

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2014

LAW OF REMEDIES

(WEDNESDAY, MAY 21, 2014)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

After six months into a three-year contract, Jerami Dyrud, who was manager of the stock department of All Brand Auto Parts, was dismissed “with immediate effect” by the General Manager three weeks ago following a stock audit. Jerami tells you that he is at a loss as to why he has been fired. He remembers that he was cautioned some time ago concerning an allegation of sexual harassment by a female co-worker. He also recalls that the day before he was dismissed he had, quite innocently, he had thought, invited the said female co-worker to have lunch with him. She had declined and said something like “your days at this workplace are numbered”.

Jerami’s employment letter indicates that he was paid a salary of \$1.5M per annum. He was allowed “vacation leave, lunch at the cafeteria, entertainment allowance, discount on vehicle parts, year-end bonus if the business made a profit and technology allowance.”

Jerami is at present unemployed. He is in no hurry to seek employment because he believes he has been wrongfully dismissed and he is benefiting from payments from unemployment insurance which he had taken out some years ago. Furthermore, Jerami is of the view that All Brand Auto Parts and its related establishments are behaving like “wild bunch business entities” and need to be curbed by the courts.

Advise Jerami on any cause of action he may have, the remedy available and the basis on which any damages due to him will be computed.

QUESTION 2

Jo-Anna Baker and her daughter, Derma, are owners of 26 Linklane, a property which is registered in their names as joint tenants. Jo-Anna had bought the land twenty-four years ago when Derma was a toddler and, contrary to advice, had added Derma's name. Jo-Anna, the operator of a small business, had single-handedly supported Derma and had paid the tuition fees for Derma's undergraduate and postgraduate education. The property at 26 Linklane was not meant to be a gift to her and had always been occupied by a good tenant who pays the rent promptly and keeps the place in good condition.

Derma went ahead and agreed to sell 26 Linklane to Reeve Vitner although she, Jo-Anna, had adamantly opposed the idea and offered to pay Derma for any share she may have in the property.

Jo-Anna hands you a letter to which a transfer document is attached. In the letter she is advised to sign the transfer. She is told that "failure to do so would result in legal consequences which every effort should be made to avoid."

Jo-Anna has already informed the tenant to ignore the notice to quit which was unilaterally prepared and served by Derma.

Jo-Anna reiterates that she wishes to purchase Derma's share and, if there should be a sale at all to a third party, the property should be sold to the present tenant whose rent substantially went towards the acquisition of 26 Linklane.

Advise Jo-Anna with respect to any liability for breach of contract as a consequence of her refusal to sign.

QUESTION 3

Prosperity Bank agreed with Builders Ltd for the latter to construct a two-storey building to house the bank's northern branch. The parties contemplated that if the construction began on August 2, 2012, work would be finished and the building handed over on January 2, 2013.

Prosperity Bank at the time occupied leased premises, the lease for which was to expire on July 31, 2013.

The contract contains, inter alia, terms requiring the contractor to use the best material and workmanship available and complete and deliver the structure on January 2, 2013.

The clause in relation to completion is as follows –

“If the contractor fails to complete and deliver the building within the contractually stipulated time said contractor is liable to pay to the owner by way of penalty the sum of \$2.5M for every week of delay.”

Another clause in the contract provides as follows –

“Should the contractor fail to construct the building according to specifications said contractor shall be liable to pay the sum of \$11.5M as compensation.”

Builders Ltd failed to complete in accordance with the contract. The building was delivered after a delay of one year. During that time, the rental for the premises which Prosperity Bank had occupied at the time of the contract had doubled and the cost of customizing the building increased by 50%. The space for the bank hall was 15% less than specified in the drawings.

Prosperity Bank's in-house lawyer wrote a letter of demand to Builders Ltd. There has been no reply to this letter.

The Managing Director of Prosperity Bank consults you for advice in relation to the above. Advise him.

QUESTION 4

Paul Douglas, a bright young attorney-at-law, while driving to work, was involved in a collision with another vehicle driven by Gerry. Paul is adamant that Gerry is totally responsible for the collision. As a result, Paul suffered a broken spine, a broken leg and cuts and bruises about the face. Paul's car was also badly damaged. Paul is paralyzed from his waist down.

After the incident, Paul was taken to the General Hospital where he remained for six weeks. He continued his convalescence at Sea View Convalescence Home for 2½ months and was visited each week by his family doctor. Each doctor's visit costs \$3,500 and the cost of care at the home was \$45,000 weekly. Paul suffered acute pain for the first two weeks after the collision but thereafter, the pain gradually decreased as his limbs healed.

During Paul's period of convalescence his employers agreed to continue paying his monthly salary, on the basis that he would resume work as soon as he was able to do so, and would repay all moneys advanced to him while he was away from work. Paul's hospital bills amounted to \$128,000.

In the meantime Gerry was charged by the police for dangerous driving. Paul, fearing that the police might not proceed as diligently and efficiently as he would like, sought and obtained from the D.P.P./A.G, a "fiat" to conduct the prosecution. He retained the services of counsel

from the firm of Dixon Haughton where he is an Associate. The case lasted two days and Gerry was convicted.

When Paul's leg eventually healed it was discovered that there was a shortening of 1½ inches. His favourite sports are football and basketball.

Paul sold his car at a 25% profit. He now travels by taxi although he would very much like to drive his car himself.

Paul is now desirous of instituting civil proceedings against Gerry and consults you. He tells you, in particular, that because of the paralysis and shortening of his leg, he "feels like a total cripple" and he wants \$150M for all the pain and suffering he has experienced and continues to endure.

Advise Paul on the claims that may be made in his circumstances and the basis on which any compensation would be computed.

QUESTION 5

K. Rohan (KR) owns land in the city on which there was a two-storey building which he had used for business and domestic purposes. Blasters Ltd. had been employed by the owner of the land adjoining KR's premises, Edwin Egginton, to carry out demolition works which involved blasting. Engineers and experts employed by Blasters Ltd. visited KR's premises and compiled a schedule of the cracks and defects in the building. A copy of the schedule was given to KR. After the blasting operations, KR's building was seen to be leaning precariously towards the road.

Mr. Haliday, Manager of Blasters Ltd., verbally accepted liability and sent engineers to examine the building. KR also employed engineers to carry out an examination.

All the engineers concurred that the building suffered from an original design defect, and might have been weakened by several earthquakes over the years (although they were not sure of this, seeing that the building had withstood those quakes without visible signs, apart from minor cracks.)

KR was advised to evacuate the building and have it demolished. He occupied upstairs with his family and carried on his business downstairs. He refused because he was very attached to the building. The local authority moved to have the building demolished pursuant to a court order. KR has received a bill for demolition costs in the sum of \$150,000, payable within 14 days.

KR desires to rebuild but does not have the money. He wants to wait until he receives compensation from Edwin Eggington or whoever else may be responsible.

Advise KR on how he should proceed, the cause of action, measure of damages and the approach a court will take to assess his loss.

QUESTION 6

Andre, a youth of 16 years, was seriously injured when a bus in which he was travelling collided with a bus owned by Safety First Bus Company. Andre was hospitalized in the Public General Hospital for six months. He is now out of the hospital and convalescing at home.

Andre's mother, Dalia Hope, after telling you the above, shows you a letter written to her by N. R. Maxim, Legal Adviser, Safety First Bus Company, requesting Mrs. Hope to attend at the company's office to discuss the possibility of a settlement.

Mrs. Hope says that she is anxious to have the matter settled because things have become more difficult especially since she had to give up her work in order to take care of Andre. She also would like some of the money to keep up with her 'pardner'.

Mrs. Hope asks you to respond to the letter and to be prepared to accompany her to any negotiation.

- (i) Advise her with respect to your requirements in order to prepare for any representation.
 - (ii) Prepare in draft a request for any significant document which can assist you in your preparation.
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QUESTION 7

Nachor Duvalier negotiated and paid for a three-week family vacation package with Javon McDarli, trading as Vacation Pleasures Unlimited.

The destination was somewhere in the Far East. Nachor and his wife Janei and their two children arrived safely. They had trouble checking into the hotel. The person at the desk said that the hotel was taken by surprise because the Duvaliers were not the type of people it was expecting.

The rooms were not spacious, as promised. No bouquets were on any table. There was no running water. The beds were single instead of double. There was no room service. In fact, the Duvaliers were the only guests and, as far as Mr. Duvalier's investigation revealed, the establishment had not yet opened officially and they were the first guests.

There was no entertainment except that one night, while they were having dinner, there was a young man singing some lyrics which sounded more like continuous expletives, while pointing menacingly at the Duvaliers as if threatening to shoot them.

The family experienced disappointment and distress. Mr. Duvalier managed, after much difficulty, to contact his embassy/high commission and was removed to a more accommodating guest house where they stayed for a few days until they were able to obtain a return flight. They had to pay for this accommodation and in addition, they incurred a 25% penalty in respect of their flight changes.

When the Duvaliers returned home they found that many of their loved ones had become anxious because of the news they had heard about the disappearance of Malaysia Airlines Flight MH370. Mr Duvalier's mother had to be hospitalized.

Advise Mr. Duvalier on any cause of action, and how any monetary remedy will be computed.

QUESTION 8

Jo-Anne is a store clerk who lives at 10 Cocobread Road. One year ago, at about 4:00 p.m. on a Sunday, a party of policemen, headed by Inspector Willard, came to her home and informed her that they had a warrant for her arrest. Inspector Willard 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.

Jo-Anne protested her innocence but Inspector Willard said “Absolutely madam, you are presumed innocent but this is not a trial. This is an arrest.” A co-worker, Jose, who had come to visit Jo-Anne, pleaded with Inspector Willard stating that there must have been some mistake as he was sure that Jo-Anne was never involved in drugs. However, Inspector Willard ignored him. Jose then told Jo-Anne not to go with the police and held on to her, whereupon two of the other police officers present pulled him away and started to beat him all over his body. The Inspector said to them “enough of that” and the officers desisted.

Inspector Willard told Jose that since he had “gone from protesting another’s innocence to obstructing police officers in the execution of their duty”, he too, would be arrested. Both Jo-Anne and Jose were handcuffed and taken to a waiting police car in full view of neighbours. The Inspector asked an officer to remove the handcuffs from Jo-Anne.

They were both kept at the police station until 2 o’clock the following morning when they were released. They were questioned but no charges were laid against them. While at the police station they were not allowed to make any telephone calls, but they were offered refreshment in the form of sandwiches and lemonade, which they declined.

It subsequently transpired that the police had made a mistake. Jo-Anne suffered considerable mental anguish as a result of the ordeal, and was forced to seek medical attention. She has lost her job at the store. Jose has also lost his job.

A legal opinion is now sought as to the causes of action open to Jo-Anne and Jose and the bases on which any award of damages will be assessed.

Prepare the legal opinion.

END OF PAPER