

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2016

LAW OF REMEDIES

(AUGUST 12, 2016)

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

Ms Alisa Cob was employed to X Company Limited as confidential secretary to Mr Leo D'Range, the manager. The end of March 2016 marked the completion of the first year of her three-year contract. Coincidentally, Mr D'Range retired on March 31 and was replaced by Ms Dora Oliga. Alisa dislikes Ms Oliga intensely but she (Alisa) does not know exactly why. Ms Oliga, however, was quite efficient, and was quite pleasant to Alisa.

On April 1, 2016, Alisa was called to a meeting with Mr Dill, the Human Resource Officer. She noted that her confidential file was on the desk, and open. She was not offered a seat. Mr Dill told her that her file had been reviewed, and there was evidence that her certificate and her two references were forged. Mr Dill asked her for an explanation. Her response was, "You will have to prove it. I reserve my defence. Anyway, I did the work, didn't I?" She turned to leave, but paused, and looking at Mr Dill said, "This is the work of that coward, Leo, and that Jezebel, Oliga. I have work to do." She left in a huff, and returned to her desk. Ten minutes later, a security guard handed her a letter, and told her to get her belongings together because he had orders to escort her to the gate, as she was dismissed with immediate effect. The words spoken by the guard caused her shock and embarrassment. When she read the letter she realized that she was indeed dismissed with immediate effect.

The terms of her employment were:

- salary \$1.5m annually, payment on a monthly basis
- lunch at the company's cafeteria
- technology grant
- renewal of contract for a further two years, at the pleasure of the company
- one month's notice, on either side, for termination prior to the expiration of the term

Alisa consults you for advice on the above. Advise her on any common law cause of action and remedy open to her.

QUESTION 2

Pastry Bakers Limited (“Pastry”) are bakers and suppliers of bread and other baked goods. They own a fleet of vans for the purpose of delivering goods. They also own three spare vans, to be deployed when any of the operating vans had to be out of service for any reason.

A year ago, a heavy-duty vehicle owned by Hawlers Limited, and driven by Edgar Phillistyn II, collided with one of Pastry’s vans, which was on its way to deliver goods to a customer. The van was severely damaged, and the goods were beyond use. Pastry immediately deployed one of its spare vans, in accordance with its policy.

Pastry’s driver, Nelson, attributes the cause of the collision to Edgar’s negligence. Edgar vehemently denies any negligence.

Pastry’s managing director, Mr Dean, consults you. He believes that Hawlers Limited is wholly to blame, and wants to recover the full cost of repairs, loss of use for the time the vehicle was out of service, the value of the lost consignment and interest. Furthermore, the spare van suffered engine damage, due to the contaminated fuel which was used in it, on one occasion. Pastry spent \$16,000 to rectify this damage.

Mr Dean tells you further that, in answer to Pastry’s claim for cost of repairs for the two vehicles, and loss of use of the van for ninety days, Hawlers Limited have requested an assessor’s report, as well as information relative to the pre-accident value of both the delivery van and the replacement. They have denied any liability for damage caused by the use of contaminated petrol.

Advise Mr Dean on any cause of action and remedy open to Pastry and indicate whether there is any merit to the requests made by Hawlers Limited, giving reasons.

QUESTION 3

Two months ago, Darry, an accountant and auditor, while crossing a street downtown, was knocked down by a trailer. The trailer was owned by Movers Limited, and driven by Hans, who was partly to be blamed.

Darry was taken to hospital where he was admitted in critical condition. He died three days later from the injuries he had received.

Darry was married to Dell and they have three children: Syline who is five years old, Arthune who is seven years old and Darry Jr. who is eight years old.

Darry was a dapper dresser who wore designer clothes and shoes. He played with the Ding Dong football team. He was very keen on physical exercise. In fact he would have liked to play on the national football team, but he was not eligible. He was 35 years old.

Dell, who was 30, did not work outside the home. Darry and Dell owned their home as joint tenants. Darry paid all the bills in relation to the home, the children and Dell. Darry Jr. is severely asthmatic and Dell is affected by sickle cell anaemia.

Darry, who had been a supervisor in the auditing department of Specialist Auditors, had always entertained plans to establish his own accounting and auditing firm. He also had plans to have his children educated as far as their aptitudes permitted. He had wanted Darry Jr. to get the best specialist care and be cured if possible. Darry's life insurance policy named Dell as the sole beneficiary.

Dell is utterly devastated at Darry's death and the children cry themselves to sleep every night.

Darry died leaving a Will naming Mr Alpino as sole executor. In the Will, Darry left all his personal estate to Dell.

Mr Alpino consults you. He desires to know how he should proceed and the cause(s) of action and remedies open to Dell and the children.

QUESTION 4

Mr Bentley, the owner and manager of a chain of supermarkets, consults you. His instructions are that last year January he contracted with Quick Contractors for the building of another supermarket. The building was to be completed by January 31, 2016. The building was, however, completed at the end of February 2016. Further, the building is smaller than the measurements required by the architect's drawings. In addition, there are other minor defects.

He furnishes you with a document entitled "Building Contract". You peruse the document and note the following clause:

"For every week that the building remains incomplete the Contractor shall pay to the owner the sum of \$250,000 as compensation, and for all and every defect resulting from failure to adhere to the architect's specifications the Contractor shall pay to the owner the sum of \$1.5m as penalty."

Mr Bentley states that he had drafted the contract himself by copying from a previous contract.

Mr Bentley states that he is anxious to have the matter resolved to his satisfaction, as quickly as possible, and needs your advice.

Advise him.

QUESTION 5

Machew Barnes has no fixed place of abode. In fact, one could say that he was homeless. He had abandoned his family and his friends. He ate whatever he found that was edible. Two years ago, he was accused of raping a young woman, who was 19 years old at the time. Machew was arrested and charged for the offences of indecent assault and rape.

Before the trial, and while Machew was still in custody, the DNA evidence showed that Machew was not the assailant. The young woman also admitted that Machew was not her assailant. Notwithstanding this, Machew was not released but was offered bail in the sum of \$1.5m, with two sureties. Machew was unable to meet the terms of the bail.

Machew was prosecuted on charges of indecent assault and rape. Last month on the third trial date, the trial began. Dancie, an attorney-at-law, appeared as *amicus curiae* for Machew and made a successful no case submission. Machew was acquitted, but remains in custody.

Dancie, who specializes in criminal law, approaches you for advice. She wants to know what, if any, are Machew's cause(s) of action, his rights and remedies under the law, and the matters that a court will take into account if Machew obtains a remedy.

Advise Dancie.

QUESTION 6

Val, the editor of the Astro-News, and the publishers, Cyber Tabloid Limited, have been found liable to Willi Jones in the tort of defamation/libel.

At the hearing, the following facts were given in evidence, and proved.

At the time of the publication of the defamatory/libellous material, Jones was a partner in the accounting and auditing firm of Wilson Jones and Genum.

Since the publication of the material, Jones has ceased to be a partner in the firm of Wilson Jones and Genum. The new firm name is Wilson and Genum.

The firm of Wilson and Genum published a notice, informing the public that Jones is not in any way associated with the accounting and auditing firm of Wilson and Genum.

Cyber Tabloid Limited publishes Astro-News in hard-text copies, as well as online.

No apology has been offered to Jones.

Jones has negotiated the settlement of a claim against Taurus Printers which are printers to Cyber Tabloid Limited and which printed the Astro-News. The claim is with regard to the same defamatory/libellous publication.

Jones gave evidence that since the publication of the defamatory/libellous material, his health has deteriorated.

Advise on the approach that a court should take, in the assessment of damages, to compensate Willi Jones.

QUESTION 7

Five years ago, when Scala was 10 years old, she was knocked down by a speeding vehicle, owned by Costume Makers Limited, and driven by Algie. The incident occurred when she was crossing at the pedestrian crossing on a busy street.

She was taken to hospital in an unconscious state. She remained unconscious for two weeks. When she regained consciousness, she experienced severe bouts of epilepsy. The medical examination revealed “severe head injury, lacerations to the face and fracture of lower limbs.”

She underwent several surgeries for the head injuries, and for the reduction of the fractures of the lower limbs. Scala no longer uses a wheelchair. She has a permanent partial disability of 10 percent in one lower limb, and walks with a limp. Her face is scarred, and she has been diagnosed as having severe learning disabilities.

You are an associate attorney-at-law in the law firm of Neaves and Leaves representing Scala in pending litigation. You are asked to prepare an opinion on the measure of damages and the approach that a court will adopt in the assessment of damages in Scala’s favour. You are also required to indicate the documentary evidence that would be relevant.

Prepare the opinion.

QUESTION 8

- (a) A claimant will not be permitted to obtain “restitutionary damages” for breach of contract or tort when more appropriate remedies are available.

Analyse this statement and illustrate your analysis with decided cases.

- (b) A vacant lot of land, owned by Jim and Ann Finch, is being used by Quarriers Limited as a shortcut for their trucks that carry marl and gravel to building sites across the country. By using the lot, the trucks save time, fuel and wear and tear by eliminating a six-mile stretch of road that has a dangerous bend.

Quarriers Limited have been using the land as a shortcut for the past two years.

Jim and Ann consult you to ascertain whether, and if so, what cause of action and remedy they have against Quarriers Limited. They also wish to know how they should proceed in the circumstances.

Advise Jim and Ann Finch.

END OF PAPER