Day, 2012, Van sustained life-threatening personal injuries when a truck, owned by Haulage Ltd, collided with the taxi in which he was a passenger. The taxi was owned by Dino Jackson. Van died from his injuries four weeks after the collision. Van is survived by his widow Angie, aged 28, and two children, Giovanni, aged 8, and Vanessa, aged 9.

Van was an excellent worker and, by all accounts, had a very real chance of being promoted to inventory supervisor in the near future. This promotion would have meant a 50% increase in his salary, the use of a car, and a housing allowance.

At the time of his death, Van and his family occupied a house owned by his uncle Joe, and Van was paying a monthly rental of \$20,500. Van purchased all the groceries; he paid the utility bills; and he contributed to the upkeep of his mother, Miss Nell, who was 65 years of age. Angie earned \$4,500 per week which she used mainly on herself and the children. She contributed to the purchase of books and lunch money for them. Van was a smoker and a betting and fishing enthusiast. He had started taking Giovanni with him on fishing trips.

You are consulted by Angie who also tells you that Van's uncle Joe, who had died a week before Van, has, by will, left the house to Van.

Advise Angie.

QUESTION 6

Maissie Gallio is Permanent Secretary in a Government Ministry. Dorina is the editor of a Daily Newspaper called "The Watcher". It has a reputation for publishing defamatory, and 'borderline' articles. Dorina disputes this perception by saying that the Watcher merely has an "aggressive journalistic style".

Two weeks ago, the Supreme/High Court found that both "the Watcher" and Dorina were liable for defamation/libel in that they had published materials of and concerning Maissie which had brought her into disrepute in the eyes of reasonable persons. The hearing to assess damages, which were claimed on the footing of aggravated and exemplary damages, has been set for next week.

As an intern associated with R D Fuller (RD), the attorney-at-law acting for "The Watcher" and Dorina, you are required to prepare an opinion on damages and indicate the approach likely to be used in the quantification process. Relevant matters for your consideration include the following:

- (i) The defence witnesses who had promised to testify to the truth of the allegations did not attend to give evidence at the trial.
- (ii) RD had declined to withdraw the defence of justification (truth) but instead cross-examined Maissie most vigorously, and insistently proclaimed that she held “a deep animosity to truth.” The courtroom was packed and RD played the consummate defence lawyer to the delight of those in the gallery and to the great distress of Maissie who cried most pitifully during the ordeal.
- (iii) During the course of the trial, Maissie gave evidence that, as a result of the publication, she lost her job and that her health had deteriorated. Her family doctor gave evidence that Maissie, who had not previously been hypertensive, is now being treated for high blood pressure. The “Watcher” is circulated in hard copies to the extent of about 100,000 subscribers, and “streams live on the Watcher’s website.”
- (iv) A file photograph of Maissie, sitting at her desk, is a part of the material published by the “Watcher”.

In addition, you are asked particularly to pay attention to the following: the relevance of personal injuries awards to the assessment; whether an apology would be effective at this time; the likely impact of an award of interest on damages; and the impact an award of exemplary damages may have on the fundamental rights of freedom of expression and freedom of the press.

Prepare the opinion.

QUESTION 7

Mr. Serge owns a transporter which may be hired by persons wishing to move heavy items easily from place to place. Those hiring the transporter are required to sign a contract exempting Mr. Serge “from liability for any loss or damage caused to, or by, the item being transported”. Two days ago, Mr. Serge’s transporter was retained by XY Ltd, a motor vehicle dealer, to transport a brand new heavy-duty vehicle to a certain destination. As the transporter was being driven round a sharp bend, the vehicle fell off and crashed on to a house below the road. The house which is owned by Mr. Leeroy Ambersley was, as a result, severely damaged. Mr. Ambersley’s wife, Stella, who saw what happened, experienced nervous shock and had to be hospitalized.

Mr. Ambersley consults you. Advise him how they should proceed, and particularly, on the bases on which damages will be assessed if they had to undertake litigation.

QUESTION 8

Denese Nolas agreed to buy Town House No. 1 in Ninja Court from Developers Ltd at a price of \$4.5M. The relevant terms of payment required the payment of a deposit equivalent to 30% of the price on the signing of the contract. It was also agreed that should the purchaser fail to complete the transaction in accordance with the contract the contract shall be rescinded and the deposit forfeited entirely.

The contract further provided that in case of the purchaser’s default the vendor in addition to forfeiture of the deposit is entitled to pursue all remedies available at law and equity. The date

for completion has passed and Denese who had paid the deposit in accordance with the terms of the contract is unable to complete due to the heavy losses she experienced with the Cash Plus fiasco.

Denese had commissioned a valuation of Town House No. 1 and shortly after the contract and it has appreciated in value.

Advise Denise.

END OF PAPER