

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2011

REMEDIES

(FRIDAY, AUGUST 5, 2011)

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

On June 1, 2011, Selvyn who is 30 years and a self-employed accountant, while driving his motorcar was involved in a collision with a vehicle owned and driven by Bravo. He sustained fractures to his right arm and right leg and cuts to his face. He was hospitalized for three months. Upon his discharge from hospital he convalesced at a private nursing home for one month at a cost of \$20,000 excluding the cost of medication, which amounted to \$2,000.

The cost of Selvyn's medical and related expenses was partially defrayed out of the proceeds of a personal accident insurance policy. At the time of the collision he was earning a minimum of \$25,000 per month. During his hospitalization and convalescence he received \$10,500 per month under the said insurance policy.

Selvyn has since recovered from his injuries except that he has an unsightly scar on his face and he now walks with a pronounced limp due to a shortening of the right leg. He has spent \$12,500 for a pair of special shoes. A recent medical report states that the resulting disability in his right leg can be partially reduced by surgery.

Selvyn was told that the operation could be performed locally at a cost of \$150,000. However, he insisted on having it done in Miami at a cost of US\$95,000 because he had no faith in the local post-operative care. He financed the operation by means of a loan with interest at 20% per annum.

Although the disability has been reduced, Selvyn still experiences some pain in his right leg and this is likely to continue for the rest of his life. Much to his dismay, he will always have to wear special shoes.

You are instructed by Selvyn to institute legal proceedings against Bravo.

Advise Selvyn on his measure of damages and the approach to computation of the quantum.

QUESTION 2

Mr. Ravi owned a motor car which he had purchased second hand two years ago for \$140,000. He used it for private and domestic purposes as well as to operate as an unlicensed taxi.

On March 25, 2011, he parked his car in his yard at 25 Riglow Road and went into his house to have a snack. While preparing the snack, he heard what seemed like a loud explosion and he felt as if his house had been hit by something like an earthquake.

He rushed outside to find that there had been no earthquake. His relief quickly turned to dismay when he discovered that the sound he had heard was caused by the impact when a car crashed through his wall fence, collided with his taxi and damaged the front porch of his house, crushing, *inter alia*, four chairs including his wife's favourite chair.

Later when his wife saw the damaged porch and her crushed chairs, she collapsed from fright, experienced nervous shock and had to be hospitalized.

Ravi's mechanic's report, which was confirmed by a loss adjuster, indicates that the cost of repairs to the car is in the region of \$145,000. Ravi also made enquiries about a replacement and found that he could purchase a reasonable replacement for the same sum.

With regard to the damaged real property as a whole, a report furnished by a real estate valuer indicates that “the overall value of the entire premises has been negligibly affected in that the freehold prior to the incident would sell for \$2.5M and, as the market stands, would fetch the same amount at this time or maybe \$25,000 less than the pre-damage value. However, replacement of the porch would cost \$250,000 and reinstatement of the fence would cost \$30,000”. The porch chairs, with the exception of Mrs. Ravi’s favourite, were five years old and new ones would cost \$2,500 each, making a total of \$7,500. Mrs. Ravi’s favourite chair was made of mahogany. Such a chair costs \$25,000 at this time.

Mr. Ravi does not wish to sell his real property. He desires to repair the fence, the house and car but at present he has no money. He wants to sue Jimmel Ltd., the owner of the car that has caused him so much loss and inconvenience.

Advise Mr. Ravi on the measure of damages and the approach to computation of damages.

QUESTION 3

John Callaghan, an accountant, is a former employee of Eezi-Auditors. The following are the terms of his former contract of employment –

- Contribution of 5% of his salary to a pension scheme. Employers contribute 10%.
- He is not entitled as of right to his employers’ contributions if he is dismissed.
- Salary
- Car loan
- Transportation allowance

- Meal allowance
- Incentive bonus (subject to profits)
- Entertainment allowance
- Annual study leave
- Annual book grant
- Technology grant

John, prior to the termination of his contract with Eezi-Auditors, discovered from the instructions given to him, that his employers' approach to auditing was not in accordance with generally accepted auditing standards in that they would certify accounts that other auditors had declined to certify. He had on two occasions voiced his concerns to a senior member of the firm.

Quite recently two members of Eezi-Auditors had faced disciplinary charges and John had given evidence in a frank and candid manner. These partners were each suspended from practice for 6 months.

All partners in the firm were most displeased with John and nicknamed him "Whistler" or "Squealer". He was subsequently dismissed for "unpunctuality". He agrees that he has been to work half-an-hour late on two occasions.

John, who had been working with Eezi-Auditors for three years, had not accessed his book grant, study leave or technology grant. Since his dismissal in January 2011, he has been receiving a monthly sum of \$10,000 as unemployment benefit under a policy of insurance which he had taken out some years ago. The premiums were gifts from his uncle who resides in the U.S.A.

In the meantime, John is trying to get a job, but so far, those who have interviewed him have been negatively impressed by his previous association with Eezi-Auditors. He is

frustrated, depressed, hurt and humiliated. He is of the view that Eezi-Auditors should compensate him handsomely and that they deserve to be punished.

Advise John as to his cause of action, if any, the measure of damages and the basis on which damages, if any, will be computed.

QUESTION 4

Answer both (a) and (b).

- (a) “The award of nominal damages is being threatened with extinction by both the remedy of declaration and the expansion of the remedy of restitution.”

Discuss briefly and illustrate with reference to decided cases.

- (b) Ariel consults you in respect of the following –

The monthly tenant of his two bedroom apartment, Tee, has delivered up the premises. Tee owes him ten months’ rent at \$25,000 per month. Tee has left unpaid utility bills – electricity, water and telephone – in the sum of \$50,000. Ariel has paid these bills to avoid disconnection. Further, Tee has caused damage to the apartment and furniture valued at \$125,000 and \$35,000, respectively. He had loaned \$25,000 to Tee who has not repaid the money owed.

Ariel wants to know how he can recover these sums, and whether since Tee has left the island, he can recover from Tee’s mother.

Advise Ariel as required and indicate the cause of action and remedy in respect of each sum.

QUESTION 5

Joel and Tricia Smith, were 23 and 24 years old respectively, at the time of their marriage in 2000. The marriage produced three children – Trixie, born in 2001; Joel Junior, born in 2002; and Darien, born in 2004. On September 2, 2010, Joel was killed in an industrial accident at his workplace.

At the time of the accident, Joel was foreman of works at the factory and earned a monthly salary of \$75,000. He was also entitled to free housing and the use of a company car. Joel, his wife, his children and his parents were beneficiaries under a health scheme which was wholly financed by his employers. Joel was considered by his employers as a valuable worker.

Joel, Tricia and the three children occupied Joel's house for which the company paid Joel the market rental value. Joel's parents, who are both 67 years old, occupy an adjoining flat which was built for their use. Joel did many odd jobs at home such as vegetable gardening, painting the house and mending furniture. He helped the children with their homework and was a very caring family man. Joel's expenditure on himself and his family are contained in the schedule attached.

Joel left a will under which he appointed his Pastor, Mr. Michael Gopal, sole executor. He left his house to Tricia for life, remainder to the three children as tenants-in-common. He also left gifts of money to his parents.

Schedule of Joel's Expenses

Household	\$25,000 monthly
Insurance premiums	\$2,500 monthly
Contribution to Welfare for the Poor	\$500 monthly
Lunch and transportation for children	\$4,500 monthly
Clothes and sundries for himself	\$3,000 monthly
Maintenance for parents	\$1,000 monthly
School Fees	\$45,000 per annum
Love gift for Tricia	\$5,000 monthly

Advise the executor as to the causes of action which may be brought, the measure of damages and the bases for computation.

QUESTION 6

Stedroy and his wife Teneesha decided to build a four-bedroom house on a lot of land they had acquired in Mountain Vale. They entered into a contract with Ren Shakes, an experienced contractor and builder, to construct a four bedroom, two bathroom house at a cost of \$1.5M. It was a term of the contract that construction would be completed and the house delivered to Stedroy and his wife by October 30, 2010.

By clause 5 of the contract it was agreed that "if there was any delay in the completion, Mr. Shakes would pay by way of liquidated damages, \$6,500 for each week of delay". Mr. Shakes had problems getting materials for the job and did not complete construction until January 31, 2011.

On November 20, 2010, Stedroy was ejected from his home by his landlord. He was forced to hire a truck to move his belongings for storage at a warehouse for which he had to pay \$150 per day. He moved his family into a very poorly furnished boarding house in a very noisy area where he stayed until his house was completed. He had to pay \$500 per night for a room.

Stedroy's wife and their daughter Amy became very depressed as a result of the whole experience. Although they have now moved into the new home, Amy and Teneesha are still depressed. He is most unhappy because they are not enjoying their home which has only three bedrooms rather than the four bedrooms stipulated in the contract. He also tells you that you are the second lawyer that he is consulting. The first one told him that his only remedy is to rely on clause 5 in the contract. He wants to know if that is a "correct" view and in any event what his remedies are.

Advise Stedroy.

QUESTION 7

In January 2010, Miss Extremely Bright was a junior attorney-at-law, aged 35 years and earning an average of \$75,000 per month in private practice. About five years previously, she had embarked on studies in medicine as an alternative career in which she expected to earn more money than in her pursuit of law. In fact, she had finished her final examinations in January 2010 when, on entering the elevator in the offices of C I & Associates, attorneys-at-law, a malfunction occurred and the elevator plummeted down six floors, crashing to the bottom of the shaft and severely injuring Miss Bright.

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 months. 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 around 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 20 years, at which point she may become a virtual paraplegic. She was previously an amateur lawn tennis player and also enjoyed playing golf and going to the movies. 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 around the time of the accident.

However, the accident has thrown Miss Bright into a severe state of depression as the prospect of being confined to a wheelchair, the spectacle of practising law with her handicap, and of not being able to fulfill her career goals, have all conspired to rob her of much of the joy of life. Her doctors have further indicated that her life expectancy has not been reduced.

Miss Bright, however, is of the opinion that any compensation package from C I & Associates should include –

- the cost of a house suitably equipped for her accommodation;
- cost of nursing care provided by her sister Stella who gave up her job as a psychiatric nurse in England. Stella's services are to be valued according to the salary scales in force at her recent place of employment;
- reimbursement of wages she has already paid to Stella.

Miss Bright consults you.

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

QUESTION 8

Mrs. Marie Jason whose husband was injured in a road accident informs you that she wants to sue the owner of the vehicle for the injuries suffered by her husband, John Jason, who was a passenger in the said vehicle at the time of the accident. Mr. Jason is still in the Central Hospital. This is the fourth week since he was admitted with a broken right hip and other injuries.

She tells you further that her husband's brother, Ed, has flown in from the USA to see his brother, John, and he is far from satisfied with John's condition. Ed is complaining of the lack of "high tech" equipment in the hospital and is planning to remove John from the Central Hospital and place him in a hospital in New York because the doctors here are not as skilled as those in New York.

Mrs. Jason tells you that her husband desires to retain you to look after his interest. She hands you a note from him. The note does not mention Ed.

- (i) State, giving reasons, what additional information you require.
- (ii) Draft any documents necessary to obtain the medical report.
- (iii) Advise Mrs. Jason if there is any objection to placing John Jason in a New York hospital and whether Ed's travel expenses are recoverable. Give reasons.