

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND-YEAR EXAMINATIONS, 2002

LAW OF SUCCESSION

(THURSDAY, AUGUST 8, 2002)

Instructions to Students

- (a) Time: 3 ½ 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 ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

hospitalized for one week. However, she is now fully recovered and is considering a marriage proposal.

Franco is anxious to settle the matter and has approached Jane with a view to a settlement out of court.

Advise Jane on the relevant causes of action and the measure of damages.

QUESTION 3

In 1997, John, a taxi driver, acquired a used 1990 luxury car. It was particularly suited to his need, as he transported tourists who preferred the comfort afforded by such a car. Shortly after the purchase, John had the car converted to right hand drive and the engine was re-conditioned. He earned \$1,650 per day.

In January 2000, John's car was extensively damaged in a collision with a lorry driven by Edgar Phillistyn. The pre-accident value of the car was \$45,000. Edgar Phillistyn's adjuster estimated that it would cost \$50,000 to repair the car.

A comparable replacement was not available locally and it would cost \$65,000 to import one. John decided to repair the car and for this purpose he applied for a loan which was approved and disbursed two months after the accident. John would have been unable to finance the repairs without the loan.

In early March 2000, John delivered the car to Mr. Pascoe to be repaired. On March 31, 2000, the repairs were completed but on this same day the car was destroyed by a fire for which Mr. Pascoe accepted liability. Because of the

unavailability of the car John lost a contract valued at \$16,500 from the National Hotel, for the transport of delegates attending a conference held in April 2000.

John who wants to institute proceedings against Edgar Phillistyn and Mr. Pascoe seeks your advice on the measure of damages.

Advise him.

QUESTION 4

Sol, a garment manufacturer, decided to expand production to supply the export market.

In fact, he had just secured a contract worth \$5M to supply a foreign company with children's clothing.

On January 1, 2001, Sol contracted with Ace Ltd. Building Contractors for the construction of a new factory. The factory was to be completed by June 30, 2001. The contract also provided, inter alia:

- (a) that in the event of non-completion by the date stipulated the contractor shall be liable to pay to Sol by way of liquidated damages the sum of \$20,000 for each month of delay, and
- (b) that if the factory is not completed according to specifications or the contractor fails to clean the site after completion, the contractor shall pay by way of liquidated damages the sum of \$250,000.

The factory was completed on November 1, 2001. This resulted in the loss of the \$5M contract. Further, Ace Ltd. refused to clean the site on completion. Sol has subsequently cleaned the site at a cost of \$15,000.

By a separate agreement, Sol hired a truck from Ace Ltd. to transport finished garments to the docks. The duration of this agreement was to be two years, either party being at liberty to terminate the agreement by two weeks notice and upon payment of \$10,000. On the expiration of three months of this agreement, Ace Ltd. gave two weeks notice to terminate but contend that they are not liable to pay the \$10,000.

Advise Ace Ltd. as to its liability to Sol in respect of both agreements.

QUESTION 5

Homesites Ltd. carries on the business of property developers. Charles is the owner of a parcel of land situated in an area for development. By an agreement in writing dated July 1, 1999, Charles agreed to sell the land to Homesites Ltd. for \$2.5M. The agreement provided that Charles would assist the purchasers in an application to the relevant authority for permission to subdivide the land into eight lots. Homesites Ltd. in the meantime entered into agreements with potential home-owners to sell the lots to them at \$450,000 each.

At the time of the agreement Homesites Ltd. made a deposit of 10% of the purchase price. They also paid \$50,000 for the preparation of the agreement and the cost of investigating title.

Shortly after the agreement, Homesites Ltd. discovered that the land was occupied by a gardener but on inquiry were told by Charles that the gardener was a mere licensee. It subsequently transpired that the gardener enjoyed protection under agricultural small holdings legislation. Charles therefore concluded that it would be almost impossible to eject him before the date fixed for completion. Charles repudiated the contract giving as his reason, the occupation by the gardener.

Homesites Ltd. have instituted proceedings claiming damages from Charles. They seek your advice as to the measure of damages.

Advise them.

QUESTION 6

In May 1998, Alice purchased the freehold of a two-storey building for \$450,000. She converted the ground floor into a factory and installed machinery to the value of \$165,000. On January 2, 1999, she commenced the manufacture and export of furniture earning annual profits of \$250,000. She resided on the upper floor.

On January 1, 2001, the property then valued at \$1.5M was partially destroyed by fire. The machinery was also partially destroyed. The building in its damaged state was valued at \$1.2M. Sparky, Alice's neighbour has admitted liability. Alice has been advised by her insurance claim adjusters that it would cost \$300,000 to repair the building and a further \$350,000 to import and install new state of the art machinery. It is estimated that rebuilding work would last for six months and it would be a further six months before the new machinery is imported and installed.

You are consulted by Alice who is anxious to restart her business. She tells you that since the fire she was forced to vacate the upper floor and is now renting an apartment at \$25,000 per month.

She seeks your advice on the likely measure of damages in an action against Sparky.

QUESTION 7

Patrick, a widower living alone, employed Joyce as his housekeeper. In January 1999, Patrick dismissed Joyce who took the following items from his home –

- share certificates for 2000 shares in AB Ltd. valued at \$10,000 together with a share transfer form signed in blank by Patrick;
- an antique chair valued at \$25,000 which had been in Patrick's family for generations;
- a laptop computer valued at \$25,000 the property of Patrick's nephew John;

Joyce had the shares transferred into her name. In March 2000, the value of the shares rose to \$20,000 but are now worth only \$5,000.

The laptop computer which was in need of repairs was repaired at a cost of \$1,500 by Joyce who sold it for \$20,000. Joyce has refused to return the shares and the chair.

Advise Patrick as to the appropriate remedy and the likely measure of damages in the event of legal proceedings against Joyce.

QUESTION 8

Mrs. Monni whose husband was injured in a road accident informs you that she wants to sue the owner of the minibus for the injuries suffered by her husband who was a passenger in the said minibus at the time of the accident. Mr. Monni is still in the Central Hospital. This is the twelfth week since the accident and Mr. Monni is not making any progress.

Mr. Monni's brother who likes to be called "Ed" tells you that he flew in from the U.S.A. to see his brother and he is far from satisfied with his brother's condition. He wants to remove him from Central Hospital and place him in a hospital in New York. Ed is of the view that the doctors in this country are not as skilled, nor are the diagnostic and therapeutic machines as "state of the art", as those in New York.

- (a) Advise Mrs. Monni in respect of –
- (i) the cause of action and measure of damages;
 - (ii) the legal problems, if any, which could arise if her husband is removed to a New York hospital, and whether he can get an advance payment to cover expenses.

- (b) State, giving reasons, what additional information you would require and prepare the documents necessary for obtaining information on the injuries suffered by Mr. Monni.
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