

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1994

REMEDIES

(Friday, August 12, 1994)

Instructions to Students

- (a) Time 3 1/2 hours
- (b) Answer FIVE questions.
- (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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Tyco Boris, aged 35, an engineer who earned about \$750,000 per annum, was injured when he visited a building site where he was carrying out an examination on behalf of Fair Deal Contractors Ltd. The injury was caused by the collapse of scaffolding. He died four days after the event without having regained consciousness. Fair Deal Contractors Ltd. employed Mr. Q. Snooper Brown to carry out investigations. Mr. Q. Snooper Brown, in chatting with Mrs. Boris, observed that Tyco Boris' crash helmet was on the bar counter in the Boris' private home bar. He learnt from Mrs. Boris that Tyco had not worn it on the morning he was injured. He had not slept at his home the night before. Snooper visited a friend of Mrs. Boris and learned that Tyco was an unfaithful spouse who lavished his earnings on extra-marital associations. Tyco was always very well dressed. He played golf and entertained stylishly and regularly, using commercial caterers. His marriage to Mrs. Boris produced two children, Tyco Junior, aged 10 and Vioris, aged 14.

Tyco was not family oriented but he provided the necessities for his family. The matrimonial home was a splendid structure and whenever Mrs. Boris complained about his behaviour he always remarked how lucky she was "to have a roof over her head".

Tyco paid the maid and the gardener. He paid the school fees and bought books for the children. Mrs. Boris and the children travelled around by taxis paid for by Tyco. He paid the

mortgage on the house and gave Mrs. Boris about \$4,000 weekly as "pocket money". He died intestate. His multi-million dollar life insurance policy proceeds go to his estate and the mortgage on the house will be completely repaid by an insurance policy which was effected for that purpose.

Fair Deal Contractors Ltd. obtained statements to the effect that Tyco refused offers to provide him with crash helmets on that fateful day. All information has been submitted to their insurers who seek your advice.

Advise them.

QUESTION 2

Benjie Johnson was a machine operator with Paper Recyclers Limited. He joined the company at the age of 19 and worked for 10 years until the fingers on his right hand were crushed by a defective machine.

While he was in hospital he lost his job. During the time he was in hospital his mother visited twice weekly to cheer him up and to deliver clean clothing for him. She also brought special food.

The injured fingers have healed but they cannot be extended and he is unable to make a fist. The medical report indicates a 15% permanent disability in the right hand.

Benjie spent two years without doing any work because he thought that his doctor had said that he was permanently disabled. After he discovered his error, he was able to secure employment with a mining company as a labourer. His wages have doubled and he gets a lunch voucher valued at \$25.00 per work day.

Advise Benjie on the measure of damages.

QUESTION 3

Mr. and Mrs. Upstart wish to employ Fancy Construction Inc. to build their house. Although they have heard bad reports about that company, they still wish to give them the job. They wish to know whether there is any legal way by which they could force Fancy Construction Inc. to build and deliver the house within six months. They have not yet signed any agreement but their express wish is that if Fancy Construction Inc. fail to deliver the house within that time that they be penalised in damages.

Advise Mr. and Mrs. Upstart.

QUESTION 4

On June 25, 1994, Damion's car (which he used as a taxi but which was licensed and insured for private use only) was severely damaged in an accident for which Helena Uppety was wholly liable.

Damion's car, before the damage, was valued at \$25,000. Damion shows you his mechanic's estimate of the cost of repairs which will cost nearly twice the pre-accident value. He tells you that he earns \$500 net daily from his "taxi" operation. He wishes to know his rights.

Advise Damion.

QUESTION 5

Under a contract for the sale of Blackacre, your client, the vendor, agreed to sell Blackacre to P who agreed to pay at the signing of the agreement, a deposit of \$250,000, being 10% of the contract price.

It was agreed that he would take possession on payment of the deposit and that the balance of the purchase price should be paid in instalments amounting to 10% of the purchase price every six months. The purchaser has paid the initial deposit and two instalments. He discovers that Blackacre no longer suits his purpose and refuses to make any further payments. He asks your client to refund all that he has paid in exchange for repossession of Blackacre.

There is a provision in the contract permitting the vendor, in case of breach of contract by the purchaser, to "retain as liquidated damages all monies paid prior to any breach".

Advise the vendor.

QUESTION 6

Miss Gloria Brevly was dismissed on January 2, 1994, from her employment to Hi Fash Salon as a hairdresser. During her tenure she proved to be a very valuable employee. She was a very friendly person and many clients were impressed not only by her friendly attitude but by the skill and competence she brought to her job. No client has ever complained of suffering the slightest chemical burn when she processed their hair. As a result, she was in great demand and earned substantial tips.

She was greatly disturbed by the dismissal. She has been trying to obtain alternative employment but without a recommendation from Hi Fash Salon (which has been unreasonably refused), she has not been successful.

She made a third attempt to get a recommendation from Hi Fash Salon but to no avail. She was told that she could return as a "shampoo girl" at the same wage.

She is minded to open a small salon at her home.

Advise Miss Brevly.

QUESTION 7

Mr. Desperado is the owner of an apartment occupied by Miss Phillipa Dainty who is paying a low rental. He desires to repossess the apartment but he has no legal grounds because Miss Dainty is such a good tenant and such a "proper lady". He knows

that he could get a higher rental for the apartment. Furthermore, he would prefer to have the apartment let to a person who would be more accessible to his needs. Miss Dainty is out of the country for two months.

He wishes to remove Miss Dainty's belongings, change the lock and prevent her from re-entering. He tells you that he knows that he may have to compensate her but he is prepared to take that risk.

Advise him.

QUESTION 8

"With regard to damages for breach of contract for the sale and purchase of real estate the law differentiates between a breach by a vendor and a breach by a purchaser."

Discuss.
