

**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE**

**SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1998**

**REMEDIES**

**(Wednesday, August 12, 1998)**

**Instructions to Students:**

- (a) Time: 3½ hours
- (b) Answer FIVE questions
- (c) In answering any question, a candidate 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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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

## QUESTION 1

Connally suffered severe injuries to his spine in an accident for which Caljon Ltd. is entirely to blame.

Caljon Ltd. has not accepted liability but is prepared to enter "without prejudice negotiation".

The negotiation is at present deadlocked because Caljon's legal advisers find some items of claim submitted by Connally (acting in person) to be "to say the least preposterous". In their letter to Connally they urge him to overcome his suspicion of lawyers and instruct counsel on the matter. They request supporting evidence. You are shown a copy of Connally's claim profile as submitted to Caljon Ltd.

Connally claims -

- pain and suffering;
- disability for life and loss of ability to work;
- impotence;
- cost of a house suitably equipped for occupation by a paraplegic;
- cost of nursing care provided by his wife Carla, a Registered Nurse, who has resigned her job at a private hospital. The nursing services are to be valued according to the salary scales in force at Carla's recent employment;
- loss of earnings by Carla who resigned her job one month after Connally's release from hospital in July 1997;
- hospital expenses for the period January to June 1997.

Advise Connally on the measure of damages and the admissibility of his claims.

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**QUESTION 2**

Benson is a pharmacist who has, until recently, been working with Up-Scale Med-Center.

In early March 1998, Benson took ill on the job and was hospitalised for three weeks. On April 2, 1998, Med-Centre's General Manager, Kelso Bramwell, telephoned Benson's home and requested him to return to work the next day. Benson explained that he had an appointment with his doctor and he felt obliged to attend because it was his first post-surgery appointment. Benson kept the appointment with his doctor and on April 4, 1998, Kelso Bramwell called Benson's home and instructed him to turn in his keys and collect his cheque. Benson is 68 years old and has been working with Med-Centre since he was thirty years old. He was trained in a metropolitan country and was considered by every objective assessment to be an excellent pharmacist. There are two institutions turning out pharmacists of reasonable theoretical competence. Most of the graduates are young persons who enter the job-market every year. Benson's financial package with Med-Center is as follows -

salary	\$10,000 per month
transportation allowance	\$ 1,000 per month
meal allowance (late shift)	\$ 500 per month
incentive bonus	\$ 4,000 per annum
medication at 50% discount.	

The incentive allowance is payable at year end and is at the discretion of the Board of Directors. Whenever there was a salary increase no incentive bonus was granted. There has been no salary increase to Benson or any other pharmacist at Med-Centre for the last two years. Benson has not yet

entered the job market. He is receiving a monthly sum of \$6,000 as illness, and unemployment benefit under a policy of insurance which he had taken out some years ago. Benson is worried over his future and his anxiety is impeding his full recovery. Benson consults you.

Advise Benson.

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### QUESTION 3

Jim and Nellie Sterling are returning residents. They approach Reliable Consultants Ltd. to seek information on reputable builders. They were given a very large book marked ***"All You Need To Know About Architects, Builders, Surveyors, Tradesmen & Other Professionals"***.

Jim and Nellie perused this book, found and selected a company - Anglo-American Builders. They selected this company because they thought that it had foreign support.

The Sterlings' subsequently found the registered office of the company and entered into a contract to have their house built by this company. They signed the company's standard form contract which contained inter alia, that "the structure, the subject matter of this contract, shall be completed and delivered to the owners at the end of 12 calendar months from the handing over by the owners of the building site...."

Penalty: In the event of a failure to complete or deliver within the contract time the builders shall forego the balance payable on this building contract".

Twelve months have passed since the commencement of the construction. The building is incomplete.

The Sterlings' have already paid to Anglo-American Builders, the sum of \$1.2 million. They retained \$800,000 to be paid to Anglo-American Builders if completion and delivery of the building are effected in accordance with the contract. You are told that \$800,000 is not sufficient to complete the building. They are also blaming Reliable Consultants.

Advise the Sterlings.

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#### QUESTION 4

John and Sara Allen are real estate dealers. While they were out on a "scouting mission" in the country they saw a parcel of land which they considered desirable for subdivision and sale as residential lots.

They were told that the land was owned by Altim Wyntergreen who lived not far away. They approached Altim and indicated their interest in the land. Altim was adamant that the land was not for sale and that it was agricultural land. Sara said to Altim "is this your last word on the matter?" Altim said "so true, so true, thou shalt not covet". Sara replied "Bye Mr. Altim but you have not seen or heard the last".

Later that night a fire destroyed the vegetation on the land as well as Altim's three bedroom house and new furniture. John, Sara and a third person were caught nearby. They were arrested and charged but only John and Sara were subsequently convicted of malicious destruction of property and arson. They were sentenced to imprisonment.

Altim instructs you to take legal proceedings against John and Sara and seeks your advice on the measure of damages recoverable.

Advise Altim.

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### QUESTION 5

C. Kay & Co. owned a year old motor car which they used in their business as driving instructors. The motor car was destroyed by fire when it was being refueled at Xtra Gas Suppliers. Xtra Gas Suppliers are minded to settle C. Kay & Co's. claim. The problem is that C. Kay & Co. are claiming -

- the cost of a new dual-controlled motorcar which is now a mandatory requirement for driving schools;
- loss of profits for six weeks from the destruction of the vehicle to the obtaining of a bank loan;
- loss of profits for the 12 weeks it would take to import and prepare the vehicle for the purpose;
- bank loan and interest at 16% per annum to purchase the dual-controlled motor car.

Advise C. Kay & Co.

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**QUESTION 6**

Trincia, aged 19 is the only child of her parents Carol and Jim. Trincia did very well at high school and obtained a scholarship to study medicine at the University. On October 1, 1997, Trincia was killed in an accident on the highway for which Peter was completely to blame.

Under a life insurance policy effected by Carol and Jim on Trincia's life some years ago, Carol and Jim received \$150,000. Jim who has just obtained letters of Administration to Trincia's estate tells you that he and Carol had invested a lot of time and money in Trincia's education and they were looking forward to support from her when she graduated and they retired.

Advise Jim as to the causes of action arising as a result of Trincia's death and the measure of damages recoverable.

Would it make any difference to your advice if Trincia was partly to blame for the accident?

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**QUESTION 7**

Ola and her daughter Jinna own No. 40 Grey Lane as joint tenants. Ola agreed to sell the premises to Markcroft at a price of \$4.5 million. The contract of sale provided, inter alia, that the purchaser pay a deposit of 10% of the purchase price on the signing of the contract. Completion was to be within 90 days of the date of the agreement.

Ola spent \$200,000 (out of the deposit) to discharge a mortgage on the premises and to prevent the mortgagees from exercising their power of sale by putting up the premises for auction as they had indicated by letter which predated the transaction with Markcroft. All this was unknown to Markcroft until he received a letter from Ola who indicated that she was no longer minded to sell the premises and he was welcome to his deposit, as well as any reasonable pertinent expenses.

Markcroft has discovered that Ola and her daughter have sold the premises for \$6.5 million which is the present market value. He also tells you that he has spent \$6,000 to have the premises surveyed with a view to carrying out repairs.

Advise Markcroft as to the measure of damages recoverable in an action against Ola and Jinna.

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### QUESTION 8

Joyce suffered severe personal injuries when a van owned and driven by Joey in which she was a passenger negligently collided with another vehicle.

Joyce suffered severe injuries to her head and experienced bouts of epilepsy for a short period after the accident.

Her recovery was rapid and the medical report at the trial of her action was that she would not be troubled by epilepsy in the future.

About six weeks after the award was made Joyce began to experience severe bouts of epilepsy and discovered that there was an arithmetical error in the computation of her special damages. This error was favourable to her. She also married Joey who was her fiance at the time of the accident.

Advise Joyce.

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