

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2018

LAW OF REMEDIES

(WEDNESDAY, MAY 16, 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

One year ago, Eliana was hired by Silicia Publishers Ltd. (Silicia) as an executive secretary to the managing director. Her contract was for three years initially, and at the end, if the circumstances so warranted, Silicia would commit themselves to extending the contract for an additional period of two years.

Eliana informs you that she had been wrongfully dismissed by Silicia. Her dismissal letter, she said, was handed to her one morning at 8:00 am two weeks ago by the security guard. The letter, which she has furnished to you, indicates that she was “dismissed from the contracted position forthwith and with immediate effect.” There is no reference to any sum included as payment in lieu of notice.

Eliana said that when she read the letter, she experienced shock. After she recovered, she asked to see the new manager who had replaced the person with whom, she, Eliana, had worked on taking up the job last year. However, the security guard told her, in a tone of voice loud enough for all to hear, that he had received orders to arrest her if she tried to enter the premises for any reason whatever. Her personal effects were delivered to her neatly packed in a box. She was asked to relinquish all the company’s keys in her possession before she was escorted from the premises to the nearby street. At the time, she felt hurt, embarrassed, scandalized and demeaned. She has not been able to sleep since.

Later, however, she was able to speak with the new manager who informed her that the human resource manager had discovered that the qualifying certificate she had tendered was a forgery, and the references she had furnished had forged signatures. Eliana was warned “to proceed with caution”. Eliana also shows you her employment letter indicating that during the employment she was receiving:

- Salary of \$1,000,000 per annum payable monthly
- Annual vacation leave
- Coffee and tea breaks

- Lunch at the cafeteria
- Year-end bonus if the business makes a profit
- Books at 20% discount from the company's bookshop
- Maternity leave according to the law

In addition, dismissal must be preceded by an exit interview with the general manager, the managing director and the human resource manager.

Eliana says further that she had "grand plans to get married and start her family this very year". There was no exit interview. She offers no comment on the manager's allegations but wants to know if she can get back her job. She also wants to know what money she can recover to remedy her loss and to punish Silicia, if she does not recover her job.

Advise Eliana, indicating, *inter alia*, any likely cause of action, any remedies available, the measure of damages and the approach likely to be employed in the computation of any award of damages.

QUESTION 2

Answer both (a) and (b)

- (a) Distinguish between the equity of retention and the equity of restitution in relation to the law of forfeiture.

What are the considerations which will result in one prevailing against the other?

- (b) Equippers & Suppliers (Equippers) are in the business of buying and selling heavy duty equipment. Two years ago, Marna, a farmer, bought a tractor from them on the following credit terms:

Marna agreed to pay a deposit of 10% of the total price. The balance was payable in 24 equal instalments. Failure to pay any of the 24 instalments gave Equippers the right to

rescind the agreement, repossess the equipment and keep all monies paid prior to the default.

Marna paid the deposit and, thereafter, faithfully paid the instalments for 12 months. Marna used the tractor on his own farm and, in addition, raised money by hiring the tractor to other farmers in his district, as well as many in the neighbouring districts. As a result, he was able to pay the instalments. However, due to an aggressive sales campaign by Equippers and their competitor, Earthmovers Ltd., many farmers who used to hire Marna's tractor obtained their own equipment. As a result, Marna lost patronage. Further, a period of very dry weather, which started some time last year, resulted in an additional decrease in demand for the use of Marna's tractor. Marna, for the above reasons, fell into arrears.

Equippers have repossessed the tractor. Marna is of the view that this is not right and there should be some way for him to get justice.

Advise Marna on any option open to him and the likelihood of such option yielding a satisfactory result.

QUESTION 3

Mr Las Fleming consults you. He is the manager of a newly incorporated company, Builders and Contractors Ltd. (Builders). He shows you a document which he says contains the terms of a building contract between Builders and Economy Holidays Ltd., a company which operates economy hotels and guest houses and also provides entertainment generally. He asks that you explain the document, particularly, the terms relating to late completion, specifications and dispute resolution.

You peruse the document and you note that in the draft it is stated, *inter alia*, that:

“Late Completion

The contractor hereby agrees that if there is a failure to complete and deliver the building within the time specified herein said contractor shall pay to the Owner as penalty or compensation, the sum of \$250,000 for every week that the delay continues.

Specifications

The contractor hereby agrees that if there is any failure to construct the building in accordance with the agreed specifications said contractor agrees to pay as liquidated damages the sum of \$4,500,000.

Dispute Resolution

The parties hereby agree to submit, for settlement, all disputes arising in relation to the performance of this contract, first to mediation and if that should fail then to arbitration.”

You note that the document is merely an unsigned draft.

Advise Mr Fleming with guidance from the case law:

- (i) on the meaning and the significance of the terms over which he has expressed concern; and
- (ii) of any problem(s) that may arise in relation to the second clause and how those could be rectified beforehand.

QUESTION 4

Mrs Marcia Glowe is a widow. Her son Jimmie was injured when a vehicle in which he was travelling, as a fare-paying passenger, veered off the road and overturned in a gully. At the time of the incident, Jimmie was on his way to school.

Jimmie sustained injuries to his head and both legs, one of which has been amputated. Mrs Glowe who tells you the above, shows you a letter from Rapid Carriers Ltd., (Rapid) the owner of

the bus in which Jimmie was travelling. In the letter, signed by Sara Benn, attorney-at-law, Mrs Glowe is invited to attend at Rapid's head office tomorrow in order to negotiate a settlement of Jimmie Glowe's claim. She wants to retain you to attend with her. She acknowledges that her request is putting you "on the spot", and for that reason, she is prepared to be guided by your good judgment. She has indicated that you are free to reschedule to suit your convenience.

You agree to assist Mrs Glowe and that the interview should be rescheduled.

Giving reasons, indicate the steps you will take to prepare for the rescheduled interview.

QUESTION 5

Six months ago, Mr Al Frame's car, which he uses as a taxi, was damaged by Edgar Phillistyn III, a route taxi operator. The collision occurred when Edgar was overtaking another vehicle in order to pick up persons who were standing near a bus stop.

Frame also suffered injuries to his face. One of the lacerations has healed leaving a scar.

Frame inherited the car from his late father who had been the second owner. His father called it "Bread Basket" because it was the means by which he maintained his family. Frame remembers being driven to and collected from school in "Bread Basket". He was not too happy those days because many of the other children's parents were doctors and lawyers and their cars were "top of the line cars". His fondness for "Bread Basket" has grown over the years. When "Bread Basket" was damaged, he had not yet received the public passenger vehicle licence, although he had already made the application and had paid all the fees. He earned \$20,000 weekly through his use of "Bread Basket".

Edgar's insurers are offering him "\$250,000 in full and final settlement". That, Frame says, does not take account of how special his car is and the scar in his face. He says that he is very unhappy over the scar. His wife is unhappy and his children are bewildered. He has stopped driving and stays home for the most part ever since a little boy pointed at him and asked his mother "if the police was looking for that man."

He insists that "Bread Basket" is a special car and he wants much more than \$250,000 to fix it. Furthermore, he wants money for loss of use of the car and compensation for all the grief he is going through as a result of the scar in his face. He is fearful of the future.

Advise Frame.

QUESTION 6

Jerrie Myah and his wife Nora lived at No. 12 Scenic View Terrace, Baker Hill. They are retirees who had returned from a metropolitan country about five years ago and bought Scenic View Terrace, a beautiful bungalow in the middle of two acres of land. Jerrie who had worked as a gardener at a university before retiring, established a garden which was the envy of all who lived or visited Baker Hill. The garden became a tourist attraction. Jerrie and Nora supplied flowers to florists who operated in the nearby town. Nora also supplied her church with flowers and sold floral arrangements for weddings and funerals.

Two months ago, an agent of Liquid Gas Suppliers, negligently installed two cylinders of cooking gas in their kitchen.

Apparently, the agent, after the installation, lit a cigarette and there was an explosion. Flames spread through the house. Firefighters were summoned and the blaze was extinguished but not before severe damage was done to the entire house. The garden with all the exotic plants and flowers was trampled during the firefighting exercise. All their furniture and furnishings have been damaged by fire and or water. The scene is now one of desolation. As a result of the fire, Alexa, Jerrie and Nora's friend and guest, who was returning from the nearby town, experienced shock when she saw the scene. She had to be hospitalized for a week. Alexa has since returned home, overseas.

Jerrie and Nora consult you in relation to the above. They are presently staying with a friend in very cramped conditions.

Advise them on any cause(s) of action on the facts, any remedy available, and the approach likely to be taken in the assessment of any monetary relief.

QUESTION 7

Mrs Daffodil Pacio, housewife and dressmaker, boarded a mini bus one bright Saturday morning in December last year. Her destination was Hurley's Pound Cloth Store (Hurley's), to purchase dress materials and other items to be used for making clothes for her children who needed new outfits.

She had already organised the children in relation to their homework. The young lady who helped her two days per week had been given a list of duties. Her dressmaking assistant was putting the finishing touches on, and pressing her customer, Mrs Morley's, dress. Mrs Morley was coming to collect her dress at 2:00 pm. All of this was on Mrs Pacio's mind. She checked her thoughts in time to press the buzzer before the stop in front of Hurley's. She noticed a group of people standing a few yards from the stop.

The driver stopped and while she was in the process of alighting, the mini bus hurtled forward and she fell sprawling on the pavement. She suffered two broken wrists, her left knee cap burst and was dislocated. She spent six weeks in the State Hospital. She was discharged after five weeks with the requirement to attend outpatient orthopaedic clinic once a week. Also, she is required to see a counsellor once a month.

Mrs Pacio, who is 35 years of age, is wheelchair-bound and her wrists are still in casts. She finds her condition painful, distressing and depressing, to say the least. Mrs Pacio's husband, Phil, hired a private detective who informed them that the minibus is owned by Mr Band and the conductor's name is Jon.

She and her husband consult you.

Advise on the cause of action, measure of damages, remedy and the approach to computation likely to be adopted.

QUESTION 8

Answer both (a) and (b)

- (a) By reference to legislation and decided cases, outline and discuss the principles relating to the award of interest on damages and debt and illustrate their application.
- (b) Oliver Lo, the managing director of Olivi Limited (Olivi), instructs you as follows:

Olivi purchased two bulldozers from Suppliers Limited (Suppliers). This was a credit transaction in which Olivi agreed to pay the price of the vehicles 12 months after purchase. Olivi and Suppliers agreed interest terms at 12% per annum. Olivi promptly paid the price at the end of the twelve-month period of credit. However, they declined to pay the agreed interest.

There was another term agreed to the effect that should Olivi fail to pay the agreed interest, the interest sum would be deemed a principal sum to be payable with interest at 5% per annum. Suppliers are threatening to take legal action against Olivi.

Advise Oliver Lo, the managing director, who is anxious to know his company's rights.

END OF PAPER