

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2017

LAW OF REMEDIES

(WEDNESDAY, MAY 17, 2017)

**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.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

### **QUESTION 1**

Two years ago, Gino, who is 14 years old, suffered personal injuries when a ten-wheeler truck, laden with cement, collided with a motor bike, on which he was a pillion rider. The truck is owned by Haulage Limited and was driven by Ben. Gino was admitted to the Central Hospital with a fractured skull and severe crush injuries to both upper limbs and his right lower limb. All valiant efforts to save these limbs failed and they were amputated.

Gino is presently very depressed over his condition. He is very tearful. He told a friend that he thinks he is better off dead. He refuses to take his medication.

His mother, Mrs Gore, who consults you, tells you the above. She shows you a letter marked “without prejudice” which she received from a lawyer, Mark Lane, who is acting on behalf of Haulage Limited. She was invited to attend his chambers with a view to working out a settlement “on the basis of shared liability”. The date she is invited to attend is tomorrow’s date.

Mrs Gore is asking you to attend with her. She believes that if Gino could at least get some money, enough to get back two real hands, he would be able to overcome his depression.

- (i) Advise Mrs Gore on the meaning of the term “shared liability” and the practical outcome of its application in a claim for damages.
- (ii) Indicate how you will proceed in preparation to assist Mrs Gore.
- (iii) Indicate the difficulties you anticipate with any claim, you may be minded to make, for the cost of hand transplants for Gino.

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### **QUESTION 2**

Mr J. J. Donay Jr. (“JJ”), owns a stately bungalow which he inherited from his late father, J.J. Donay Sr. He had pledged to his father that he would never sell it or change the structure.

The bungalow was built in the middle of one acre of land at 16 Regal Way. JJ lived there with his wife, Lacey, and two children. The lawn and the garden were well kept by Gerry, the son of the gardener who had worked with JJ's father. Gerry was a very conscientious and trustworthy worker.

Sometime in November last year, John Smart, a representative of Urban Realtors, approached JJ and offered to negotiate a deal with him on behalf of a client, Upscale Builders.

Mr Smart explained that his client was interested in acquiring the land to accommodate a project to build a block of upscale apartments. Mr Smart told JJ that he (JJ) was not using his land to its utmost advantage and the developmental possibilities could be actualised by Upscale Builders which already possessed a map of the premises as well as architectural drawings of the structure to be built on it. They also had an artist's impression of the project in its completed form.

JJ indicated a lack of interest and Mr Smart warned him that "it was not beneficial for anyone to stand in the way of an entity like Upscale."

Four months ago, Mr Smart telephoned JJ and offered him \$30M plus "10% developmental value." He added that his client was willing to pay all costs and fees plus any outstanding taxes and utility bills. JJ repeated his unwillingness to sell.

Mr Smart accused JJ of resisting progress and depriving him (Mr Smart) of a significant commission. Mr Smart's parting words were "well you can wet yuh hand and wait".

During the first weekend in March this year, JJ, his wife and two children, along with Gerry, attended his Uncle Bill's funeral in the country. On returning home, he saw an empty lot where his home and garden were. There were two bulldozers working and Mr Smart was there. Mr Smart approached him with two documents and pleaded with him to sign them. One was a

contract to sell the land to Upscale and the other was an instrument to transfer the said land to Upscale. JJ refused to sign.

While JJ and Mr Smart were in conversation, Gerry called the police. When the police arrived, Mr Smart saw them and left hurriedly with the unsigned documents. The men who were on the bulldozers also left. By this time the children were crying and JJ's wife, although distressed, was trying to calm them. After speaking to the police, JJ took his family to spend the night with a relative.

JJ consults you in respect of the above. Advise him.

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### **QUESTION 3**

In August 2015, Delia, an engineer employed to Power Generators Ltd, was involved in a motor vehicle collision with John in circumstances in which Delia was partly to blame.

Delia was severely injured. She suffered injury to her face and spinal cord. She had three surgical operations for the spinal injury, one in the jurisdiction and two abroad at a total cost of \$4.5M. Each time she went abroad for surgery, she was accompanied by her mother, an older brother and a practical nurse. Her convalescence lasted for a year, after which she returned to work. As a result of the injuries she can no longer go for her morning exercises or run in road races.

While Delia was away from work, she was paid only half of her normal salary. On her return to work she was assigned to the Complaints Department with no reduction in salary. There is now little hope of Delia obtaining the general manager's position for which she had applied.

Under a personal “Health and Disability Risk” insurance policy, effected by Delia some time before, she has received the sum of \$3.5M.

She wants to learn to play chess but the scar on her face is a big bother to her. She dreads being too close to people. She still feels intense pain in her back and has to undergo regular medical checks and physiotherapy which are expensive. She cannot stand for long and when she sits, getting up is a painful ordeal. Delia who is 28, and unmarried, thinks that her life is finished. She had intended to acquire an apartment to live on her own, but that plan has had to be shelved. Further, she is not sure how long she will be permitted to remain in her present job.

Power Generators Ltd is one of two companies in the jurisdiction engaged in that line of business.

Advise Delia on the measure of damages and the method of computation of any award of damages payable to her.

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#### **QUESTION 4**

- (a) *“In considering an application for relief from forfeiture of a deposit, a tribunal has to balance two competing equities.”*

Indicate these equities and show, with the help of decided cases, how they are balanced and whether the judicial approach to balancing has been consistent.

- (b) Jill agreed to buy a parcel of land, Lot 4 in Regent Development, from Bargain Realtors. She paid a deposit of 10% of the purchase price. Jill was required to pay the balance within 90 days of the contract. There is a term in the contract providing that any failure to pay the balance within the stipulated time would result in a forfeiture of the deposit. Jill is 10 days late. She was unable to meet the contract deadline due to financial

difficulties. However, she is now able to pay the balance, if given the opportunity. Jill has discovered that the lot she had agreed to buy has increased in value, and that her application for a loan to purchase the lot had been obstructed by someone connected to the manager of Bargain Realtors. The person is now on leave, and the application was found on her desk.

Jill has not yet received any correspondence from Bargain Realtors. She wants to acquire the land.

Advise Jill on the options open to her, how she should proceed, and the likelihood of her realising her desire.

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#### **QUESTION 5**

Glen was 35 years old at the time of his death, three days after his involvement in a road collision which occurred on February 1, 2017. The collision was between the motor car he was driving and a delivery van, owned by Tastie Bakery Ltd, and driven by Hezron.

At the time of his death, Glen was an auditor. He was an associate in a firm of auditors and was pursuing an advanced course in auditing. Successful completion of this course would have resulted in a promotion at his workplace and would also have given him an edge in the workforce. In fact, he had dreams of starting his own auditing establishment in the future. He would then be able to buy his own home and move his family out of rented space.

Glen was married to Ettra who is 34 years old. There are three children of the marriage – Glen Junior who is ten years old, Ettina who is eight years old and Lystra who is six years old.

Glen was the sole breadwinner and paid all family expenses. Since he was on a fixed salary, he obtained additional income from a van he had bought and which he employed his brother to drive as a public passenger vehicle. He assisted his step-mother, Miss Jen, with a monthly stipend to meet the cost of her medication. Miss Jen, out of gratitude, always brought vegetables and ground provisions for Glen whom she regarded as a son.

Glen's family benefitted from health insurance provided by his employers and he had taken out a personal life insurance policy, in which Ettra was named as the beneficiary.

Ettra, the children and Miss Jen are experiencing significant grief. The children cry themselves to sleep every night. Ettra and Miss Jen are on medication.

Glen died leaving a Will in which Ettra is the sole executrix.

Ettra consults you for advice in relation to the above.

Advise her.

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### **QUESTION 6**

Mr Jerry's motor car was badly damaged six months ago when Ali Phillistyn, who was driving a public passenger bus, collided with Mr Jerry's motor car. After the collision, Ali came out of the bus and said to Mr Jerry "Look here grandad, all you shouldn't be on the road and in fact you must move your jalopy out of the public domain when you see heavy duty equipment coming. My daughter who is going to UWI or UTECH whichever one of them would say you volent-I. Gwaan to yuh yard!". Mr Jerry felt very insulted and reported the matter to the police who told him that it was a civil matter and he should go to the Ministry of Transport as well as seek a lawyer. He agreed to go to the Ministry of Transport but insisted that his report be written in the police record book.

Mr Jerry paid a wrecker to move his vehicle to his mechanic's garage where it was examined. His mechanic gave him a report, detailing the damage and the cost of repairs. The mechanic told him that the report should be sent to a loss adjuster before he could be compensated.

Furthermore, he has received a letter from the Ministry of Transport offering to repair his vehicle at their workshop as compensation. He is required to hire a wrecker to tow the vehicle there.

He does not know why he should take the mechanic's report to anyone else. He does not wish to have his vehicle repaired at the Ministry of Transport workshop. He has told them that quite plainly. In fact, he went to the workshop and saw Ali Phillistyn there!

Mr Jerry's car is an Austin Morris 1925 model. It is a licensed public passenger vehicle. He only transports VIPs. He also works on contract with hotels to transport dignitaries from abroad. His car has a rich history. It was used to transport royal visitors on two occasions.

As a result, he has kept his car in "mint condition". Mr Jerry has an annual maintenance budget for his car and for the past years only one mechanic has worked on it. He is a member of the Association of Vintage Motor Car Owners and the Association has an option to purchase the car whenever he desires to sell it. He has never made an insurance claim in respect of his car.

Mr Jerry receives substantial tips from the dignitaries he transports. The tips are in the form of money, jewellery, lunch or paid accommodation while he waits for them. Furthermore, Mr Jerry says that he enjoys his work immensely and this incident has interfered with his livelihood and enjoyment of his work. He wants to have his car repaired and sue to recover the cost and all other losses. He is of the view that the Ministry of Transport owes him an apology for the behaviour of the driver, Ali Phillistyn.

Mr Jerry consults you in respect of the above and seeks your advice.

Advise him.



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## **QUESTION 7**

Artemus Lorse, former employee of Excellent Printers Ltd, consults you. He claims that he was wrongfully dismissed by his employers about eight weeks ago, when he was terminated without notice and without pay in lieu of notice. The loss of the job threw him into a bout of depression which he thought he had overcome some years ago. As a result of the depression he was not able to leave his home.

At the time of the interview for the hiring, three years ago, he did not disclose that he had had issues with depression. He still thinks that there was no need to disclose this since it was not as if he were applying for insurance. He was merely applying for a monthly paying job as a chauffeur to the Chief Executive Officer (“CEO”).

In fact, for the past two years, the CEO had refused to be driven by Artemus and he was actually driving the delivery van. There was no reduction in pay, however.

Artemus shows you a letter in which he was told that he was “too accident prone having been involved in at least two accidents annually since he was hired”. In the letter, he was given the choice between going for psychological counselling for six weeks or termination with immediate effect. The letter refers to numerous complaints from people who had encountered him on the road. Artemus tells you that he flatly refused to attend the counselling sessions.

Under his employment contract he was given the following:

- (i) Salary
- (ii) Coffee and tea break
- (iii) Health benefits
- (iv) Clothing allowance
- (v) Bonus if company makes a profit

(vi) Free printing of wedding invitations for self or daughter or son.

He has not received any bonus since he has been working. When he enquired as to the reason, he was told that the business was “just marginal and in fact your foolish driving has cost the company significant expense in vehicle repairs for the company and the owners of the six other vehicles you have damaged.” They also refused to print his son’s wedding invitations. The CEO has indicated to him that the company is considering recovering from him all the monies they have paid out as a result of his careless driving.

Artemus wants to know his rights, if any, against his former employers, Excellent Printers Ltd.

Advise him.

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### **QUESTION 8**

Mr C. D. Ram consults you for advice in respect of the following:

On March 12, 2017, he was lawfully seated as a paid-up passenger on a Gallantry Airways aircraft. He was travelling with his wife and teenaged sons who were identical twins. They were travelling to meet relatives who had already gathered at a hotel in St Maarten and were awaiting them. While awaiting take-off, a voice from the cabin called for four volunteers to disembark in consideration of a payment *ex gratia* of \$800. This, the voice explained, was necessary in order to accommodate Gallantry Airways workers.

Three persons who appeared to be teenagers volunteered. After about five minutes, the voice from the cabin offered \$1,000 for another person to vacate. No one took up the offer. There was another five minutes of tense silence. Suddenly Mr Ram felt himself being grabbed and dragged from his window seat. He tried to resist but he was hit in the head by some object. The

last thing he remembered was that he was on the floor in the aisle of the aircraft and was being dragged. He had this surreal feeling that he was being moved along as if on a conveyor belt controlled by monsters. During the ordeal, he experienced bouts of unconsciousness. Also, he had the feeling that he was at his own funeral and there were people viewing his body.

Mr Ram recovered consciousness when he was taken to a security post and placed to sit on a plastic chair. As soon as he recovered some composure, he asked about his family. He learned that his wife, who was pregnant, had collapsed. She suffered a miscarriage and was taken to the General Hospital. He too, was taken to the General Hospital where he saw his sons waiting anxiously. He knows that the incident had been videotaped and posted online. Ever since the incident, wherever he goes, persons point at him and sometimes he finds himself surrounded by people.

He was told that Gallantry Airways CEO had published an explanation that he had been a “belligerent intruder”.

Mr Ram and his family missed the reunion which was cancelled when his Uncle Theo, who is the head of their extended family, saw the video and contacted the twins, Diko and Dikeo.

A medical examination of Mr Ram revealed that as a result of the ordeal, he has suffered bruises all over his body and mild concussion of the brain and spinal cord. The severe pain he feels is being alleviated by strong doses of pain medication. He has been having nightmares ever since.

Advise Mr Ram on any cause(s) of action, the measure of damages and mode of computation of any quantum of damages likely to be awarded.

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**END OF PAPER**