

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2013

LAW OF REMEDIES

(WEDNESDAY, MAY 22, 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Rolando Willis, a very happy-go-lucky school child, suffered serious injuries, when he was knocked down by a bus owned by Regal Transport (Regal). He was hospitalized for six months. He is now in outpatient care.

Rolando's mother, Anita Willis, a widow, after giving you the above information, shows you a letter written to her by Regal's legal adviser. The letter, written 'without prejudice' and signed by Hortensia Blake, attorney-at-law, invites Mrs. Willis to attend at Regal Transport's head office to discuss a settlement of Rolando's claim. She was given the "option of bringing along a representative of her choice".

Mrs. Willis wants you to accompany her.

- (i) Inform her of any steps necessary to be taken in preparation for any such discussion.
 - (ii) Prepare **EITHER** the application for Rolando's medical record **OR** a response to Ms. Blake's letter.
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QUESTION 2

Two years ago Stanley, a taxi-operator who prided himself on keeping his taxi in "mint condition", replaced his taxi with a used Callac motorcar. It was particularly suited to his needs as he transported tourists and visitors mainly and they preferred the comfort offered by such a car. Shortly after the purchase, Stanley had the car repainted, the upholstery redone and the engine reconditioned. In January 2013, the Callac was extensively damaged in a collision with another vehicle driven by Jason, who Stanley believes was solely at fault. The pre-accident value of the Callac was \$260,000. Stanley was informed by Jason, that according to his (Jason's)

adjusters, it would cost \$230,000 to repair the car by his mechanics. According to Stanley's mechanic, the repairs would cost \$300,000 and the car would be out of service for 30 days. In March 2013, Stanley instructed his mechanic to do the repairs.

Stanley did not have the money so he borrowed from his bank for the purpose. The bank charged 15% interest per annum on the loan.

Stanley prided himself in being a skilful driver. He is very upset and feels humiliated over the incident. Furthermore, the income he earned from hiring a replacement is only half his pre-accident earnings. He is particularly peeved that Jason has suggested that he is partly to blame for the collision.

Advise Stanley who is seeking to recover all expenses and losses from Jason who has not reported the incident to his insurers.

QUESTION 3

Mr. N. Troperner, a supermarket operator, agreed in writing with J. Builders and Contractors Ltd. to construct a single story building which was to be the permanent location for his business. At the time of the agreement, he operated his business out of leased premises in a nearby shopping centre. Mr. N. Troperner paid \$250,000 per month as rental.

The new building was to yield twice the size of the leased premises. The time for completion of the building was fixed to coincide with the date the lease was to expire.

In addition to the usual terms, it was provided in the agreement that:

1. If the building is not completed and delivered within nine months from the date of the agreement, J. Builders and Contractors Ltd is liable to pay to the owner as penalty, the sum of \$650,000 for every week of delay.
2. Should J. Builders and Contractors Ltd. fail to construct the building according to specifications the said J. Builders and Contractors Ltd. shall be liable to pay, as compensation, the sum of \$4.5M.

The parties complied with all local building regulations and construction commenced at the scheduled time. However, due to a strike of workers at the dock/harbour there was a time overrun of six weeks before the completion and delivery of the building on April 30, 2013. In addition it was discovered that the storeroom was only three-fourths of the specified capacity.

Mr. N. Troperner consults you.

Advise him in relation to his rights and obligations, if any.

QUESTION 4

“Damages may be defined as the pecuniary compensation which the law awards to a person for the injury he has sustained by reason of the act or default of another, whether such act or default is a breach of contract or a tort ...”

Consider the above statement and indicate, using illustrations from case law, the existence of any new or emerging qualification to, or displacement of, this definition.

QUESTION 5

Two years ago Eli Jameson, a land surveyor aged 30 at the time, suffered serious injuries when a motor vehicle in which he was travelling as a passenger was involved in a collision with a van owned by XY Ltd and driven by Javan. Eli was admitted to the General Hospital. On examination by Dr. Loban, he was found to be suffering from the following injuries:

- One and a half (1½) inch laceration of the right cheek;
- two irregular lacerations of the nose;
- fracture of the right seventh rib; and
- dislocation of the right hip joint.

There was no clinical evidence of any damage to his central or peripheral nervous system.

The dislocated hip was reduced surgically and he was confined to bed. His right leg was put in traction in order to give the torn ligaments of the hip joint the opportunity to heal.

Eli was a very difficult and pessimistic patient. He complained incessantly and was generally very sulky. He made no secret of his conviction that he was receiving sub-standard treatment and that a transfer to a medical facility in Canada or somewhere else would be beneficial to him.

He was discharged six weeks after his admission. By then, his facial laceration had healed and the pain in his fractured rib had subsided. He still experienced pain in the right hip and walked with a limp. He was assigned to the outpatient department and physiotherapy and analgesics (painkillers) were prescribed.

He was verbally abusive to the physiotherapist and complained bitterly that the physiotherapist was “killing him with pain”. He ignored medical advice to avoid or reduce alcohol intake while using the painkillers. He was told that his use of alcohol along with the medication was a cause of depression and resultant aggression. In disgust, he ceased attending for physiotherapy and outpatient care after only three visits. He continued to abuse alcohol.

In January this year, his family doctor, after assessment of his general attitude, and after consultation with a psychiatrist, commented that “a change of therapeutic environment” may be of some help.

In March 2013, Eli was admitted to a hospital in Canada. He paid the round trip air fares for himself and his wife who took unpaid leave from her job to accompany him. They had to pay overweight charges on their luggage which contained *inter alia*, local foodstuff. Also, Eli took out travel insurance on his and his wife’s life. His wife stayed in a nearby hotel and visited him daily.

In Canada he was managed in the same way as locally, much to his disappointment and disgust. It was recommended that in ten years time he could undergo hip replacement surgery. Eli recently returned to the jurisdiction. He can no longer stand or walk for long periods. Neither can he play table tennis any more. He feels very sorry for himself especially since he considers that his prospects as a land surveyor seem rather bleak.

Advise Eli on his cause of action, measure of damages and the approach to assessment and quantification of damages.

QUESTION 6

The Nothy Local Council obtained a court order authorizing demolition of a structure built in violation of relevant regulations. The subject of this demolition order was located on No. 7 Silvan Way which was without doubt built in breach of the Council's regulations.

No. 7 Silvera Way is a two-storey structure owned by Bill Hawkyns and Sandra-Dee his wife who lived upstairs and carried on a wholesale general business downstairs. Bill and his wife had gone abroad to attend Bill's favourite sister's wedding and to visit with their son who was in college.

By some error the demolition contractors were instructed to dispatch a crew to premises at No.7 Silvera Way to "effect the demolition work". The crew was dispatched on the morning of March 12, 2013. The crew arrived at the address and carried out the demolition work.

On April 30, 2013, when Bill and Sandra-Dee returned, Sandra-Dee fainted when she saw the pile of rubble and wreckage in the place of their home and business place. Sandra-Dee was taken to the hospital where she was treated and discharged.

Bill and Sandra-Dee consult you. Advise them on any cause(s) of action open to them, the measure of damages and the basis on which any award will be quantified.

QUESTION 7

On January 2, 2012, Delia Evans was employed as Senior Director of Sales by Popular Motors Inc. (the Company). Her contract was for a period of three years and could be extended at the discretion of the Company.

The following are some of the provisions of the employment contract between Delia and the Company:

- Annual remuneration of \$950,000 to be paid monthly.
- Incentive bonus payable at the end of each trading period based upon earnings of Sales Department.
- Fully maintained motor car provided.
- Vacation leave and maternity leave.
- Lunch at the Company's cafeteria.
- Coffee and tea breaks.
- Funded visits to motor car sales shows.
- Latest state of the art hand-held telephone device.

- Smoking breaks (to be taken outside the building).

One year after the commencement of her employment, Delia was summoned to the office of Jo Deon, the Manager. She was asked to submit her resignation. She refused. Mr. Deon repeated the request by email to her later that day. She responded by asking him to furnish reasons. The next day she received a letter terminating her employment with immediate effect. In the letter she was asked to remove all her personal effects and to relinquish all property belonging to the Company that may be in her possession. On receipt of the letter, she rushed to the Manager's office and demanded to know the reasons for her dismissal. He informed her that she (Delia) was quite well acquainted with the reasons and asked her to "kindly leave his office and the premises as a whole." She complied.

Delia says she still feels the "heat of that humiliating event". It is her view that she should be compensated for wrongful dismissal and the Company and Mr. Deon should be punished for what has been done to her. Delia is now receiving unemployment benefits from a private insurance policy that had been contracted a year ago. She says that that is hardly any consolation.

Advise Delia.

QUESTION 8

On March 21, 2013, Adlai was entertaining his friends in his backyard where he was having a barbecue in celebration of his birthday.

More than a hundred and fifty guests were present and more were expected. The music was turned up and drinks were flowing. The party had started in earnest at about 10 p.m. and at about midnight, when things were in full swing, the word “police” was heard and the music came to a sudden stop. In full view of all the guests, Adlai was accused of being involved in incidents of scamming, by which he had defrauded numerous persons of millions of dollars. The officer in charge produced a warrant for Adlai’s arrest. Adlai protested his innocence and refused to accompany the officers. He was handcuffed and led away.

At the police station, Adlai was searched and put into a cell where he was interrogated non-stop during the night until he fainted from lack of sleep and beatings. During this time the police told Adlai that they had a report from a reliable source close to him that he was involved “big time” in the vicious game of scamming retirees and fleecing them of their hard earned pensions.

This information turned out to be false and groundless and Adlai was released after five days in police custody.

Advise Adlai on any cause(s) of action open to him, the measure of damages and considerations relevant to the assessment of any monetary remedy to which he may be entitled.

END OF PAPER