

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2006**

REMEDIES

(FRIDAY, AUGUST 4, 2006)

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

Simeon, a garment manufacturer, decided to expand production to supply the export market.

In fact he had just secured a contract worth \$5M to supply a European country with children's clothing.

On January 1, 2005, Simeon contracted with Avant Gard Ltd., building contractor, for the construction of the new factory. The factory was to be completed and delivered by June 30, 2005. The contract provided, *inter alia* -

- (a) that in the event of non-completion by the date stipulated the contractor shall be liable to pay to Simeon by way of liquidated damages the sum of \$45,000 for each month of delay, and
- (b) that if the factory is not completed according to specifications or the contractor fails to clean the site after completion, the contractor shall pay by way of liquidated damages the sum of \$250,000.

The factory was completed on February 1, 2006. This resulted in the loss of the \$5m contract. Avant Gard Ltd. refused to clean the site on completion. Simeon has subsequently cleaned the site at a cost of \$15,000. Further, part of the roof collapsed because of a defect in the construction.

Advise Simeon.

QUESTION 2

In January, Miss Extremely Sharpe, a junior attorney-at-law, aged 25 years was injured when an elevator malfunctioned and plummeted six floors to the bottom of the shaft.

She suffered a broken hip bone, multiple fractures to her ribs, a dislocated shoulder and severe spinal cord injury. She stayed in hospital for six months and at home for a further six weeks. She is only able to move with great difficulty and pain. However, she insisted on resuming her legal practice and has had to employ an attendant to assist her in moving about and getting to and from court. She has had to purchase and use special computer equipment to transcribe her notes.

The medical prognosis is that she will suffer a steady degradation of her automotive functions over the next ten years at which time she will become a virtual paraplegic.

She was previously an amateur lawn tennis player and also enjoyed playing golf and gardening. She was sometimes prone to depression but had been seeing a psychologist who has indicated that she was doing well in therapy and would have been able to manage on her own. This was just before the accident occurred.

However, the accident has thrown her in a severe state of depression as the prospect of being a paraplegic with all the consequences have robbed her of much of the joy of life. Her doctors have further indicated that her life expectancy is now reduced to 55 years.

Miss Sharpe is of the view that any compensation package should include –

- (i) the cost of a house suitably equipped for her to occupy;

- (ii) cost of nursing care provided by her sister who gave up her job as a psychiatric nurse in England;
- (iii) her sister's services are to be valued according to the salary scales in force at her last place of employment in England;
- (iv) reimbursement of wages she has already paid to her sister.

Miss Sharpe consults you.

Advise her generally on the appropriate measure of damages and the basis on which quantum of damages will be assessed.

QUESTION 3

James Scott, an accountant, is a former employee of Streamline Auditors. His three year contract was prematurely terminated after six months on January 1, 2006. The following were the terms under which he worked -

He was to contribute five percent of his salary to a private pension scheme and his employers contributed ten percent. He was not entitled by right to his employer's contribution if he were dismissed for cause. He was entitled to a basic salary of \$45,000 per month, car loan, meal allowance, incentive bonus, entertainment allowance, annual study leave and annual book and technological grant.

Prior to the termination of his contract he had discovered that his employer's approach to auditing was not in accordance with generally accepted auditing standards, and that they would require him to certify accounts that other auditors had declined to certify. He spoke to one of the partners quite calmly and candidly and he was subsequently dismissed for "unpunctuality". He concedes that he had been to work half an hour late on two occasions some time ago. He had given satisfactory reasons and these had been accepted by the HR Manager.

Since his dismissal he has been receiving a monthly sum of \$15,000 as a benefit under a policy of insurance which he had taken out some years ago.

In the meantime, Mr. Scott is trying to get a job, but so far, those who have interviewed him have been negatively impressed by his association with Streamline Auditors.

He is frustrated, depressed and hurt.

Advise Mr. Scott on any cause of action open to him at common law, the measure of damages and the basis on which any compensation will be computed.

QUESTION 4

Mr. Chancey is the owner of a beach house built on lands adjoining premises owned by Cliff Hangar.

On June 4, 2003, while Cliff and some workmen were cutting down a tree it fell on Chancey's house causing extensive damage to the roof and eastern wall.

Cliff at first accepted liability and promised to have the house repaired. Shortly thereafter Cliff denied liability and refused to discuss the matter with Chancey.

Owing to financial difficulties Chancey was unable to effect the repairs.

By December 2003, the roof had caved in and the house had become uninhabitable. Chancey had to vacate and vandals broke in; furniture and the refrigerator were stolen; plumbing and electrical fixtures stolen and vandalized. The house is now in a state of ruin and the cost of repairs \$750,000 – three times as much as it did in 2003.

Chancey, his wife and two children are living in rented premises and are paying \$25,000 per month. Chancey brought an action in negligence against Cliff for damages in respect of the premises and the value of the refrigerator and has obtained judgment.

The question of damages has been referred to assessment and he seeks your advice on his measure of damages and the date at which the value of the repairs should be assessed.

Advise Chancey.

QUESTION 5

Mr. Dolitte, a cashier, is tenant of an apartment owned by the State Housing Corporation (SHC). On December 1, 2004, when he moved in he discovered

that the plumbing in the bathroom and kitchen was defective. He made several complaints to the relevant authorities but without success. He was very upset and complained bitterly about the recurring expenses resulting from the defects.

Two days ago the apartment was flooded again and he decided to make a formal complaint to the Consumer Affairs Commission and the Human Rights Lobby.

Representatives from these two groups contacted the SHC on behalf of Dolitte who was asked to report the matter in person. Accordingly, Dolitte visited the offices of the SHC to lodge his complaint.

As soon as he entered the premises a clerk named Monica shouted “see the man coming! the one who carry we to human rights and Consumer Affairs”. Monica called a security guard and said “this man is making a nuisance of himself and antagonizing us, put him outside”. Dossie, the security guard grabbed Dolitte and pushed him from the building. Dolitte fell to the pavement and sustained a cut to his forehead. When he was able to get to his feet he asked a police constable who was present to call an ambulance for him. The constable responded by handcuffing him and taking him to the police station where he spent three hours before fainting from loss of blood.

When Dolitte regained consciousness he found himself in the hospital where he spent two weeks under police guard. Because of his absence from work he lost his job. Furthermore, the episode was distorted in the media and he feels humiliated because he is now being considered a common criminal.

Dolitte consults you.

Advise Dolitte on the causes of action and the remedies available to him.

QUESTION 6

Stefan and Stephanie are the joint owners of a very old house called Riversdale, which they inherited. Your client Unique Properties Ltd., a company specializing in the acquisition and restoration of old houses for resale, approached them with a view to purchasing the old property. Stefan, who is a businessman, is in need of money and is minded to sell. On the other hand, Stephanie is of the view that she intends to work to restore the old building.

By a contract in writing dated January 2, 2006, Stefan agreed to sell and Unique Properties Ltd. agreed to buy Riversdale at a price of \$3.5m with completion date fixed for March 31, 2006.

They paid sums in respect of the following –

- 10% deposit
- Surveyor's identification report
- Preparation of Contract
- Investigation of Title

Shortly after the contract was signed Stefan tried to persuade Stephanie to join in the sale but she was adamant that there should be no sale.

On April 2, 2006, by which time the value of the house had risen to \$4.5m Unique Properties Ltd. repudiated the contract and sued for damages.

They tell you that in January 2006, they entered into a contract to sell the house after restoration and would have made a clear profit of \$1.5m.

Advise Unique Properties Ltd. as to the measure of damages.

QUESTION 7

Mr. J. Johnson, who was 32 years old at the time, was involved in a motor vehicle accident for which Mr. H.C. Weber, a banker, was to be blamed. Mr. Johnson, himself a mechanic, owned and operated a successful motor mechanic establishment. Mr. Johnson's medical report which was dated some time in August 2002 reveals that there is a 100% permanent disability in his right hand. There is no indication in the report whether this level of disability is capable of reduction. As a result of the disability he can no longer work personally on the vehicles owned by some of his prized customers.

As a result of the disability his business has declined and he has to spend more on advertisements than before. He was forced to employ another worker to do what he had become unable to do. He himself is spending more time on management and has just completed a course of study in management.

Mr. Johnson was advised by Mr. Weber that he had visited a website www.medicareinfuture.org and read of a medical breakthrough which could be of advantage to Mr. Johnson who was advised to check the website for himself.

Mr. Johnson discussed this with his wife and they were of the view that Mr. Weber "spoke altogether in jest".

The limitation period in respect of Mr. Johnson's cause of action expires on May 31, 2006.

- (i) Advise Mr. Johnson on the measure of damages and the basis on which damages will be computed;

- (ii) How, if at all, would your advice differ if Mr. Johnson had sought medical attention in the USA and had paid US\$125,000 for a surgical operation which failed to reduce the disability?
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QUESTION 8

- (a) “If the contract provides for the payment of an unreasonably large sum under the guise of a deposit, the court may go behind the language of the contract and consider the true nature of such a stipulation”. Voumard, The Sale of Land in Victoria, (4th ed.) p. 463.

Discuss this statement and illustrate with reference to case law.

- (b) Your client, Mr. Purchess agreed to buy Blue Acre from Mr. Verette for the sum of \$6.5m. Mr. Verette had purchased Blue Acre to house his company’s head office and was most unwilling to sell. He only agreed to sell after much persuasion and only because Mr. Purchess was willing to buy the premises at a price double the market value.

The agreement provided for the payment of 5% of the purchase price as deposit but did not stipulate expressly for forfeiture in case of default. The purchaser failed to complete on the agreed date.

Mr. Verette has refused to return the deposit and is threatening to sue Mr. Purchess for damages.

Advise Mr. Purchess who consults you.
