

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST-YEAR SUPPLEMENTARY EXAMINATIONS, 2004

REMEDIES

(MONDAY, AUGUST 9, 2004)

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.
- (e) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

For the past five years Fancie Foodes Ltd. bought their supplies of fish and meat from F. & P.S. Ltd. (Fish and Poultry Suppliers Ltd.). Orders were placed and paid for one year in advance. For the Lenten season this year, F. & P. S. Ltd. supplied only half of the quantity of fish ordered by Fancie Foodes Ltd. but they supplied the full quota of chicken.

When Fancie Foodes Ltd. complained about the short supply, Mr. Navettie, the manager of F. & P.S. Ltd., offered to make up the shortfall on the fish by supplying "an additional 500 kg of pork at a heavy discount of 25%". He suggested that the discount could help to pay for advertisement and added that "many people still ate meat during Lent". Fancie Foodes Ltd. rejected this offer and the Manager, Mrs. Sensitivia, was quite outraged and disappointed by the actions of F. & P.S. Ltd.

Fancie Foodes Ltd. sent out scouts but were unable to find fish of the required quality. They borrowed U.S. currency at 8% p.a. to cover the price of the fish, and the cost of airfreighting it to satisfy part of their needs.

Fancie Foodes Ltd. ordinary Lenten and Easter profits were cut by 75%. They lost profits on two special contracts to supply a total of 5,000 fish dinners at \$500 each dinner. Mrs. Sensitiva suffered mental distress and was hospitalized for two weeks. Fancie Foodes Ltd. paid all of Mrs. Sensitiva's hospital and medical bills and paid her wages for two weeks.

Fancie Foodes continues to experience loss of goodwill evidenced by decline in patronage.

Advise Fancie Foodes Ltd. on the measure of damages.

QUESTION 2

Tina and John Renegade lived in a three-bedroom wooden house, which they had removed to a new site, near to the basic school where Tina is employed as a teacher. With the consent of the landowner from whom the Renegades leased the site, the house was placed on four sturdy concrete pillars and they have been living there for the past two years.

On January 10, 2004, due to negligent driving, a truck loaded with concrete blocks veered off the road and crashed onto the house leaving it "as flat as a pancake". A 1,000 gallon water tank connected to the house has been rendered useless for its purpose. The truck is owned by Reliable Removers Ltd. and, without prejudice to liability, they are willing to pay compensation to Tina and John.

The house was built in 1997 at a cost of \$150,000. Furniture and furnishings in the house are valued at \$500,000. The valuer remarked that the remains of the house are only valuable for a good bon-fire but the house was originally made of good materials. He valued the remains at \$15,000. It is his opinion that a similar structure would cost \$350,000, more or less, to rebuild. The water tank was bought in 1997 for \$3,000.

Mr. Joss, a pensioner who was lodging with the Renegades has suffered the loss of his TV set, CD player and other personal effects.

Tina and John are presently living in rented premises. They pay \$5,000 per month. Instead of a short walk to work, Tina has to take the bus. Furthermore, they are unable to accommodate Mr. Joss who used to pay them \$2,500 every two weeks for his accommodation.

Advise Tina and John on the measure of damages.

QUESTION 3

Jon Lall, a married man with three children, was seriously injured in an accident for which he was in no way to be blamed. He was advised by specialists to go to the America for treatment, even though equally good treatment could have been obtained at a local hospital. Lall decided to go to a hospital in America where he usually went for his regular check -up.

Before leaving for America he had spent thirty days in hospital and because of the pain he was feeling his doctor felt that his wife's presence in his bedroom at night would help him to endure his ordeal. Mrs. Lall was therefore obliged to be away from her home during those nights and employed a baby-sitter to keep house for her during that time. Upon being discharged from hospital, Mr. Lall was forced to spend a further period of three weeks at home while arrangements for his trip to America were being made. During that time, his wife and 18 year old daughter took turns in nursing him.

At the time of the accident, Lall was aged 42 and employed as an insurance salesman on a commission basis; during his spare time he used to earn extra money as an amateur photographer. He was also a good handyman and did all the repair jobs about the house. His doctor says that he will not be able to work anymore nor will he be able to handle any of the handyman jobs he loved doing.

Mrs. Lall who was 38 on her last birthday works as a Radiographer and has had to take six months no pay leave to care for her husband. She has accompanied him to America in place of the nurse who on medical advice would have gone with him. After receiving treatment, Mr. Lall and his wife left America for Hawaii as he wanted to put as much enjoyment into what was left of his life. His doctor said that he may not live to his normal retirement age. In any event Lall could not have stayed in his own home during convalescence, because it was being remodelled to suit his post-accident condition.

Advise Mr. Lall on –

- (i) the measure of damages and the basis on which any award will be computed;
 - (ii) what items of loss could be claimed as special damages.
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QUESTION 4

Jasper, a pharmacist, worked with Neo Pharmacy Ltd. under a three-year contract, which started on January 2, 2004 until he was dismissed two months ago. The contract provides for the following –

Salary,

lunch at the company's cafeteria if on the day shift,

a snack if he worked nights,

annual bonus if the pharmacy made profits,

prescription drugs free

- not to be dispensed by him,

refresher and motivational courses to be organized by the company to enhance the employee's skills and to improve the employee's capacity for public relations and interpersonal interactions,

a favourable recommendation on termination by either side which will not be unreasonably refused – reasonableness depends on what is for the benefit of Neo Pharmacy Ltd.,

dismissal will normally be by a majority of the Board of Directors on the recommendation of the Managing Director,

an option to renew for another three years.

One day the Managing Director, Mr. Wilfrid Tubman, saw Jasper dispensing sleeping tablets which required a prescription to a 'street person'. Jasper admitted that the 'street person' had not produced a prescription. Mr. Tubman asked Jasper if he was aware of the rumour that certain establishments were implicated in the death of Reno, a 'street person' from overdose of sleeping tablets and alcohol. Jasper said "yes, so what?" Mr. Tubman told Jasper "very well, so take your things and go – now!"

Jasper called a talk show host (TSH) and informed him that the Manager of the uptown pharmacy, the Neo Pharmacy Ltd., just fired him because he tried to help the poor. He was invited to send a copy of the agreement to TSH by facsimile. The matter was discussed on national radio for the better part of three days.

Jasper has been trying to get a job recommendation from Mr. Tubman. He is unable to get a job without this recommendation. He is under severe mental stress at this time. Jasper is 25 years old and he is afraid that he will not be able to work in his home country for the balance of his life. He wants to sue Mr. Tubman and the Neo Pharmacy Ltd. for damages for breach of contract.

Jasper consults you.

Advise Jasper.

QUESTION 5

On January 6, 2004, Rondo Quail was killed as a result of a collision whilst he was a passenger in a motor car being driven by his wife Carla. Carla was one-

third responsible for the accident. The Quails had been estranged for sometime and on the day in question they were returning from their parish priest with whom they were discussing a possible reconciliation. According to Mrs. Quail nothing definite about their future had been decided; they were to have met again to iron out some important details before taking a final decision on resuming cohabitation.

Mr. Quail was 37 at the time of his death and had just been elected to a senior executive position in a large furniture business. He had bought a large house in the better part of suburbia to go with his enhanced status and had intended to move his family there if a reconciliation had been effected. He was also entitled to the use of one of the company's chauffeur-driven limousines free of all costs.

While they lived apart, Mrs. Quail had, by agreement, kept and looked after the two children of the family aged 12 and 14 who were wholly maintained by their father. Mrs. Quail herself was employed as a part-time secretary in the same company as her husband but was paid as a full-time employee because of his position. After Mr. Quail's death, the two children were taken in by their paternal grandmother because their mother was too distraught to keep them after the accident even though she had received no injuries whatsoever.

It is more than likely that the directors of the company will either reduce Mrs. Quail's salary to that of a part-time employee or ask her to leave altogether. She had herself thought of giving up the job because she did not think that she could any longer afford to pay the elderly lady who helped to keep the house for her while she was at work. She would, however, prefer to be at work where she could meet other people her age.

Advise Mrs. Quail on what damages she and her children are entitled to.

QUESTION 6

Beris, who is 23 years old, suffered injuries to his spine and right arm in an accident for which he says that MXY Ltd. are to be blamed. Beris is now wheelchair bound and also has 20% permanent partial disability in his right arm. The disability in the arm could have been significantly reduced if Beris had followed up the course of physiotherapy that was prescribed. The medical opinion also indicates that the course of physiotherapy would also have significantly reduced or even eliminated the depression which Beris now complains of.

Beris had told the physiotherapist that even if he and his parents worked and saved for three years that they still could not pay the physiotherapist fees.

At the time of the injury, Beris was an apprentice to a tailor. His hospital and medical bills were paid by his parents, who also provided him with food. It is the last day of the limitation period and Beris' action for personal injury is now being filed, because there was great difficulty finding the only eyewitness to the accident, which was a case of "hit and run". Beris was hit in the back and was taken to hospital by the said eyewitness who is now back in the jurisdiction.

Advise Beris on the measure of damages and the question of interest.

QUESTION 7

Mr. Purchess agreed with Aubrey Venda to purchase a parcel of real property at Mount Dredger. You notice that the written agreement contains inter alia the following terms:

Purchase price	\$2.5M
Deposit	\$250,000
Second payment	\$125,000
Third payment	\$ 62,500

Balance payable on completion on or before May 31, 2004.

The agreement also provides that should the purchaser fail to pay the balance on the due date there will be "absolute and unrelieved forfeiture of all payments" held by the vendor as specified liquidated damages.

Mr. Purchess informs you that he paid the deposit and the other payments but was unable to raise the amount required to pay the balance.

Mr. Purchess shows you a letter from Mr. Venda telling him that he "is in serious breach of the contract and is hereby notified that the contract is cancelled and the monies forfeited".

Mr. Purchess wants to know if he could get back his money from Mr. Venda.

Advise Mr. Purchess.

QUESTION 8

On January 15, 2004, the workmen of Randall Suppliers Limited were burning some rubbish in an open lot next to the property of Oilchems Limited. They failed to exercise proper control over the fire, and, helped by a strong breeze, the fire spread to the premises of Oilchems Limited. It destroyed a disused warehouse,

which was rat infested, and a car owned by Jack Johnson, a customer who was transacting business at the wholesale operated by Oilchems Limited.

Oilchems Limited had had plans to demolish the warehouse, which was valued at \$550,000 to accommodate a car park for staff and customers. The cost of the proposed demolition had been put at \$250,000.

The cost of removing the fire debris was \$150,000 and the restoration of the fire-gutted fence was \$35,000. Prior to the fire, Oilchems Limited paid \$40,000 monthly for pest control. Since the destruction of the warehouse, this bill has been reduced to \$10,500.

Jack Johnson's taxi was at the time of the fire valued at \$250,000. He earned approximately \$1,500 per day and spent \$1,000 weekly for maintenance. He has applied for a road licence, but in the meantime he was plying the taxi trade illegally.

Jack Johnson's ten-year-old son who was in the car suffered burns on his face and hands. There is a probability of scarring.

The manager of Randall Suppliers Limited, Ossie Randall, consults you on the above.

Advise him on the liabilities facing Randall Suppliers Limited.