

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2017

LAW OF REMEDIES

(AUGUST , 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

A year ago, Mr Batson's motor car was extensively damaged by a van owned by Bigga Dickens, a farmer. The van was driven by his teenaged son who was driving his friends to a beach party contrary to his father's instructions.

Mr Batson's who is an insurance salesman, shows you his mechanic's report indicating that the cost of repairs is three hundred and fifty thousand dollars (\$350,000).

Mr Dickens, who considers himself a reasonable man, has offered to have Mr Batson's car repaired by his, Mr Dickens', mechanic. Mr Batson has declined the offer. Mr Batson says that he wants to have his car properly repaired and so he will use his own mechanic. In the meantime, he is using the second family car as a substitute. This car really belongs to him but his wife ordinarily uses it to take the children to and from school, to do the shopping and other errands, such as going to the hairdresser. The substitute car is more costly to operate in that, among other things, it is a high petrol user. Mr Batson has to charter taxis to take his children to school and transport his wife on household and other personal errands.

As a result of the unreliability of the substitute, he was unable to keep an appointment with an insurance prospect. He believes that as a result, he has lost a significant commission.

Advise Mr Batson on the possible claims he can make, what he needs to do to prove his claim, and the likelihood of success.

QUESTION 2

Economy Suppliers Ltd. (“Economy”), operator of economy supermarkets, agreed with Builders Ltd. (“Builders”), to construct a two-storey supermarket.

The contract contains, *inter alia*, terms requiring the contractor to use the best materials and workmanship available, complete and deliver the structure within nine months from the commencement of the project and adhere strictly to all building specifications.

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 liquidated damages the sum of \$200,000 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 \$2.5M as compensation.”

The building was completed and delivered six weeks late. Additionally, while the building was being furnished for use by Decorators Ltd. (“Decorators”), the ceilings in all the rooms on the ground floor, collapsed. Investigations revealed serious flaws in respect of the ceilings throughout the entire building.

As a result of the difficulty with the ceilings, Decorators had to desist from their work. According to their agreement with Economy, this resulted in a breach of contract. Under this contract with Decorators, Economy are required to pay a sum as liquidated damages.

The managing director of Economy, Ms Donaldo, consults you for advice on the company's rights and how the company should proceed in the circumstances in relation to Builders.

Advise Ms Donaldo.

QUESTION 3

- (a) In the law of remedies, the compensatory measure is the pre-eminent one giving damages precedence over any other relief that a claimant may seek from the courts.

Analyse the validity of this statement.

- (b) Angie agreed with Developers Ltd. ("Developers") to purchase a parcel of land (Lot 10) in their development scheme at Southside District. Developers have informed Angie that they no longer wish to sell the lot to her. They have asked her to attend at their office to collect the deposit she had paid.

Angie consults you. She is adamant that Developers are to be compelled to sell the lot to her.

Advise Angie.

QUESTION 4

Alice Derma's cause of action against The Secret Eye Newspaper ("Secret Eye") is defamation/libel in that Secret Eye has published defamatory material of and concerning her. Alice obtained a judgment in default of defence against Secret Eye which successfully applied to have the judgment set aside. Secret Eye's defence, which was filed and delivered in accordance with the court's order, averred, *inter alia*, that the material published is true.

At the trial, counsel for Secret Eye told the judge that his client's witnesses have declined to attend out of fear of reprisal. During the hearing which took place in a packed courtroom, counsel for Secret Eye subjected Alice to such intense cross-examination that at one point, Alice was visibly distressed. In the end, judgment was entered in Alice's favour and a date for assessment of damages was set.

As an intern in the law firm representing Alice, you are asked to prepare a memorandum indicating the approach to the computation of damages, likely to be taken by the tribunal.

You are required to take account of the following, which are additional findings of fact at the trial:

- Since the publication, Alice lost her job as a specialist teacher. She has been violently accosted in a supermarket and is now afraid to leave her home.
- Secret Eye streams live on the internet, and Alice is well known throughout the region and the Caribbean diaspora in the U.S.A., Canada and the U.K.
- Alice has been the victim of 'hate mail' ridiculing her and calling her names.
- She had been the subject of a number of blogs which had been taken down after she had protested.
- Secret Eye has refused to furnish an apology to Alice.
- Alice has experienced, and continues to experience mental suffering and distress.
- Alice rejected an offer of amends made by Secret Eye.

Prepare the memorandum.

QUESTION 5

- (a) In recent years, the decision in **Hedley Byrne & Co. Ltd. v Heller & Partners Ltd.** [1964] AC 465 has been exalted into a principle to give a remedy where in previous times there was none.

Analyse the accuracy of this statement.

- (b) Jason instructed William, a partner in the law firm SnellJen, to draft his last will and testament. Jason told William that his (Jason's) conscience was restless over an incident between himself and his first wife, Elaine. He wanted to give her one of his best properties, a house which he named "Delight". He also wanted to apologise to her for not being the husband he had pledged to be, and for the embarrassment he had caused her during their marriage. He wanted her to know that she was a good woman. William gave the written instructions to an associate, who, unknown to William, was a friend of Jason's daughter by Jason's second wife.

Jason, who had informed Elaine of his intentions, died three months after giving the instructions to SnellJen, and before the will was prepared. "Delight" was valued two years ago, in the sum of \$6.5M. Elaine is living in rented premises some distance from her workplace and it happens that "Delight" is much closer to her workplace.

Elaine consults you in relation to the above.

Advise her on any rights she may have, giving reasons.

QUESTION 6

- (a) Mr Donovan, whose wife was injured in a minibus accident last year, informs you that he wants to sue the owner of the minibus, Mr Run Jostle, for the injuries suffered by his wife

and the loss of consortium. Mrs Donovan, he tells you, has just been discharged from the hospital. He also tells you that a person who has come from the U.S.A. says that if he (Mr Donovan) and his wife were in the U.S.A., he could easily get \$10M for his wife's injuries, in addition to what he would get for loss of consortium. Furthermore, he says that he read in the Moon Newspaper about a teenager who was awarded a quarter million dollars and that his wife is nearly four times that teen's age. He also wants to know if his wife could get damages to punish the driver of the minibus for his bad driving, to the detriment of his wife and other passengers.

Advise Mr Donovan.

- (b) Mr Arthur owns a wrecker by which he earns his living. On April 1, 2017, while the driver, Max, was negotiating a deep bend in the road, and the wrecker was carrying a heavy duty vehicle, the road 'broke away' and the wrecker fell over an embankment on to a house below. Significant damage was done to the house. The house belongs to Parris Hoo, who was not present at the time. When Mr Hoo returned home he collapsed from nervous shock.

Advise Mr Arthur.

QUESTION 7

Elees was 28 years old at the time of her death, as a result of a collision between the car she was driving and a van owned and driven by Edgar Phillistyn. Elees did not die on the spot. She died three days later, while undergoing treatment at the National Hospital.

Elees is survived by her widower, Herman, who is 30 years old. There are two children of the marriage, Herman Jr., who is five years old, and Jenny, who is three years old.

Elees was a businesswoman and Herman is a corporal in the police force. They owned their home as joint tenants and they shared all expenses relating to the household – groceries, utilities, home maintenance and school fees.

Elees transported the children to school and extra-curricular activities. They had also looked forward to sharing the obligation to finance their children’s education right up to university level.

Elees, who was a dealer in clothes and haberdashery, shopped overseas for her business. She purchased clothes, shoes and other items for Herman and the children, as well as for the home. She also purchased special Father’s Day gifts for Herman. She supported her mother, Miss Ada, and bought similar Mother’s Day gifts for both Miss Ada and for Herman’s mother.

Elees died leaving a will. Herman is the sole executor and the sole beneficiary.

Herman, tells you the above. He also said that he and all members of their family are in deep mourning. He says that he has lost not only his wife but his best friend and confidante. The children and Miss Ada are crying. His mother, Miss Winnie, is also grieving deeply. Their families have “lost an angel”.

In fact, he and Elees had an agreement for mutual maintenance, under which they committed to maintain each other in all circumstances, especially if either of them was at any time unable to work.

Advise Herman on the above, indicating how he should proceed.

QUESTION 8

Sisko, who is 25 years old, is employed on a month-to-month basis as a machine operator with Manufacturers Ltd. Three years ago, while driving to work, Sisko was involved in a collision with another vehicle driven by Jian. Sisko is adamant that Jian is clearly responsible for this collision. As a result of the collision, Sisko suffered a broken arm, a broken leg and cuts and bruises about his face. Sisko's car was also badly damaged.

After the incident, Sisko was taken to the General Hospital where he remained for 12 months. His arm had to be amputated above the elbow. He continued his convalescence at home for three months and was visited each week by the family doctor. Each doctor's visit cost one thousand five hundred dollars, (\$1,500). Sisko suffered acute pain for the first two weeks after the collision but thereafter, the pain gradually decreased with the aid of painkillers.

During Sisko's period of convalescence, his employers agreed to continue paying his monthly salary of six thousand dollars (\$6,000) on the basis that he would resume work as soon as he was fit and able to do so, and would repay all the monies advanced to him while he was away from work. The proposed agreement was that the employers would deduct two hundred dollars (\$200) each month from Sisko's salary until the amount "loaned" was liquidated. Sisko's hospital bills amounted to one million one hundred and twenty eight thousand dollars (\$1,128,000).

In the meantime, Jian was charged by the police for dangerous driving. Sisko, fearing that the police might not proceed as diligently and efficiently as he would like, sought and obtained from the Director of Public Prosecution/Attorney General a "fiat" to conduct the prosecution. He retained the services of a lawyer. The case lasted two days and Jian was convicted.

Sisko's car was repaired at a total cost (parts and labour) of sixty-five thousand dollars (\$65,000) and the repairer took three weeks to complete the job. Sisko had to hire taxis to get around. Sisko wants his car adapted to suit his present condition until he gets a hand transplant. He says that he does not want any fake arm. He wants a real arm.

He, Sisko, is now desirous of instituting civil proceedings against Jian and consults you. He tells you, in particular, that because of the loss of his arm and the shortening of his leg, he “feels like a cripple” and he wants five million dollars (\$5,000,000) for all the pain and suffering Jian has put him through. Further, if he had not suffered the injuries, he would have had good prospects of being promoted to head of his division.

Advise Sisko on the items of loss for which he is likely to recover compensation and the approach the tribunal is likely to adopt in the assessment process.

END OF PAPER