

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

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LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATION, 1990

REMEDIES

(Tuesday, August 14, 1990)

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Instructions to Students

- a) Time: 3½ hours
 - b) Answer FIVE (5) questions only.
 - c) In answering any question a student 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.
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QUESTION 1 ✓

Jason, a mechanic, was injured in a motor vehicle accident by reason of the negligence of Mr. L. B. Hunter a sergeant of police. He was advised by Dr. Care, sergeant Hunter's personal physician, that the disability in his right hand could be reduced from 100% to 15% if he underwent a certain operation costing \$4,000. Jason was advised by Dr. Care that he should see Mr. Verify, a Consultant Neuro-surgeon, for examination and counselling. Dr. Care made an appointment for Mr. Verify to see Jason.

Jason discussed with his wife all that Dr. Care had told him. He formed the view that Dr. Care was only "trying to get sergeant Hunter off the hook". He decided not to keep the appointment. Mrs. Jason suggested that a good hand may be better than money. Jason's reply was that sergeant Hunter cannot avoid the responsibility of maintaining him for the rest of his life.

- (a) Advise Jason on the measure of damages.

 - (b) Advise on the basis that the facilities available to perform the operation are in the U.S.A. and Jason is afraid of air travel.
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QUESTION 2

Mr. J. J. McIntuch has a 16 year old motor car called "Suzie" which was parked on the road outside his home. In September, 1989 a truck collided with "Suzie" and it was extensively damaged.

The adjusters report indicates that the car is a constructive total loss and also states a salvage value.

Mr. McIntuch is adamant that "Suzie" can be repaired and has put it in the hands of his mechanic. He is unable to find enough money to do the repairs. Meanwhile, the costs of repairs and replacement have doubled.

Mr. McIntuch wants to sue the owner of the truck.

Advise him as to the measure of damages.

QUESTION 3 ✓

Carmen was a 24 year old unmarried public relations officer. She also worked as a part-time actress with the drama unit of the local television station. In July 1988 she was knocked down by a motor car driven by Kenny who accepted that he was totally to blame for the accident. She suffered lacerations to the face, a broken jaw and a dislocated hip.

The lacerations healed but there was extensive scarring for which Carmen underwent plastic surgery. However she is left with some residual scarring. The cost of this surgery was met from the proceeds of Carmen's accident insurance policy. The broken jaw has healed but Carmen is left with a slight speech defect.

The injury to Carmen's hip required surgery which was done in Canada at a cost equivalent to \$20,000, local currency.

QUESTION 3 (Cont'd)

This surgery could have been done locally at a cost of \$18,000. Carmen chose to have surgery in Canada because she wanted to be near her mother who was resident in that country.

In July, 1989 Carmen resumed her job in public relations. However, because of the hip injury, residual scarring and the speech defect she was forced to give up acting.

A recent medical report indicates that Carmen suffers moderate to intense pain whenever she stands or sits for long periods and this is likely to continue for some time in the future.

A recent psychiatric report shows that Carmen is suffering from severe depression brought on by her fear that the scarring to her face will reduce her prospects of marriage. Further she is fearful of dealing with strangers at her work place and her employer has threatened to assign her to the position of telephone operator at a reduced salary.

Carmen seeks your advice as to her measure of damages as Kenny is willing to settle the matter out of court.

Advise her.

QUESTION 4

Mr. Small tells you that his cultivation comprising 20 acres of sugar cane is being destroyed by a herd of cattle owned by his landlord, Mr. John Land-Baron, whose stated intention is to force Mr. Small to terminate his lease out of sheer frustration so that Mr. Land-Baron could use the land for the cultivation of orchids. While Mr. Land-Baron's cattle are grazing in Mr. Small's cultivation there are three security guards, each

QUESTION 4 (Cont'd)

with a dog guarding the field to prevent any impounding of the animals. The security guards are employed to Tight Security Company of which Mr. Land-Baron and his wife are the shareholders.

Mr. Small is severely bitten by one of the dogs when he tries to enter his cultivation.

Advise Mr. Small.

QUESTION 5

- (a) Distinguish between nominal damages and contemptuous damages.
- (b) Your Bar/Law Association has asked you to prepare a short paper for presentation to the Law Reform Committee which will soon be conducting a public hearing on the advantages and disadvantages of lump sum awards as compensation in personal injuries claims. Prepare the paper.
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QUESTION 6

Magnus, the Manager of All Day Tourist Charters Limited informs you that his company wants to place an order for 50 coaches to be constructed by Wild Bunch Assemblers Limited and delivered over a period of six months. All Day Tourist Charters Limited is selling out its old coaches on a phased basis and would wish to obtain new coaches as replacements. Unless the coaches are delivered within the stipulated times substantial sums of money could be lost.

Advise Magnus on the options available to made provision in advance in case of any breach of contract by Wild Bunch Assemblers Ltd.

QUESTION 7

(a) Assess the usefulness of the following report to potential users. Indicate, giving reasons, whether there are any other heads of damages under which additional compensation could have been awarded without risk of overlap.

Trial: February 2, 1981

Plaintiff - male, left-handed, aged 20, single, labourer - injured in a motor vehicle accident on March 20, 1975, had right arm torn off.

Personal Injuries

Loss of right arm from the middle of right upper arm.

Treatment

Admitted to hospital and remained for one month.

Disability

100% permanent disability of right upper arm.

Special Damages: \$125.00 (agreed).

General Damages: assessed as follows:

Loss of future earnings	\$27,000.00
Pain and suffering	20,000.00
Artificial limb	<u>7,000.00</u>
TOTAL	<u>\$54,000.00</u> =====

(b) Denton who is right-handed was thrown from his pedal cycle some time in June 1988. He sustained injury to his right shoulder which resulted in 100% permanent disability of the right arm. Denton who has

QUESTION 7 (Cont'd)

gone to the U.S.A. on the Farm Work Programme every^{year} for the past five years is no longer acceptable for the programme. He is extremely despondent. At the time of the injury he was 28 years of age. Once his health permitted he was acceptable for the programme until he was 35 years of age. When he was not in the U.S.A. he did farming on his own.

You are in the process of negotiating a settlement with the Nopay Insurance Company. You received a letter from the claims' manager offering general damages in the sum of \$47,000. He points out that the court in your jurisdiction had made a similar award in a previous case where the injury was similar. (This is a reference to the report at (a) above).

Prepare a memorandum in answer.

QUESTION 8

Alfie Sanfie who is a crane driver suffered severe injuries to his spine in an accident for which Mr. B. T. Knockdown was two-third responsible.

As a result of the injuries, Alfie is paralysed from his neck down. On his discharge from hospital he was taken to his mother's home. The other members of his mother's household are 4 lodgers who pay \$200 per month. It was agreed that in consideration of each lodger helping to provide care for Alfie Mrs. Lynch (Alfie's mother) would forego the monthly sum for each lodger. Two of the lodgers became uncomfortable with the arrangement and left. They have not been replaced. Alfie's house has been let to a tenant who pays \$800 monthly as well as all utility bills

QUESTION 8 (Cont'd)

and who has the obligation to repair the premises.

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

Subsequently, Alfie signed an agreement to pay his mother monthly, \$200 for his room and \$300 for nursing him and to pay his brother \$100 per week.

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

- (i) lump sum for loss of earning capacity
- (ii) sums paid and payable to Mrs. Lynch and Andy
- (iii) loss of income to Mrs. Lynch.

It was submitted on behalf of Mr. Knockdown that items (ii) and (iii) are not recoverable and that the following items should be considered in reduction of any sum awarded under item (i) above:

- (i) Rent from the letting of Alfie's house
- (ii) Savings on living expenses
- (iii) Tax liability.

It was also argued that certain payments received by Alfie in respect of his health and accident insurance on account of medical, surgical and prescription expenses and loss of earnings should be taken into account for the benefit of Mr. Knockdown.

As a Law Clerk assigned to the trial judge advise him on all submissions.
