

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
SECOND-YEAR SUPPLEMENTAL EXAMINATIONS, 2000

REMEDIES

(Tuesday, August 8, 2000)

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 territory.**
- (d) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED

QUESTION 1

On January 1, 2000, while on their way home from a party, Donald and Tracyn, who was 35 years old, decided to take a short cut across the railway track. They climbed through a gap in the fence near to a sign which said "TRESPASSERS KEEP OUT - NO LIABILITY IS ACCEPTED FOR DEATH, PERSONAL INJURY OR DAMAGE TO PROPERTY, HOWSOEVER CAUSED".

Both Donald and Tracyn knew they were not supposed to be on the railway track.

The owners of the railway knew that people were in the habit of cutting across the track by climbing through the fence. Initially, they repaired the fence each time it was brought to their attention that it was broken. However, owing to the expense of maintaining the fence, they decided instead to invest in a warning device which was placed on the track and which would warn drivers of on-coming trains of obstruction on the track, thus giving the trains plenty of time to stop.

Tracyn, having had too much to drink, tripped over a loose plank of wood lying near the track and fell on to the track. The warning device failed to work and Tracyn was killed by an on-coming express train. Donald, who was trying to rescue Tracyn, suffered severe nervous shock as a result of the horrifying experience. Donald loved Tracyn and they were to be married in June 2000.

Tracyn, who died intestate, was an accountant who was struggling to qualify as a lawyer. She is survived by her son John, who is 14, an adopted daughter Cheryl who is 12 and her mother, Maria, who depend on her for support.

Donald and Maria seek your advice on the above.

Advise them.

QUESTION 2

Jim and Audrie Louisy are returning residents. They approach Assurance Consultants Ltd. to seek information on reputable builders. They were given a very large book marked

"MANUAL & DIRECTORY

ALL YOU NEED TO KNOW ABOUT ARCHITECTS, BUILDERS,
SURVEYORS, TRADESMEN AND OTHER PROFESSIONALS
AND ARTIFICERS"

Jim and Audrie perused this book and found the names and addresses of a number of builders and contractors. They selected "Shillingfords Incorporated - Contractors & Builders".

The Louisys subsequently found the business office of their selection and spoke to the general manager, Balfour Shillingford. They discussed their plans with Balfour who told them that his company used a standard form contract with certain terms.

They signed the company's standard form contract which contained, *inter alia*,

"the structure, the subject matter of this contract, shall be completed and delivered to the Owners at the end of six 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."

A period of six months has passed since the commencement of the construction. The building is incomplete.

The Louisys have already paid the sum of \$2.5m. In accordance with the contract, they retained the sum of \$1.5m. to be paid at the completion and handing over of the building to them.

An assessor retained to examine and assess the unfinished building reported to the Louisys that the structure was made of inferior materials and did not comply with the plan, and also failed significantly to comply with the mandatory building code. In terms of the materials used and the quality of workmanship, the structure could be valued at \$500,000.

In the meantime, the cost of building the house that the Louisys had contracted to build escalated to \$4.5m.

The Louisys again visited Mr. Balfour Shillingford's office to enquire what plans the company had to rectify the situation. Mr. Balfour Shillingford was most abrupt. He showed them the penalty clause and informed them that they could keep the balance that they had in hand.

The Louisys contact you.

Advise them.

QUESTION 3

Jake and Siona Alanby 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 belonged to Altim and Ceci Donovan. They approached the couple and indicated their interest in purchasing the land.

Altim, speaking for himself and his wife, told them that the land was not for sale and that it was agricultural land. Siona said to the couple "Is this your last word on the matter?" Altim said, "It is".

Later that night a fire destroyed all the trees on the Donovans' 10-acre property as well as their three-bedroom house and new furniture. Ceci was badly burnt and is still in hospital. Altim also suffered burns.

Jake and Siona and a third person, Alson, were caught nearby in possession of flammable materials. They were arrested and charged, but only Jake and Siona were subsequently found guilty of malicious destruction of property, wounding with intent and arson. They were sentenced to imprisonment.

Altim consults you. He wants you to commence legal proceedings against Jake, Siona and Alson

Advise him on the measure of damages recoverable and the mode of computation of the quantum.

QUESTION 4

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

The injuries to her head were severe and as a result, she experienced bouts of severe epilepsy for a short period after the accident. However, her medical report at the trial of her action was that she would not be troubled by epilepsy in the future.

There was no sum awarded for future care, since she had married Joni, who was caring for her.

Two months after the award was made, Joyce began to experience bouts of epilepsy and depression and regular outbursts of violent behaviour. Joni, who was unable to tolerate the changes in Joyce's behaviour, left the matrimonial home to live with a former girl friend who has recently returned from the U.S.A.

Joyce's sister, Elin, has left her job as a practical nurse at the General Hospital and is caring for Joyce who now has to spend more on medical expenses which include psychiatric, prescription and transportation bills.

Joyce consults you.

Advise her.

QUESTION 5

In October 1997, Miss Stricklie Booti was employed as a secretary to the chairman of Elite Airline. The view was held by employees of Elite that it was Miss Booti and not the chairman, Herbert Fidelity, "who ran things" at Elite. Miss Booti selected the flights and times of her work. She was in the habit of threatening other employees with dismissal. She was persistently insubordinate to the chief personnel officer.

In June 2000, Herbert Fidelity was dismissed as chairman. Shortly thereafter, Miss Booti received a letter terminating her services on the ground that she was academically unqualified and temperamentally unsuitable for the post of secretary to the chairman. The letter indicated that she had been employed as a secretary by the former chairman without the approval of the

selection committee. The letter continued to inform her that with regard to her "self-appointed position as air hostess", any permission she had received from the former chairman is now revoked.

She was given two months' pay in lieu of notice. Her pay was calculated on the basis of her initial appointment as a secretary.

As secretary to the chairman, Miss Booti received a basic salary that was twice the normal salary scale to which she had been entitled. Mr. Fidelity had, without the approval of the Board and in spite of the opposition by the chief personnel officer, added the following -

- free flights to any of Elite's destinations
- car allowance
- meal allowance
- cosmetic allowance
- housing allowance
- annual bonus if the Elite Board of Directors so decided
- allotment of shares if the Board of Directors so decided.

During her employment, the chief personnel officer had refused to grant her paid study leave to enable her to qualify for the job.

Shortly before the dismissal she had spent US\$1,500 to acquire special make-up. She had bought an apartment near the airport and used her housing allowance to help with the mortgage payment.

Miss Booti consults you in respect of the above.

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She tells you also that she has heard "on the grape vine" that Elite intends to sue her and Mr. Fidelity for any amount overpaid to her. Mr. Fidelity had told her that whatever he said or did at Elite had to be accepted. She did not understand how she could be sued. She says that she has been traumatised by

the dismissal and moreso since she cannot get a job because Elite has refused to give her a testimonial.

Advise Miss Booti.

QUESTION 6

J. Bunyan Holness, a business executive, collapsed at his office on the day after New Year's Day and dislocated his right shoulder. He was treated by Dr. Norte who diagnosed that it was a mere sprain. During the ensuing weeks, Mr. Holness realised that he was unable to use his right hand and the pain was excruciating.

On his way to an orthopaedic specialist, he was involved in an accident for which Carlos, the driver of the other vehicle, was wholly to be blamed. As a result, Mr. Holness suffered a fracture of the right humerus.

Advise Mr. Holness of the principles on which damages will be assessed.

QUESTION 7

Sheldon and Mario are joint owners of business premises in the city. Some time in January 1999, they decided to sell the property to take advantage of the rising real estate prices. In or about some time in May 1999, Mario told Sheldon that he was no longer interested in selling because it would be more profitable to renovate and sublet the premises.

On June 14, 1999, Sheldon entered into a contract with Suntana for the sale of the premises to him at the price of \$2.5m. Suntana paid \$20,000 for the preparation of the agreement and the cost of investigating title and \$250,000 by way of deposit.

Sheldon permitted Suntana to enter into possession of the premises pending completion on September 15, 1999, time being of the essence. On entering into possession, Suntana found a man occupying two rooms of the premises. This man was in fact a former tenant whose tenancy was determined by notice and against whom Sheldon had instituted proceedings for repossession.

From the date of the agreement, Sheldon tried his best to persuade Mario to join in the sale, but Mario steadfastly refused to sell.

On September 16, 1999, Suntana repudiated the contract and issued a Writ against Sheldon for breach of contract.

You are consulted by Suntana who tells you that he intended to subdivide the premises and let the units on long leases, thereby earning a net profit of about \$1.5m. annually. He further instructs you that the property is now worth \$3.5m.

Advise Suntana on the measure and quantum of damages.

QUESTION 8

Indicate the principles by which the measure of damages and quantum will be settled in the following cases -

- (a) Mrs. Anne Frances Brown, a 35-year old housewife, as a result of an accident for which Tom Tuft was to blame, suffered injuries to her right shoulder, which after extensive medical treatment, left her with little movement in that shoulder. Her use of her right shoulder was impaired to a considerable degree. She was unable to perform such household tasks as ironing, vacuum-cleaning and bed-making. She was also restricted, *inter alia*, in gardening, driving, cycling and washing her own hair. The depression which she suffered as a result of her injuries made it more difficult to supervise her children, aged 10 and 11, and affected her marriage. Her hopes of increasing her family were rendered impracticable and her inability to write with her right hand diminished her opportunities of returning to paid employment as a secretary.
- (b) Granville's Photos Ltd. was engaged by Mrs. Maeven to video-tape her daughter's wedding and the subsequent reception. It was also agreed that a photographer would be sent to take photographs.

The videographer and photographer unjustifiably failed to attend with the result that there was no record of the wedding and reception. Mrs. Maeven and her daughter are suffering considerable mental distress and disappointment as a result.
