

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2019

LAW OF REMEDIES

(WEDNESDAY, MAY 15, 2019)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate may reply, in accordance with the law of a 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

Olga was employed to Jewels Plus (Jewels), dealers in cosmetics, costume jewels and ladies' fineries. She was Jewels' marketing sales representative with responsibility to secure orders from retail establishments in the jurisdiction. She started work one year ago when she was offered a three-year contract. She was entitled under the contract to annual salary of \$1,500,000 which was paid monthly, 5% commission on sales above \$5,000,000, annual vacation leave, transportation allowance, maternity leave, 2% discount on any jewellery purchased from Jewels' retail outlets, as well as sponsored attendance at marketing-related workshops.

In addition, she enjoyed free lunches at Jewels' cafeteria and tea and coffee breaks with all members of staff. The cafeteria was closed on the first working day of each month when staff members were to bring their own lunch or buy lunch from nearby vendors, who welcomed the day as a sign of existing goodwill between them and Jewels. Two months ago, when the cafeteria was closed, Olga took the notice signed by "P. Archibald, General Manager", threw it into the dustbin and replaced it with a computer-generated sign which read "MEANIES UNLIMITED signed by WE Workers".

A group of workers had by then gathered and were chanting "Go, Ga! Go, Ga!" (referring to Olga), Mr. Archibald, the managing director, was just in time to see and hear what was happening. One of the workers shouted, "*A lie she ah tell we don't know anything about it!*" There and then Mr Archibald dismissed her with immediate effect. He requested the keys, as well as the swipe card, and asked her to exit the building and not return on pain of prosecution for trespass.

Olga thinks she has been wrongfully and unfairly dismissed and her right to free expression has been violated. She feels humiliated and embarrassed. She has not communicated her dismissal to her friends or relatives.

Olga consults you for advice in relation to the above.

Advise Olga.

QUESTION 2

Answer both (a) and (b)

- (a) “Parties who provide for their own remedies are required to act with mutual fairness.” Discuss this statement and, with the help of decided cases, indicate whether this is so.
- (b) Mr Dudley Otters consults you in relation to a dispute with Fast Track Limited (Fast Track), the contractor he has employed to construct the building to house his supermarket. He presently operates his supermarket out of rented premises at 2 Constitution Way. According to the contract, the building was to be completed and handed over 28 days ago. This has not happened and work is still going on at the site. The manager of Fast Track is avoiding him and the engineer who is representing him (Mr Dudley Otters) says he is preparing a report.

The notice he had given his landlord expired 28 days ago and the landlord is talking about a new lease with an increase in rent. He is not interested in a lease renewal. He wants to move into the new building. Further, he wants the money that the contractor is to pay for the delay.

You peruse the contract and note that the agreement provides that in case of delay the contractor is liable to pay, as compensation, the sum of \$250,000 for every day the delay continues. The owner is also entitled to withhold the sums from the contract price.

Further there is, *inter alia*, a clause which requires the parties to take steps to avoid disputes failing which all unavoidable disputes are to be subject to mediation and if necessary to arbitration.

Mr Dudley Otters wants to know his rights and whether he can lawfully go ahead and deduct the agreed sums from the money he has in hand for Fast Track.

Advise him.

QUESTION 3

Livingstone and Ada Coombs, retired citrus farmers, owned the 12,000 square metres of land in the middle of which is a four-bedroom bungalow. They maintain a beautiful garden which is the envy of horticulturists. From time to time they earn money from filmmakers who shoot scenes in their magnificent garden. The property is called Lands' End. One day, the manager of Home Builders Limited, Douglas, approached them with a proposal to purchase Lands' End for the construction of an upscale block of apartments.

After an hour discussing the matter and viewing an artist's impression of the proposed development, they declined to sell. Livingstone expressed horror that the people at Builders Limited could have gone as far as to make such detailed plans for using other people's property. He asked Douglas to leave and never be seen again at Lands' End. Douglas, with a sneer, assured them that *"such a thought is an untenable concept which I cannot afford to entertain"*.

In January this year, Douglas again visited Lands' End and told them that the company was giving them another opportunity to agree to sell. Livingstone reminded Douglas that he was trespassing and threatened to call the police. Douglas left stating that he would oblige them for the time being.

In February, the Coombses went abroad to attend their son's wedding. They spent two weeks. On their return, they met bulldozers clearing the land on which their four-bedroom bungalow had been and Douglas was present looking on. Livingstone attempted to grab Douglas to give him a beating but changed his mind when he saw Ada falling to the ground in a faint. He turned his attention to revive her and to seek medical attention. Ada remained in hospital for observation and treatment for six days.

The Coombses are residing temporarily with a friend. The situation is proving difficult and somewhat hopeless. As far as Ada is concerned *"It is as if we have nothing left"*. Fortunately they have an inventory of their household items in a safety deposit box at their bank.

Livingstone consults you in relation to the above and seeks your advice.

Advise him on the cause(s) of action and remedies available to them, and the basis on which any monetary remedy will be computed.

QUESTION 4

- (a) Distinguish between the doctrine of mitigation and contributory negligence.
- (b) Three months ago, Victor's car was involved in a collision with a small van owned and driven by Edgar Phillistyn. Victor believes that Edgar Phillistyn was entirely to blame for the collision but Edgar Phillistyn said that he did not share that view, especially since Victor's jalopy should be off the road.

As far as Victor is concerned, his car, Princess Royal, was no ordinary vehicle. It is a 1960 model and registered with Vintage Car Association (VCA) of which Victor is a member in good standing. The police had visited the scene of the collision and Edgar was warned for prosecution. The damage to Princess Royal was reported by Victor to the VCA.

Victor, a structural engineer, uses Princess Royal only on special occasions. Edgar's insurers are willing to settle Victor's claim on the basis of 50% contributory negligence. To this end, they are willing to pay a sum to meet half the price of a replacement. They also indicated that since the car was not used generally, they have not considered any claim for loss of use.

Victor is disputing the allegation of contributory negligence. He desires to repair his vehicle and to recover money for loss of use.

Advise Victor.

QUESTION 5

Three months ago, Leo Timmins suffered fatal injuries in a traffic collision when a Transport Corporation's bus negligently collided with the car he was driving. He died three days later in the National Hospital. At the time, Leo, who was 35 years old, was an architect employed to the Public Works Department. He was married to Delia who is now 30. Their marriage produced two children, Alexander, who is 7 years old and Linette, who is 5 years old. Last year, Delia left the matrimonial home located at 25 Honour Road, which was rented premises, and went to live on her own. Delia left the children with Leo who had to persuade his mother, Mrs Nancy Timmins, to come to live at 25 Honour Road to help him with the children.

Delia vowed never to return to him as she had plans to travel. Indeed, Delia did travel overseas and it was rumoured that she had remarried. Leo had consulted a lawyer on the matter, just before he died. He made a Will on the lawyer's instructions and appointed Zenos Smith as the sole executor. He mentioned in the Will that Delia had left the marriage.

In his lifetime, Leo provided for his entire household. He paid rent and all utilities. He bought the groceries and provided everything the children needed for their education. He wanted Linette to study architecture and Alexander to be a structural engineer. He paid for the family's annual holiday and contributed to his parents' welfare.

He was in good health. He earned a good salary. Also, he regularly helped to facilitate workshops on construction best practices and received reasonable fees. He subscribed to periodicals in his field and had plans to establish his own firm.

Zenos Smith gives you the above instructions and adds that Delia is back in the matrimonial home and acting the part of a grieving widow. He wants advice on who are the dependents of the deceased, how he should proceed under the circumstances and the approach the court is likely to take in making the relevant awards.

Advise him.

QUESTION 6

Alethea Mays is an education officer. She is well known as an educator, education consultant and administrator. She has played a significant role in the administration of regional examinations.

She had, by her attorneys-at-law, initiated legal proceedings for damages against Publishers Limited, publishers of the Daily Revealer, an evening newspaper. The cause of action is defamation/libel.

At the trial, judgment was given for the claimant and the trial judge made the following findings of fact:

- The words complained of are defamatory of the claimant.
- The defendant had republished the defamatory material even after it had been contacted by the claimant's attorney-at-law.
- The claimant, as a result of the defamatory publication, was subject to disciplinary procedures which resulted in mental distress and humiliation during the process.
- Although the claimant was vindicated by the disciplinary committee the claimant resigned and has been unemployed since then.
- The defendant's newspaper is circulated in hard copies and online.
- The claimant is well known locally, regionally, and in the diaspora.
- Some of the claimant's friends are no longer cordial to her.
- The defendant offered a conditional apology just before the completion of the hearing on liability.
- The defendant's attorney-at-law cross-examined the claimant concerning the truth of the allegation, and it was suggested that she was an enemy of the truth.
- The defendant's hostile cross-examination caused the claimant visible distress.
- A claim was never brought against the printers of the Daily Revealer because Alethea Mays received a sum of money as a result of an out-of-court settlement with them.

The hearing for assessment of damages has been set down for the second week in June.

You are an associate in the law firm representing Ms Mays. Your senior partner has asked you to prepare a memorandum in relation to the issues of aggravated damages and exemplary damages as well as mitigation. You are also advised to indicate the approach likely to be taken by the court in the assessment of damage.

Prepare the memorandum as required.

QUESTION 7

One year ago, Sylvan Simmons, a mason, fell from the scaffolding around the third floor of a building under construction. He was seriously injured. He spent six weeks in the South Regional Hospital and two weeks in a rehabilitation centre.

Sylvan, although mentally alert, is unable to walk as he is paralyzed from his waist down. Sylvan, who is 25 years old, is unmarried and lives with his mother and two siblings. He has his own room but since his injury, doing things that were once normal has become very difficult and inconvenient.

The building owner is Mr Alistair Graham and the contractor is Mr Felix Torres. The scaffolding was erected by a subcontractor, Secure Building Steps.

Sylvan has not received any wages from Mr Torres, although he (Mr Torres) is aware of Sylvan's present condition.

Sylvan shows you a letter from Ms Anthia Morgan, an orthopaedic surgeon, claiming to act on behalf of Torres Construction and Engineers. In the letter, Sylvan is invited to attend for examination and counselling in preparation for surgery in order to reduce the present disability.

Sylvan, who is adamant that he does not wish to do any surgery, wants you to advise him on his cause of action and likely remedy. He also wants to know what claims he may make and the steps he should take.

Advise him accordingly and indicate the approach that a tribunal is likely to take in respect of Sylvan's claim and what steps should be taken and the relevant law in relation to any issue(s) arising.

QUESTION 8

Al Johnson is a wealthy entrepreneur who owns manufacturing enterprises in several countries. He bought a parcel of land, Lot 40, part of Max Regal Estate in your jurisdiction, from Real Estate Dealers Limited (REDL). REDL is a company carrying on the business of buying, selling and leasing land, as well as that of engineering consultants, contractors and project management.

Max Regal Estate is a small subdivision in a very secluded location to which writers and retirees were attracted.

The contract, signed by Johnson and REDL, is in the standard form used by REDL. There are a number of restrictive covenants in the contract and these are designed to protect and preserve the atmosphere of quiet seclusion, which is the hallmark of Max Regal Estate. It is named after a famous writer who was the first lot holder. His widow, a retiree and writer, is still occupying Lot No. 1.

The restrictions which Johnson finds most disquieting are those which provide that there should be no commercial use made of any lot, and that all designs and plans for buildings or adaptation of buildings must be submitted to REDL's Building Committee.

The membership of this committee includes a structural engineer, a quantity surveyor, an architect and a member of the Integrity Committee.

Johnson says he has freedom of contract and "will not be fettered by a bunch of small-timers". He further says that he does not take kindly to the thought of sterilising his investment by minor concerns. He intends to maximise his investment by commercial use as he has the means to

negotiate his way. He wants your advice as to all possible issues and their legal consequences, so that he can give the matter fuller consideration and “gauge the temperature of the local systems he is up against”.

Advise Johnson accordingly.

END OF PAPER