

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2016

LAW OF REMEDIES

(WEDNESDAY, MAY 18, 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

Mr. and Mrs. Meeks lived at 12 Peace Way. One year ago, Mr. Bajjon and his wife came to live next door to Mr. and Mrs. Meeks. When Mr. Meeks personally extended a welcome to them they seemed surprised. Six months ago, Mr. Bajjon informed Mr. and Mrs Meeks that he and his wife were interested in buying 12 Peace Way. When Mr. Meeks heard this, he laughed and enquired whether Mr. Bajjon was in his right mind. Mr. Bajjon's reply was that Mr. Meeks would soon find out one way or the other. A short time after this conversation, Mr. Bajjon brought in two of his brothers and their girlfriends to live at his house. They played loud music day and night, much to the discomfort of the Meeks. Two dogs belonging to the Bajjons barked incessantly night after night. As a result, both Mr. and Mrs. Meeks were unable to sleep.

Two weeks ago, the Meekses went to spend some time with their daughter and son-in-law, who lived some miles away in another district. When they returned, they found a large heap of rubble instead of their three bedroom home. It turned out that Mr. Bajjon had hired a firm of deconstruction experts, Majesty Deconstructor, to demolish the Meeks's home! Mrs. Meeks fainted at the sight. She is still in hospital.

Advise Mr. Meeks on the cause(s) of action and remedies open to him and his wife and the basis for compensation for any damages that may be awarded in the circumstances.

QUESTION 2

Vera worked at Xtra Supermarket Limited., Xtra, as a data processor. Xtra has a policy of giving discounts to their customers who qualify for Xtra's customer cards. In order to obtain this customer card, a patron has to complete an application form by furnishing a substantial amount of personal data.

Last month, it was discovered that Vera was in the habit of emailing the data on the customers' application form to herself and copying the email to a syndicate of scammers. She was paid by the scammers.

The discovery was made after a number of Xtra's customers had been receiving, on a continuous basis, telephone calls offering them shares in companies and other "opportunities for investment", in exchange for deposits of money. Some have been receiving emails to similar effect. Two customers have been canvassed by personal visits to their homes.

It was also discovered that the customers' data had not been stored in any secure database and neither Vera nor any other employee of Xtra had signed any agreement to keep customer's data confidential. Further there was nothing on the application form indicating that the information given would be kept in strict confidence.

Edna and Joe Elza are card holding customers of Xtra and tell you the above. They admit that they have been canvassed by telephone calls, emails and home visits, much to their distress and dismay.

As a result, they have since contracted with a security company for security services, at great expense. Also, they have changed their bank and their supermarket, and now have to travel much further for banking and shopping. Edna is now experiencing sleepless nights and anxiety. As a result, her blood pressure has become elevated and she has to take medication.

Advise Edna and Joe in relation to any cause(s) of action and remedies that may be open to them under the circumstances indicated.

QUESTION 3

Two years ago, Archie, who was driving back to work after lunch, was involved in a motor vehicle collision with Dalia who was driving her father's car. Dalia's father is Albert Grange. At the time of the collision, Archie was on his cell phone excitedly telling his mother that he had been awarded a scholarship to study at a reputable university abroad. Dalia was also speaking on her cell phone.

As a result of the collision, Archie suffered serious spinal injuries and a fracture to his right arm. He spent two months in hospital. His treatment involved surgery, injections and physiotherapy. He received treatment both locally and abroad.

At the time of the collision, he was 25 years old and was working in the legal department of the Foreign Affairs Ministry. His hobbies included football and weight-lifting.

In August last year, when Archie went abroad for treatment, he was accompanied by his mother and his older brother, Benn. Although he is wheelchair-bound, the medical opinion from his medical advisor is that he has reached the maximum point of recovery and would only need to take pain relieving drugs and continue physiotherapy as well as psychological counselling.

Archie has not lost any wages. He is still working in the legal department of the Foreign Affairs Ministry. He feels like a misfit. The medical advisors to Albert Grange, the owner of the car, are of the opinion that Archie should undergo a special type of surgery to reduce the spinal disability and eliminate the severe pains in his back.

Archie has been advised of this but he is adamant that he will not undergo any further surgery for whatever reason.

Advise Archie on any cause(s) of action open to him, and the likely approach a court will take in the assessment of any damages which may be awarded to him.

QUESTION 4

- (a) In every case where relief from forfeiture of advance payments is claimed, a court is obliged to consider two contesting equities.

Explain and illustrate by reference to decided cases.

- (b) Six months ago, Prince bought a used car from Quesco Limited at a price of \$2.5 million. As he was turning into the car park at his workplace, police officers stopped him and asked to see his car papers. He complied with their request. The papers were examined. The engine was also examined. One police officer said to Prince, "Sorry sir, but this is actually a stolen car. We have to take it." Prince gave the officers the key. Prince complained to the Consumer Rights Committee but they told him to see a lawyer. Prince consults you.

Advise him whether he has any remedy against Quesco Limited which ceased to deal in used vehicles and switched to selling pharmaceuticals.

QUESTION 5

Frank was employed to Essential Insurers Limited. ("the Company") as head of their IT Unit. On April 30, 2016, he had just completed one year of a three-year contract which contained no

provision for notice. He was dismissed, following allegations that he had permitted the use of pirated software in the Company's operations. Further, it was alleged that he had refused and/or omitted to install the latest IT security measures. By this exercise of bad judgment, he had caused the Company loss and embarrassment in respect of the amount of "malware" that has been introduced into the Company's online database. This resulted in the corruption of, and inability to recover important online files. His letter of dismissal contained a cheque in the amount of one month's pay in lieu of notice.

Frank's emoluments were:

- Salary \$2.5m per annum
- Annual subscription to "Online Security Guide" magazine
- Fifty percent of all medical, dental and optical expenses
- Renewal of contract for a further three years should the Company so determine
- Housing, transportation and entertainment allowances.

Frank, who was 35 years old at the time of dismissal, denies the allegations and counters that he is being made a scapegoat. He considers that his reputation has been severely tarnished. He is so distressed and embarrassed that he cannot bring himself to seek alternative employment at this time.

Advise Frank.

QUESTION 6

Kerry was taken into custody following a customs check at the airport. This followed the discovery in her luggage of a bag of contaminated white powdery substance which was sent to

the police forensic laboratory for testing to ascertain whether it was a banned substance. She was kept in custody pending receipt of the results.

The bag was apparently mislaid, and when it was eventually found and tested, the contents were found not to be contraband. By this time, Kerry had already been in custody for 90 days, and prosecution for possession of a banned substance, (cocaine), importing of cocaine and dealing in cocaine had been in progress, pending the forensic report.

During the second mention of the case, the forensic laboratory report was presented. At this point the prosecuting counsel told the court that the case had an unnatural feature. The Magistrate's/Parish Judge's response was "Be that as it may the result is clear and the accused is cleared of the charge." Kerry was told to go home.

During the time in custody she was called names. It was suggested to her that her husband might be using contacts to get her freed. She was asked when she was going to live an honest life and stop giving trouble. Kerry admitted that she had been convicted and imprisoned twice already in the local jurisdiction, and once elsewhere, for possession of and dealing in drugs.

Kerry had been a basic school teacher before her first encounter with the law. Now she is an importer of a variety of goods. She goes abroad to shop every month but she has not been able to do so for the past three months. She has lost about \$450,000 in profit on sales. She wants to recover this amount and at least \$5 million for all that has been done to her.

Advise Kerry on any cause(s) of action and remedies open to her as well as the basis on which any award of damages will be assessed.

QUESTION 7

Mr. Brent, the owner of a chain of economy hotels, consults you. He has plans to build another hotel which he desires to open next year, d.v., to take advantage of the spring, summer and winter demand for good accommodation at reasonable rates, for which his chain is noted.

He has already selected a contractor. He has the architect's drawings. He now needs advice on any provision(s) that may be included in the building contract to secure timely completion and strict compliance with any local building code and the architectural specifications. He wants to be sure that the relevant provision(s) would be effective to save time and the stress of litigation.

Advise Mr. Brent, giving him reasons for your advice.

QUESTION 8

Mrs. Mack consults you in relation to her son, Junior, who is 12 years old. Last year, he suffered injuries on a construction site operated by Best Home Bargains. Work is still going on there. He spent time in hospital but he is at home now. He cannot walk and is confined to a wheelchair. She wants justice for Junior, whom everybody says was a "promising youth".

Ms. Akela James, the legal officer who works at Best Home Bargains, has asked her to come to the company's office to discuss the way forward with Junior. Mrs. Mack says that she is willing to make the effort but is reluctant to go alone. She requests your assistance.

- (i) Advise Mrs. Mack, indicating how you will proceed and what needs to be done in preparation to meet Ms. Akela James.

- (ii) Draft a letter of request for any document you think will be necessary or helpful.

END OF PAPER