

**COUNCIL OF LEGAL EDUCATION**  
**NORMAN MANLEY LAW SCHOOL**  
**SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1997**

**REMEDIES**

**Thursday, August 14, 1997**

**Instructions to Students:**

- (a) Time: 3½ 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 not necessary to transcribe the question you attempt.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED**

QUESTION 1

Miss Winsomm was engaged as a singer/performer in the National Pantomime and Dramatic Production which is taken by the organisers to different districts each month. She was paid a weekly sum of \$3,500 and transportation allowances if she presented herself for work punctually and regularly and observed all the rules which were contained in a booklet marked "Code for Performers".

The rules in this booklet (which are incorporated in the contract) deal with matters of dress, deportment, personal reputation, punctuality and attendance at rehearsals. A clause in the contract provides that any singer, performer or actor who breaches the contract or the Code for Performers should pay to the Organisers (National Pantomime and Dramatic Production Limited) the sum of \$1,500 as liquidated damages for breach of contract (which includes any breach of the Code).

One day in April, 1997, Miss Winsomm turned up late for rehearsals. She was wearing a pair of Hottentot shorts. She appeared intoxicated and fell asleep during rehearsals.

Miss Winsomm has been asked to pay \$6,000 as liquidated damages for four breaches of the rules.

Advise Miss Winsomm.

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QUESTION 2

Mr. Wilfried Earl is 55 years old and works as a typesetter and supervisor in a small printing establishment, Luxurious Printers, which produces very high quality stationery, invitations and calling cards etc. for an exclusive clientele. This establishment uses a very obsolete typesetting method. The other workers in the establishment desire trade union representation because they claim that the management "make good money and their conditions of employment are woeful".

Mr. Earl is adamant that while conditions of work "are not ideal" he is not joining any trade union. The management was pressured into dismissing Mr. Earl, July 31, 1997, giving him two weeks pay in lieu of notice. Mr. Earl is very dissatisfied. He had worked with Luxurious Printers for 20 years. He started out on contract and then was put on tenure. His retirement age is 65. There is no market for his skills as type-setter and supervisor.

Advise Mr. Earl on the measure of damages.

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QUESTION 3

On April 10, 1997, Derrick's motor car was damaged in a collision for which he blames Alvin Boiss. Derrick uses his car as a taxi although it was not a licensed public passenger vehicle. Derrick's mechanic inspected the damaged vehicle and assessed the cost of repairs at \$85,000. The pre-accident value of Derrick's motor car is \$65,000.

You have perused the loss adjuster's report and note that compensation should be based on constructive total loss basis. Derrick tells you that he is very attached to his car and he intends to have it repaired. He earned \$500 per day.

Advise Derrick.

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QUESTION 4

Cammlot, a dealer in real estate, agreed to buy and Oswald agreed to sell Black Acre - premises in an up-market locality. The contract price is \$3.5m. Cammlot and Oswald knew that the demand for land in this area was high especially since a number of returning residents and foreign nationals were settling in this area. Both parties discussed this fact. Cammlot, within 6 days of signing the contract for sale and paying the deposit signed an agreement to sell Wilki Black Acre. for \$6.5m. Wilki made a down deposit of 10% of the sale price. When Oswald learned of the agreement between Cammlot and Wilkie, Oswald became very annoyed and decided not to continue with the transaction "in order to show that hustler Cammlot a thing or two".

Advise Oswald.

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QUESTION 5

Newton Fearless, a newspaper columnist, was known for his candid opinions expressed in the "Daily Diatribune" where he was employed as a journalist. The view was often expressed that "the Diatribune has no merit if Fearless' column was not published". The Editor of the "Daily Diatribune" gave Fearless the ultimatum "to tone down his writing or resign" because the newspaper is facing two libel suits and is losing it's most profitable advertising clients as a result of Fearless' "misguided bravado". Fearless resigned and thereafter, subscription to the Daily Diatribune declined substantially. Bravo, the Editor of the Bi-weekly Bomber is minded to hire Newton Fearless who he thinks will help to buttress the sagging fortunes of his newspaper. He is however concerned as to his newspaper's liability in the event it is sued for libel as a result of Fearless' articles.

Advise Bravo.

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QUESTION 6

"You should as nearly as possible get at that sum which will put the person who has been injured ... in the same position as he would have been in if he had not sustained the wrong".

Per Lord Blackbourne - Livingstone v Rawyard Coal Co. (1880) 5 App. Cas 25.

Discuss this dictum in respect of claims for loss of support by dependents of the victim of a fatal accident and the claim by the deceased's personal representatives.

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QUESTION 7

Nineteen year old Bertie Jones modelled sports wear for Exclusive Make menswear for the young set and the young-at-heart. On May 19, 1997, Bertie was involved in an accident for which Edgar Phillistein was 75% to blame.

Bertie's injuries include -

a fracture with dislocation of the cervical spine between the fifth and sixth cervical vertebrae; compound fracture of the left tibia and left humerus; fracture of the left patella; damage to the left radial nerve.

Before the injuries, Bertie earned \$5,000 per week. He modelled at hotels (local and international). He always received food and entertainment "on the house". Whenever his employers advertised abroad his air fare, ground transport and hotel accommodation were all paid for by his employers.

In addition to his salary Bertie is entitled to a clothing allowance and three sports suits per annum. Bertie who is in a wheelchair but mentally alert, consults you.

Advise Bertie on the further information including documentary evidence which is necessary to assess his claim for damages.

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QUESTION 8

In June 1995, Pandora Moxhill was injured when her boyfriend , Randolph, so negligently drove his car that it collided with a trailer. Pandora's injuries left her severely permanently disabled. She will need constant attendance and care for the balance of her life. Pandora who was 22 years old at the time she received the injuries can no longer work as a secretary.

The trial judge who assessed damages against Randolph awarded a lump sum which included \$1.5m as cost of care (attendance, doctors fees and medicines) for Pandora. Randolph , who is a medical student in his final year and Pandora are now married. Randolph's insurers now wish to appeal.

Advise the insurers.

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