

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2007

REMEDIES

(WEDNESDAY, AUGUST 1, 2007)

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

Devine Smith was employed to Lucea Jewels, jeweler and retailers of fine jewels, crystals, china and cosmetics. They also dealt in ivory ornaments and accessories. Her compensation package included a basic salary of \$125,000 per month, a monthly cosmetic and jewellery allowance.

Devine recently became “sold” on radical environmentalism and all of a sudden began objecting to her employers’ stocking anything made of ivory. A month ago she participated in a demonstration outside her employers’ store. The manager became aware that she had been the instigator of the demonstration and the group of which she was a leading member was also planning to promote a campaign to encourage patrons to boycott all Lucea Jewels sales outlets.

The manager summoned her to his office. He told her of the information that he had received and dismissed her summarily. He called the security guard to accompany her to her office to gather up her belongings. The guard had orders to escort her from the building.

Devine who is 36 years of age and who had been working with Lucea Jewels since it was established five years ago feels that she has been dismissed without cause. She feels disappointed and disrespected and is distressed by the humiliating way in which she was “booted” out of the company. As a person who had occupied a supervisory position she feels that the manager could have expressed the company’s will in a more sensitive fashion.

She is also depressed because she believes that she will not be able to find a job for the rest of her working life. All her applications have resulted in humiliating interviews. One interviewer had asked her if she wanted to have full information on their stock. Another had asked her if she would be happy handling leather

goods and alligator skin purses. She has refused further interviews because she suspects a conspiracy to ridicule her.

Miss Smith seeks your advice on the above and the principles on which damages will be calculated in her favour if she were to sue Lucea Jewels.

Advise Miss Smith.

QUESTION 2

- (a) Distinguish between the judicial approaches in respect of the liquidated damages/penalty inquiry on one hand and that in respect of the equity of restitution in relation to the forfeiture of deposits.

- (b) Pixo Plast Ltd (Pixo) manufacturers of assorted paper and plastic containers, decided to expand into the manufacture of glassware. To this end Pixo agreed with Fast Track Builders to construct a bottle making plant.

It was agreed that the plant should be completed within 40 weeks from the date of the final approval of the drawings. A term in the contract provides that –

“If this period of 40 weeks is exceeded, Fast Track Builders, shall pay by way of penalty the sum of \$100,000 for each week of delay “...

As a result of a shortage of building materials there was a delay of 10 weeks.

The manager of Fast Track Builders consult you.

Advise him.

QUESTION 3

- (a) “In respect of breach of contract for the sale and purchase of land one or other of two measures of damage may be applicable.”

Discuss this statement indicating the two measures and the circumstances under which each is applicable.

- (b) Dobby owns premises called “Purview”. He agreed with Mari-Anna to sell her “Purview”. The price agreed was \$2.5M. It was also agreed that Mari-Anna was to pay a deposit of 10% of the purchase price and two further payments of equal parts on the signing of the contract and that completion was to be 90 days after the signing.

Mari-Anna tells you the above and adds that she has received a letter from Dobby’s attorney-at-law indicating that he is unable to complete the transaction because his wife has lodged a caveat on the title.

Advise Mari-Anna.

QUESTION 4

Indigo Dicey, a 35 year old vendor, was on January 10, 2007, killed in a car accident for which John Dow was entirely to blame. At the time of Dicey's death he was earning \$2,500 per day from sales. He owned two mini-vans which he operated as public passenger vehicles. One of these vans was unlicensed. He earned about \$10,000 per day from both vehicles after paying the drivers and conductors. He had recently applied for a licence for the unlicensed van.

During his lifetime he supported his mother, Miss Golda, who is 70 years. He also supported his children, born out of wedlock, Maila 12, Tissan 10 and Elsa-Ann 7.

On one occasion Dicey had been convicted on a charge of receiving stolen goods knowing them to have been stolen. Although he was a gambler he made sure he saved \$5,000 per week. He gave his mother a weekly sum of \$6,000 to maintain herself and to pay discretionary amounts to the three mothers of the three children. He was saving to get married.

Dicey paid the rent for the house in which his mother lived. He had occupied a room in the house and had warned her that she should start to make herself "smaller in the house because I am tired of single life". Dicey died without making a Will.

Miss Golda consults you.

Advise her.

QUESTION 5

Agile was a very keen sportsman who enjoyed fishing, basketball and sometimes played hockey. He is a policeman. At age 35 he was injured in a motor vehicle accident for which a fellow policeman was to blame. They were travelling in a police squad car. He suffered extensive deep lacerations on the scalp, multiple abrasions and bruises all over his body, fractures of the right tibia, fibula and humerus.

He spent three months in hospital and underwent surgery three times. He continues to experience intense pain in the right hand, right leg and both hips. His right leg is now $\frac{3}{4}$ inch shorter than his left and he is no longer able to participate in the sporting activities which he had enjoyed previously.

Agile has not lost any earnings but he was not included in the last batch of promotions. He has to wear special shoes and is now confined to a desk job. Agile is depressed over the fact that he is now beginning to suffer from obesity as a result of his inability to pursue physical activities. He is now 38 years old and feels very insecure generally and specifically in respect of his job.

Agile shows you a letter from an attorney-at-law acting on behalf of the Attorney General requesting evidence of his claim.

Advise Agile on any cause of action and the principles on which damages will be calculated if the matter is litigated.

QUESTION 6

Conrad entered the annual Marlin Fishers Tournament which was scheduled to take place at Flamingo Beach during June of 2007. The brochure issued by the organisers of the tournament agreed among other things to provide the services of a professional photographer to take “photographs for posterity” and adequate coverage of each competitor and his/her catch. Conrad landed the biggest marlin ever caught in any tournament. When the time for the taking of photographs arrived the tournament organiser’s son took a photograph of Conrad posing with the giant marlin. When the films were developed only part of Conrad’s body and part of the huge marlin were visible. There was no media coverage as promised and there was no acceptable pictorial record of the event.

When Conrad saw the photographs he was most annoyed and paid a visit to Mark, one of the organisers who was most abusive. Mark punched Conrad in the chest and ordered a security guard to throw him (Conrad) into the swimming pool before escorting him to the gate.

Conrad consults you.

- (i) Advise him on the cause(s) of action and measure of damages.
- (ii) How, if at all, would your answer differ if Conrad on seeing the pictures experienced severe nervous shock?

QUESTION 7

Mrs. Donovan and her husband Charles consult you. She tells you that she was injured in an accident with a minibus owned and driven by Mali Ban. She

suffered injuries and was hospitalized for six months. During her stay in the hospital her husband Charles visited her every day at great expense. She also informs you that her Aunt Kate came from the U.S.A. to see her and spent a week. During that week Aunt Kate travelled to see her by taxi. Aunt Kate desires a refund of all monies spent. She has learnt from Aunt Kate that she should be able to get a “multi-million dollar award” for her injuries because that is the situation in the U.S.A. Mrs. Donovan says that her Aunt Kate says that she should also be able to get enough to punish the bus owner.

Advise Mrs. Donovan on -

- (i) Her cause of action and the principles on which damages will be assessed.
- (ii) The sums that may be recovered as special damages, giving reasons.
- (iii) What should be done to substantiate her claim against Mali Ban.

QUESTION 8

- (a) “Negatively, fresh evidence ought not to be admitted when it bears upon matters falling within the field or area of uncertainty in which the trial judge’s estimate has previously been made. Positively, it may be admitted if some basic assumption, common to both sides, have been clearly falsified by subsequent event, particularly if this has happened by the act of the defendant. Positively, too, it may be expected that courts will allow fresh evidence where to refuse it would affront common sense, or a sense

of justice. All these are only non-exhaustive indications". (Mulholland v Mitchell [1971] A.C. 666 at pp. 679-680 per Lord Wilberforce)

Discuss the above dictum and with the aid of decided cases illustrate the court's approach to dealing with evidence of changes occurring after an award of damages.

- (b) Pasha, who was 35 years old at the time, was injured in an industrial action at his workplace Factories Ltd. On July 23, 2007, he was awarded damages at the close of an assessment in the Supreme/High Court. The components of this award entailed \$165,450 as special damages, \$450,000 for pain and suffering and loss of amenities, \$250,000 for handicap on the labour market.

The amount for pain and suffering involved a component for pain that the medical evidence indicated he would suffer for the balance of his natural life, as a result of the onset of arthritis.

Two weeks after the award Pasha died in a swimming accident.

The Defendant, Factories Ltd., consults you. Advise them on how to proceed.
