

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1988

REMEDIES

(Monday, August 8, 1988)

Instructions to Students

- a) Time: 3½ hours
- b) Answer FIVE questions but not less than TWO from either 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.

PART A

QUESTION 1

(a) " ... When there has been a purported termination of a contract of service a declaration to the effect that the contract of service still subsists will rarely be made." FRANCIS v MUNICIPAL COUNCILLOR of KUALA LUMPUR [1962] 3 All E.R. 633 at 637 per Lord Morris of Borth-Y-Cest.

Discuss this statement and, with reference to decided cases, indicate what if any circumstances will impel a court to grant an order which tends to enforce a contract of service in defiance of the will of one of the contracting parties.

(b) Mr. Smart Alec is the tenant of Black Acre. Mr. Volteer had leased Black Acre to Mr. Southby who in turn had assigned his leasehold interest to Mr. Smart Alec. Prior to this assignment Mr. Southby had, in accordance with the lease, sought and obtained Mr. Volteer's consent. Smart Alec wants to assign the residue of his term to Mr. Southby. Neither of them believes there is any need to seek Mr. Volteer's consent. Mr. Volteer has been informed that negotiations are taking place with a view to concluding the transaction as soon as possible.

Advise Mr. Volteer whether and by what means he can prevent the assignment.

QUESTION 2

(a) "Where a man threatens and intends to do an unlawful act [a Court of Equity] will, before it is done, grant an injunction to prevent his doing it ... - the jurisdiction is simply preventive."

Discuss this statement and indicate the factors which a plaintiff and his/her legal advisers must consider in order to invoke successfully this preventive jurisdiction.

(b) Mr. Phoebe is the owner of land adjacent to Mr. Pele's land. Mr. Pele migrated to England in 1958 leaving a nephew in charge of his land. In December 1986, Mr. Pele returned home for a vacation. During that period Mr. Pele received a notice inviting him to be present at a survey of Mr. Phoebe's land. Mr. Pele objected to the survey on the ground that Mr. Phoebe was encroaching on his land. As a result the surveyor declined to survey Mr. Phoebe's land.

Mr. Pele returned to England in September of 1987. Mr. Phoebe had the land surveyed in December 1987, notwithstanding the objection voiced by Mr. Pele's nephew. Mr. Phoebe told the surveyor that "the boy is a squatter." Mr. Phoebe has commenced building a house partly on his land and partly on Mr. Pele's land. Quite early in the construction stage he received a letter from Mr. Pele's legal adviser requiring him to demolish such parts of the building as may be on Mr. Pele's land within 7 days failing which a court order would be obtained to compel him to do so.

Mr. Phoebe tells you that a student has told him that if he can hurry and complete the building the most he would have to do is pay damages to Mr. Pele. As a result he had workmen working by floodlights at night, and now that the building is near completion he has been served with a summons.

Advise Mr. Phoebe whether he may be required to demolish his house.

QUESTION 3

(a) Write short commentaries on the defences of hardship, and absence of mutuality and indicate the extent to which there have been any new developments in the application of these defences.

(b) The Government of your territory has served a notice of acquisition on Mrs. Bertham O'Mally in respect of the acquisition for public purposes of 500 acres of land adjacent to the airport. Mrs. O'Mally consults you with a view to seeking an injunction to restrain the acquisition.

Advise Mrs. O'Mally on her rights.

QUESTION 4

(a) "A plaintiff must have regard to a number of factors in addition to traditional discretionary considerations which a court of equity must consider before granting an interlocutory injunction."

Discuss this statement. (Do not refer to any of the traditional discretionary considerations).

(b) Mr. D.C. Sharp who has recently returned from England informs you that in 1978 he agreed to purchase land from Alson Eversell. The transaction had not progressed beyond the agreement stage. He shows you a memorandum of the agreement which appears to have been duly signed and you observe that the parties, price and the premises are adequately described therein. He had in the past returned home annually but although he had driven past the premises he had never pursued the matter with Mr. Eversell.

He tells you that he would like to complete the transaction and he wants to know if he should pay the deposit now although it was payable at the time he signed the contract. He tells you that a friend had seen the premises advertised for sale. He also states that if the land was in England he would be able to get an injunction without Mr. Eversell knowing of it and he knows that "our law is the same as English law."

Advise Mr. Sharp.

Part B

QUESTION 5

Read the following draft partial Statement of Claim and follow the instructions at (i) and (ii) below:

PARTICULARS OF INJURIES

- (a) Abrasions to forehead
- (b) Tenderness and swelling of mid shaft of right femur with hyper-extensibility of the right knee - X-Ray showed a comminuted fracture upper right femur.

- (c) Leg was rested in a splint and a metal pin inserted through the upper end of the leg bone in order to allow for efficient traction. Continued on traction followed by a period of mobilisation in bed then allowed up on crutches.
 - (d) Physiotherapy recommended; walking unaided but with slight limp. Full movements at the knee regained, but tired feeling in the right leg after prolonged standing or walking.
 - (e) Fracture united but with half-inch shortening which can be compensated by the use of a raise on the heel of the right shoe.
- (i) Comment on the draft;
 - (ii) Redraft the Particulars in accordance with your comments.

QUESTION 6

(a) Mr. McDougal's skull was fractured in a traffic mishap for which Ivan Hustler is liable. McDougal underwent an operation to elevate the depressed fracture. As a result of the negligence of the anaesthetist during the operation, "something went wrong" and Mr. McDougal is now paralysed from the waist down. The Hospital Board wishes to know how damages should be assessed.

Advise the Hospital Board.

(b) "The doctrine of mitigation applies to contract as well as tort."
Discuss this statement and illustrate by reference to decided cases.

QUESTION 7

Mr. Jolly is 45 years old and a painter by trade. He suffered serious injuries to his right hand as a result of an assault committed by John Deveel. He filed suit in person but he now needs legal advice because he is "now presented with a very difficult decision."

John Deveel's medical adviser has informed Mr. Jolly that he must undergo a certain surgical operation which would restore ninety per cent of the function of his right hand. The surgery, if proceeded with this year, would cost \$15,000. Hospitalisation and medication for the 20 weeks that he would be hospitalised would cost approximately \$10,000.

Mr. Jolly tells you that he does not have the money but if he decides to have the surgery done he would have to borrow the money from his brother. He is concerned that he will not be able to repay the loan.

- a) Advise Mr. Jolly how any decision he takes will affect the measure of damages applicable to his case.
- b) Would your advice be different if Mr. Jolly is one of the persons whose blood does not clot easily?

QUESTION 8

(a) "In the process of assessing damages judges endeavour to take into account all the relevant changes in a claimant's circumstances which have been caused by the tortfeasor." WEST v SHEPHERD [1963] 2 All E.R. p.631 per Lord Morris

Discuss this statement and with reference to decided cases indicate whether the judges in your jurisdiction have taken the same approach.

(b) Advise, giving reasons, whether the following may be brought into account to reduce any award made in a plaintiff's favour:

- i) Sums from insurers under an Accident Policy;
 - ii) Sum of \$10,000 from a disaster relief fund;
 - iii) Sums amounting to one-half of salary monthly from employers;
 - iv) Sum of \$2,000 paid by an uncle for medical and prescription expenses;
 - v) Amputation of an injured leg that had been prior to amputation a source of much pain and suffering.
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