

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1987

R E M E D I E S
SUPPLEMENTARY EXAMINATIONS
(Monday, August 10, 1987)

Instructions to Students

- a) Time: 3½ hours
- b) Attempt FIVE questions but not less than TWO from any PART
- c) It is unnecessary to transcribe the questions you attempt.
- d) In answering any question a student may reply by reference to the Laws of any Commonwealth Caribbean Territory, but must state at the beginning of the answer the name of the relevant territory.

P A R T I

QUESTION 1

- a) Distinguish between a remedy in REM and a remedy in personam
- b) In 1985 Avarice who is a trustee under a trust used \$25,000 of trust money to purchase a painting for his wife's birthday. The painting is now worth \$50,000.

Advise Timmy and Tammy, the beneficiaries under the trust, whether they can recover the painting from Mrs. Avarice.

QUESTION 2

Mrs. S obtained an order from the Family Court requiring Mr. S to pay to her \$500 monthly for her maintenance and \$100 monthly for the maintenance of each of the five children of the marriage.

Mrs. S tells you further that she has heard from a reliable source that Mr. S has voiced his intention to make a voluntary transfer of all his interest in his business, the house he now occupies and three other premises that are now rented and from which he derives income, to the children of the former marriage.

She has received a letter from her husband's Attorney-at-Law informing her that Mr. S intends to move back into the matrimonial home and he requires the master bedroom for his sole use.

The matrimonial home has three bedrooms and two bathrooms and belongs solely to Mr. S. Mr. S is a violent person and before he left the matrimonial home about two years ago he was in the habit of beating Mrs. S very severely. In fact his first wife had divorced him on the ground of cruelty. Mrs. S is fearful that if her husband is allowed to return to the matrimonial home her 'life is going to be something of a hell'.

Advise Mrs. S whether her husband can be prevented from disposing of his assets and from returning to the matrimonial home.

QUESTION 3

a) "Where there is a right there is a remedy".

Discuss this statement paying attention to the distinction between the 'equitable' and the 'legal'.

b) Ginal agreed to purchase Greyacre from Mr. Bodle. The agreed price is \$250,000 which is payable as follows:

15% of the price payable on the signing of the agreement
and the balance to be secured by means of a mortgage of
the premises to Mr. Bodle.

Completion was to be within 90 days of the date of the contract. Mr. Bodle went to the U.S.A. one month after the deposit was paid and spent a month there. On his return he noticed that substantial repairs had been done to the premises. His agent, who presented him with bills in his (Mr. Bodle's) name for work and materials, explained that Ginal had suggested that the repairs be made because a 'valuer was going to value the premises'. After investigation Mr. Bodle discovered that the agent was in collusion with Ginal and had agreed to secure a buyer to pay \$500,000 for the premises in consideration of a commission of 15% of the profit that Ginal would make on the deal.

Mr. Bodle wrote to Ginal informing him of his findings and indicated that the "contract was cancelled".

Ginal has filed an action in the Court claiming inter alia, specific performance of the agreement.

Advise Mr. Bodle generally and in particular whether he can successfully resist Ginal's application for an interlocutory injunction to restrain Mr. Bodle from disposing of the premises pending the determination of the action.

QUESTION 4

The President of the Ultra Left Movement Mr. Pomeroy obtained from the Court an order declaring, inter alia:

- i) that his rights to freedom of expression and association guaranteed by the Constitution have been abridged and violated by the Victory Government School Board in that he was prevented without reasonable cause from using the Victory Government School Auditorium for the purpose of addressing members of the public;
- ii) that the chairman and members of the Victory Government School Board violated and abridged his right to equality of treatment by refusing to permit him to use the school auditorium for expression of his political views while they permitted other groups so to do; and
- iii) that Mr. Pomeroy was entitled to use the auditorium on the same basis and on the same terms as any other person.

The chairman and members of the School Board were parties to the action and a certified copy of the Order of the Court was served on each. They however persisted in their refusal.

Pomeroy tells you that he wants to see the "Chairman and his gang behind bars for disobeying the Order of the Court".

Advise him.

P A R T II

QUESTION 5

Aldon suffered severe injuries to his spine in an accident for which Complex Ltd. has accepted full liability. As a result of these injuries Aldon is completely paralysed from his neck down.

On his discharge from hospital he was taken to his mother's house. The other members of his mother's household are lodgers who pay \$100 each per week for a room.

It was agreed that in consideration of each lodger helping to provide care for Aldon Mrs. Hill (Aldon's mother) would forego the weekly sum.

Aldon's brother Benni changed his employment to take work at lower wages so that he would be available to help with Aldon for a period of three months during which Mrs. Hill was on vacation.

Aldon subsequently signed an agreement to pay his mother \$200 per week for nursing him. He also agreed in writing to pay Benni \$100 per week for attending to him.

At the hearing of the assessment it was submitted that Aldon should recover, inter alia, the following:

- i) loss of income to Mrs. Hill and Benni; and
- ii) weekly sums paid and payable to Mrs. Hill and Benni under the agreements.

It was submitted on behalf of Complex Ltd. that certain insurance payments received by Aldon under his health insurance policy in respect of medical, surgical and prescription expenses should be taken into account for the benefit of Complex Ltd.

Comment on the submissions.

QUESTION 6

"The object of damages ... is to compensate". Lord Devlin.

Discuss this statement and indicate whether and under what circumstances there are exceptions.

QUESTION 7

Mr. J. Mapp suffered a back injury in a traffic accident some time in December of 1979. Action was filed on his behalf some time in 1983. At the hearing of the assessment early in 1987 Mr. Mapp gave his age as 62 years.

q He complained of feeling pains and had to be seated during the hearing which was stopped for about 3 minutes to permit him to put medication in both eyes and to take medicine.

At the time of the accident he was a Life Underwriter and ever since the injury he has been unable to work. The medical expert witness testified that Mr. Mapp was a diabetic and suffered from glaucoma. The injury to Mr. Mapp's spine had resulted in a degenerative condition (meaning that the condition will get worse rather than better).

a) Outline and discuss the principles applicable to assessment of damages for personal injuries under the following heads:

- i) pain and suffering;
- ii) loss of earning capacity;
- iii) special damages in respect of hospital and medical care in the U.S.A. where he has been residing since 1980 as well as air fares to and from the U.S.A.; and
- iv) interest.

b) Advise in respect of Mr. Mapp's claim for damages.

QUESTION 8

By an agreement for sale and purchase dated November 6, 1981, Harriman agreed to sell and Oral agreed to buy Blackacre at a price of \$112,500. The price was payable as follows:

\$11,250 on the signing of the agreement and \$10,125 per month until the total purchase price is paid.

It was also agreed that should the purchaser fail to pay any instalment the vendor may "cancel the contract and retain all sums already paid".

Oral who is not in possession of the premises has paid the deposit and 4 instalments. He tells you that he has lost his job and is unable to pay any further instalments.

a) Advise Oral.

b) Assuming that there is no forfeiture provision in the contract and that on the date fixed for completion the purchaser indicates to the vendor that he is no longer interested in acquiring the premises, advise Harriman of the basis on which damages should be assessed.