

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

SECOND-YEAR SUPPLEMENTARY EXAMINATIONS, 2001

REMEDIES

(FRIDAY, AUGUST 10, 2001)

Instructions to Students

- (a) Time: 3 ½ 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Hans 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 rising real estate prices. Months later Hans told Mario that he was no longer interested in selling because he thought it would be more profitable to renovate and sublet the premises. Mario disagreed and was adamant that he wanted to sell.

On July 14, 1999, Mario entered into a contract with Patrick for the sale of the premises to Patrick, at the price of \$2.5 million. Patrick paid an initial sum which included the cost of preparing the agreement, cost of investigating title and the deposit.

Hans permitted Patrick to enter into possession of the premises pending completion on October 15, 1999, time being of the essence. On entering into possession Patrick 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 Hans had instituted proceedings for recovery of possession.

From the date of the agreement Hans tried his best to persuade Mario to join in the sale but Mario was steadfast in his refusal to sell. On October 16, Patrick repudiated the contract and filed suit against Hans to recover damages for breach of contract.

You are consulted by Patrick who tells you that he intended to subdivide the premises and let the units on long leases thereby earning substantial profits. He further tells you that the property is now worth \$3.5 million.

Advise Patrick on the measure of damages.

QUESTION 2

Jezie, a journalist, worked for several years with Jewel Limited, publishers of the "Daily Watch" newspaper. In addition, she hosted a weekly talk show on television station ABXTV.

On March 1, 1999, by a written agreement, Jezie was employed by Jewel Limited as a talk show host on its newly launched "Channel 10 TV". Under the agreement, Jezie was to host a show for two hours each week-day for a period of three years at a monthly salary of \$100,000 plus after show refreshments, if she had guests and the use of company car. Jezie was also given the option to renew the agreement for a further three years if she so desired. She was also given complete editorial freedom.

In the written agreement, Jezie agreed to relinquish her position as a journalist with the "Daily Watch" as well as her weekly talk show on ABXTV.

In December 1999, Sylvia, the chairman of Jewel Limited, warned Jezie that her attitude was undermining her tenure at Channel 10. Sometime in January 2000, Sylvia, again warned Jezie not to criticize negatively the editorial policy of the "Daily Watch" on her shows. Jezie ignored the warning and on subsequent episodes of the show Jezie persistently criticized the newspaper's stand on social issues. On one occasion she termed the newspaper "a deaf, blind and dumb watchman working for a socially comatose employer". Sylvia, who found Jezie's attack "vitriolic and insufferable", dismissed her from the show. Immediately after the dismissal, Sylvia offered Jezie the job of sub-editor on the "Daily Watch" with no loss of benefits. Jezie who refused to take up this offer is at present unemployed.

ABXTV has refused to re-hire her and rival newspapers have no vacancies.

Jezie is very distressed because she understands from friends in journalistic circles, that she, Jezie is being viewed "as a 'normless viper' who will sting even its most gracious charmer".

Jezie consults you.

Advise her.

QUESTION 3

In April 1999, Carlton and Ceres, a newly married couple, purchased a townhouse at Knobsville Terrace, a new up-scale development. Security at the townhouse complex was provided on a 24-hour basis by an elderly watchman.

Jaars, the owner of the parcel of land adjoining the complex, was engaged in the landscaping of his land and in the process changed the direction of a natural water-course. During November 2000, there was heavy rainfall causing a large amount of water from Jaars' land to accumulate against the rear wall of the townhouse. As a result, the wall collapsed causing extensive flooding and damage to the furniture and fixtures in the townhouse.

On November 30, 2000, Jaars accepted liability for the damage to the townhouse and promised to repair the damage "before the Christmas season". In the meantime because the townhouse was uninhabitable, Carlton and Ceres were forced to move in with Ceres' parents. Jaars delayed in executing the repairs and thieves and vandals broke into the townhouse, stole several items of furniture, vandalised the walls and stole bathroom and kitchen fixtures.

Ceres became very depressed at this state of affairs and had to seek medical attention. Carlton, an accountant, took time off from work, without pay, in order to concentrate on having the townhouse repaired. Carlton noticed that the cost of repairs and replacement of fixtures is higher than that which obtained when Jaars had promised to do the repairs.

Advise Carlton and Ceres regarding the measure of damages against Jaars.

QUESTION 4

Containers Ltd., manufacturers of containers for household business and other uses, wishing to expand their plant capacity have agreed with Excell Contractors Ltd. for the construction of a factory for making paper and plastic containers and for recycling waste paper and plastic. Containers wanted to be the first in the recycling market.

It was agreed that the factory should be completed within 45 weeks from the date of the final approval of the plans. A term in the contract provides that "if the period of 45 weeks is exceeded Excell Contractors Ltd. shall pay by way of liquidated damages the sum of \$800,000 per week for each week of delay and for each week that the plant is non-functional because of any defect in construction by reason of the use of inferior materials or sub-standard workmanship."

Excell Contractors Ltd. completed the factory ten weeks after the stipulated time. During this time Containers Ltd. found out that a major competitor, Fast Track Processors, had already started recycling from a prefabricated factory which was hastily imported and assembled.

Containers Ltd. had a haulage agreement with Provincial Carriers whereby Provincial Carriers would transport two containers of raw materials from the wharf to their factory in consideration of the sum of \$10,500 to be prepaid. Containers Ltd. duly paid the haulage fee. Yesterday Provincial Carriers, as a result of an error, delivered the containers to Fast Track Processors.

The Manager of Containers Ltd., Jimmy Pashens, consults you on the above.

Advise him.

QUESTION 5

Norton D. Esene consults you and tells you the following:

Nina Esene, his wife, was on November 10, 2000, killed when a container being hoisted by a crane fell on her and crushed her entire body. The crane was being negligently operated by Ritchie Doncare, employee of Scaffolding Ltd. Nina, who was 36 at the time, was a Senior Registered Nurse. She is survived by Norton, aged 40 and four children: Joseph aged 10, Alice aged 12, Marvin aged 14 and Janina aged 16.

Norton himself is confined to a wheelchair as a result of injuries suffered from a motor vehicle accident, on January 10, 1994. On May 12, 1997, he was awarded damages against the tortfeasor, Utility Company Limited. The award was for inter alia pain and suffering, loss of amenities, future care, loss of future earnings.

After he had received his award of damages, he and his wife, Nina, had agreed that she should work for four hours on the day shift at the State hospital so as not

to lose track of professional developments in the field of nursing and that she should devote the balance of her working time to provide care for him. Apart from her attentiveness to him as a spouse, she was in charge of his care. In addition to being a nurse, Nina was an accomplished artist. Norton was very proud of the fact that she had exhibited her paintings on two occasions and had received rave reviews from art critics. She also was teaching him to draw and paint. This relieved his depression. She used to sell some of her paintings. In addition instead of purchasing gifts for friends, relatives and family members, she would give them paintings as gifts.

Nina was a good wife and mother. She helped to 'stretch' money by her earnings and the savings which accrued and also by virtue of the nursing care which she gave him. She managed and cared for the children and supervised the household help with great skill and wisdom.

Norton is at his wit's end. He is in deep depression and the children are very sad. Joseph is suffering much more than the other children.

Advise Norton.

QUESTION 6

Haroll suffered severe injuries to his spine and back in an accident for which Caljon Inc. is entirely to blame. Caljon has not however accepted liability but is prepared to enter "without prejudice negotiation" for the purpose of an out-of-court settlement.

The negotiation is at present deadlocked because Caljon's legal advisers find some items of claims submitted by Haroll, who is acting in person, to be "to say the least preposterous and bordering on gold-digging". In their letter to Haroll they urge him to "overcome his suspicion of lawyers and instruct learned counsel on the matter." They request supporting evidence of his claims and have suggested that he consult with their medical adviser with a view to undertaking surgery to ameliorate his pain and suffering and reduce the present disability.

Haroll consults you. He shows you the letters from Caljon. According to the claim profile, Haroll is claiming under the following heads:

- pain and suffering and social handicap;
- disability for life and loss of ability to work;
- loss of earnings to date and continuing;
- handicap on the labour market;
- cost of a house suitably equipped for occupation by a paraplegic;
- cost of a car properly equipped for his condition as a paraplegic;
- salary for his wife Carla who has given up her job as a State Registered Nurse to care for him;
- loss of earnings by Carla who resigned her job at a private hospital in January 2000, one month after Haroll was released from hospital where he spent six months;
- hospital expenses for six months;
- special diets;
- cost of computerised wheel chair;
- exemplary damages.

Haroll is receiving monthly sums from an insurance policy which he had taken out some years ago and his wife Carla has received six months unemployment benefits under her own unemployment policy. He fears that Caljon Limited may insist on his undergoing surgery and try to discount his damages by having the insurance payments deducted.

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

QUESTION 7

Marcus whose business it is to transport heavy equipment was on August 1, 2001, transporting a mechanical digger owned by Clydie to a building site. While the transporter was negotiating a bend in the road, the mechanical digger fell from the transporter and landed on the roof of a house below the road. The house is owned by Mr. Bendersley.

The digger was damaged beyond repair and the wreckage is now in the middle of Mr. Bendersley's house which also is a wreck.

Marcus consults you. He tells you the above and comments that he is in "double trouble". He wants to know what to expect from Clydie and Mr. Bendersley and what, if anything, he should do at this time.

Advise Marcus.

QUESTION 8

Mrs. Allestra Bisma consults you and seeks your advice in respect of the following facts:

Mrs. Bisma is a "banker" for a partnership scheme in which there are twelve members. This scheme is an old fashioned scheme where "what you contribute

is what you must expect – no more, no less". The scheme commenced on January 1, 2001, with each member 'throwing a hand' of \$10,000 per month. Each member will receive a total of 11 x \$10,000 plus his/her hand to make up a total of \$120,000. The order of each draw is as follows:

January 31, Felestina Crash

February 28, Augustine

March 31, Benjie

April 30, Jimmie

May 31, Alex

June 30, Cancheta

July 31, Juline

August 31, Allestra

September 30, Novelline

October 31, Sharleen

November 30, Allestra

December 31, Allestra

Crash who received the first draw has refused to continue with paying her monthly hand. Mrs. Bisma, in order to keep things going and to avoid the 'mix-up' that the modern partner schemes get into, has been paying on behalf of Crash.

Advise Mrs. Bisma as to the rights and obligations of the partners.

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