

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2019

LAW OF REMEDIES

(August 00, 2019)

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 zoned for this school **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

Mr. Angello is the Managing Director of Data Processors Limited (the company), which is a data processing company with branches in all parishes/districts in the jurisdiction. The company works for a large number of clients. The company has been in existence since 1980 and has a good track record for timely compliance and confidentiality. It also has a good record for balanced industrial relations. A number of its long-standing workers are retiring. Mr. Angello is aware that, in these postmodern days, workers are very 'tech savvy' and besides this, they do not remain in one employment for long. The company is about to recruit new workers and, for the reasons already indicated, needs to take a fresh look at the company's employment contracts to insert additional terms.

In addition, just a few days ago one of the monthly workers, who has been with the company for about two years introduced malware into the data system causing much dislocation, confusion and loss to the company. The company wants to terminate this worker's contract. Further, the company had to pay the repair cost of a vehicle that this worker had negligently damaged as well as the cost of repairs of the company's vehicle, which he was driving at the time. Mr. Angello is of the view that the company should be able to recover from this worker the cost of sanitizing the company's system and the monies paid in vehicle repairs.

Advise Mr. Angello on:

- (i) additional terms that the company could incorporate in the employment contracts and the legal implications of these terms; and
- (ii) any options open to him in relation to the worker whose employment the company wishes to terminate.

QUESTION 2

Bill, the Managing Director of Best Builders Limited (BBL), a construction company of some standing, consults you in relation to a building contract between BBL and Leonie Limited (Leonie). Leonie is the owner of a well-known chain of respectable middle-income guest houses. The contract relates to Leonie's newest guest house which was to be completed 30 days ago. The delay was due to a failure of BBL's dispute management unit. This resulted in industrial action by BBL's workers. In addition, there was delay by one of BBL's sub-contractors.

The building contract provides for the payment of a "*... penalty of \$250,000 for every week the building remains unfinished.*"

The contract also provides that "*Failure to use the best or any contractually-specified materials will result in the contractor being liable to pay \$2,000,000 as compensation.*" The sub-contractor used tiles 2.54 cm larger than required by the contract.

Bill desires to know whether his company will have to pay the sums stated in the contract and, why, and whether there is any alternative.

Advise Bill in relation to his concerns.

QUESTION 3

Daniel, who is 35 years old, was employed to Block Makers Limited (Block Makers) as an operator of a forklift truck. His duties consisted of loading empty racks on a conveyor belt so that they could be filled with concrete mixture. As soon as the racks were filled he would take them to the drying yard. In addition to this, he performed duties of cleaning the block-making machines and, at times, assisted in cleaning the concrete mixer. Daniel considered himself a jack of all trades and whenever there was a mechanical breakdown he would be asked by his supervisor to help.

About a year ago, when one of the concrete mixer machines had stopped working, Daniel, intending to help the machine operator, inserted his hand into the machine to remove something which Daniel considered to have been the source of the breakdown. At the same time, the machine operator switched on the machine, which started, with the result that the blades severed Daniel's right arm.

Daniel, as a result, spent a month in the General Hospital. During that time, he received his wages from Block Makers.

On his recovery, Daniel returned to work with Block Makers with no loss of wages. He was retrained and the forklift was adapted to his disability. Things went smoothly for about three months, after which Daniel refused to perform his duties, and was persistently insolent to the supervisor. Consequently, he was dismissed. He is unemployed at this time.

Daniel consults you in respect of the above.

Advise him on any cause of action, measure of damages, and the approach a court may employ at the assessment hearing.

QUESTION 4

Tracy is a realtor and the manager of her company Realizations Limited (Realization), a company which buys, sells and leases real and personal property. Angela Keen agreed to buy Belfell, premises at 7 Hospitality Drive, from Realization. The memorandum of this agreement was signed by the parties. Angela paid the deposit in addition to sums for government taxes. The transaction is to be completed on or about the end of November 2019.

Yesterday, Tracy received an email from Angela saying that she (Angela) has changed her mind and is no longer interested in buying Belfell. Angela has requested a refund of the deposit and all other monies she had paid. Angela wants interest on the monies she had paid calculated from June 1, 2019 when the payments were made. Tracy's reply to the email was a terse, "*See you in*

court.” Tracy believes that Angela should be required to complete the transaction and buy the property. It was Angela who chose Belfell from a list of properties. At the time the agreement was signed there had been two tenants occupying the house. They had been given notice to quit, and being reasonable tenants, they had quit the premises and ever since July no rental income from that property had been received by Realization. A valuer’s report, obtained since the tenants, had quit the premises, shows that there is a 10% increase in the value of Belfell.

Tracy consults you. She desires to take steps against Angela right away. She does not wish to wait and see if Angela will change her mind.

Advise Tracy in respect of the legal issues arising on the facts, including the cause of action and likely remedies.

QUESTION 5

Mr. Renard Crimson owns a transporter vehicle which he rents for the purpose of transporting heavy-duty vehicles quickly to construction sites. He also earns income when the transporter is hired to remove vehicles from the wharf.

Two months ago, he was hired by Xavier Ganer to transport a defective tractor to a mechanic shop some miles away. Unknown to Renard Crimson, his assistant had been negligent in securing the tractor on to the transporter. As Renard Crimson was negotiating a bend in the road, and whilst trying to avoid a pothole in the said road, the tractor fell off the transporter and crushed a small car that was parked at the roadside. A lady who was standing nearby, when she saw what happened, collapsed from fright and had to be taken to the hospital.

The police arrived, took measurements and examined Renard Crimson’s documents, which were all in order.

Renard Crimson hired a wrecker to take the tractor to its destination. As a result of the incident, the cost to repair the tractor was increased by 25%, and the tractor was returned to its owner five days later than originally expected. Xavier Ganer says that, as a result of the delay, he has

lost a very lucrative job on a farm. He has refused to pay the cost for the carriage of the tractor, and has indicated that Renard Crimson is liable for the increase in the cost of repairs and the losses in respect of income from work on the farm.

Renard Crimson seeks your advice in respect of all the issues arising on the instructions above.

Advise him.

QUESTION 6

Answer both (a) and (b)

- (a) Jaleel Stubes, who is a 25-year-old mechanic, has just completed a five-year term of imprisonment. This was the maximum term and it was his first offence. At the time of sentencing, he had instructed his attorney-at-law to institute appeals against conviction and sentence.

He was assured by his said attorney-at-law that while it was unlikely that he would succeed against the conviction, it was very likely that his sentence would be reduced to two years.

Unfortunately, his attorney-at-law failed to lodge his appeal and Jaleel served five years. During his incarceration, Jaleel was hungry for most of the time. He was beaten by inmates and was housed in unsanitary conditions with two other inmates. He was forced to do hard labour, although he was not so sentenced.

Jaleel consults you for advice in relation to any cause of action and likely remedy open to him on the instructions given above.

Advise Jaleel.

- (b) What would be your advice if Jaleel had been sentenced to two years' imprisonment but, as a result of administrative error, he ended up serving five years?

QUESTION 7

Answer both (a) and (b)

- (a) Asa Kelmer's uncle, Jimmie Kelmer, died one year ago. Before he died, he had promised Asa that he would leave him a gift of all the shares in a company in which he, Jimmie Kelmer, had invested. When Asa checked with his uncle Jimmie's lawyer, Asa was told *"The Will had indeed been prepared, but Jimmie Kelmer had not kept his appointment to return to execute it"*. The lawyer's clerk confirmed that the unsigned Will contains a gift of shares to Asa.

Asa consults you for advice as to any possible cause of action and remedy open to him.

Advise Asa.

- (b) John and Jill Caines, the proprietors of South Mall, consult you. All the shops in their mall have been closed. The tenants who had occupied the shops have given notice in accordance with the terms of their leases. They are claiming that they have suffered millions of dollars of business losses as a result of the works that are taking place on the road adjoining South Mall.

John and Jill confirm that it is a fact that all utility service lines have been severed and the tenants have been deprived of water, telephone and electricity.

John and Jill agree that the mall is virtually inaccessible to all traffic. Dwayne, the representative of the tenants, indicates that the tenants are claiming from John and Jill reimbursement of all their losses for the past three months. They are also claiming future losses according to the residue of each lease. The tenants have instructed a certified public accountant to work out the figures and a lawyer to advise on the legal ramifications.

Dwayne admitted that most of the tenants are receiving insurance payments to cover business disruption losses. As far as Dwayne indicated, John and Jill could expect a letter with the claims from their lawyers by the end of the month.

Advise John and Jill, giving reasons, whether or not:

- (i) the tenants can recover their losses from them;
 - (ii) if found liable to the tenants, they would be allowed to set-off any insurance payments for loss from business disruption, that the tenants may have received; and
 - (iii) in the event of any liability to the tenants for the loss of income to them, they, John and Jill, would have any claims against any of the parties to the road works and the utilities providers.
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QUESTION 8

Lianda Amerson, now 17 years of age, was severely injured, three years ago, by a hit-and-run driver. Both of her legs were injured in the incident. One of them had to be amputated. She also suffered head injuries. At the time of the incident, she was doing very well, both in academics and athletics, at school.

Her recovery took about two years. During that period, she was in and out of hospital until her condition settled. She had another year as an outpatient at both the orthopaedic and psychiatric clinics at the National Hospital.

Last year, Lianda's father was able to discover the identity of the driver and the vehicle owner. A construction worker, who had been on his way to work, had seen the incident and had written down in his carpenter's notebook the registration particulars, the date and the name of the owner of the van, which was written on the side doors. He had forgotten about it until he saw

Lianda at the orthopaedic clinic, and recognized her as the girl he had helped into the taxi after she had been hit down.

Lianda's parents consult you for advice. They want to know if Lianda can still bring a claim, what claims she can make and whether there would be any penalty for starting the matter at this time.

Advise Lianda's parents on Lianda's cause of action, remedy and the approach the court is likely to take at the assessment hearing.

END OF PAPER