

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2014

REMEDIES

(AUGUST 11, 2014)

Instructions to Students

- (a) Time: **3½ 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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Darren ben Alison, head of the chemistry and research department of the Pharmaceutical Research Foundation (PRF), wrote an article on pharmaceutical brands in relation to anti-coagulants. A leading medical journal published the article in its January 2013 edition. This sparked worldwide controversy amongst medical practitioners, heart foundations, pharmacists and pharmaceutical manufacturers.

Representatives of three pharmaceutical companies which manufacture anti-coagulants met with the president of PRF and indicated their displeasure and disgust over the article and the writer. The president was asked to require Mr. ben Alison to publish a retraction. Mr. ben Alison was approached but he declined.

One week following the meeting, Mr. ben Alison received a letter dismissing him with immediate effect. The president called Mr. ben Alison and told him that if he Mr. ben Alison were permitted to remain on staff the institution would be in trouble with its main benefactors.

Mr. ben Allison is in the second year of a three-year contract with PRF. This contract has an option to renew for another three years on such terms as are mutually agreeable.

Advise Mr. ben Alison on the causes of action available to him and the remedial advantages inherent in any.

QUESTION 2

Three years ago exactly, Jim Pillo down, a land surveyor 35 years of age, was thrown from a bus after it had collided with a heavy duty vehicle owned by Haulage Limited. He was taken to the National Hospital and admitted in an unconscious state.

On examination it was discovered that his injuries were as follows:

Fracture of the shaft of left femur; fracture of the upper end of the tibia; several wounds to the face, right hand, left foot and right wrist; lacerations to the left occipital region of the scalp and right eyebrow; damage to the right knee resulting in swelling and stiffness.

The wounds were sutured and dressed. Pain medication and antibiotics were administered. He showed extreme sensitivity to pain medication which had to be discontinued. He eventually obtained some relief through physiotherapy and frequent massages.

Jim now has a combination of disabilities. There is shortening of the left leg, lack of full flexion and extension of the right knee, severe limp, loss of significant function of the left lower extremity and inability to stand or sit for long without excruciating pain. All the wounds have resulted in scarring. He experiences pain continually.

Jim, at the time of the injuries, was working at the National Survey Department. He also did field work during his weekends and on holidays. While he is still working at the National Survey Department, he is unable to carry out field work with any comfort or appearance of skilfulness. He is very anxious about his many disabilities and the diminished prospect of gaining prominence in his field.

Further, Jim is dissatisfied with the local medical care and desires to travel abroad with his wife and eldest daughter.

Advise Jim of the measure of damages, and the approach a court is likely to adopt when assessing the quantum of any monetary relief to which he may be entitled.

QUESTION 3

Your client, Wheels Unlimited (Wheels) is a dealer in “less than new vehicles”. The General Manager, Marcus Sterling, informs you that Wheels are facing unusual problems at their show room and parking lot on Main Street downtown. This is as a result of what is happening in respect of a 20-storey building under construction directly opposite their show room parking lot. Apparently because of the peculiar concave shape of the building and the material being used, intense rays of sunlight and heat radiate from it onto the street and the parking lot. The result is that the 150 vehicles parked in the lot from 11:00 a.m. to about 4:00 p.m. have all been warped and some have melted down under the ultra bright light and scorching heat reflecting off the building during that period. Wheels are seeking to relocate and have entered into an agreement to lease premises elsewhere. They have advanced 10% of the annual rent. This alternative is not as ideally located but they need space to accommodate a new shipment of vehicles.

The owner of the building under construction is Wonder Supplies Ltd., providers of ultra-modern office space. The architects are Rennais and Associates while the contractors are Wilburn Gobalt Builders and Jewel Cannary. The Environmental Protection Agency and the Local Government Authority have all approved the construction.

The Local Government Authority has written to Wheels demanding an “environmentally friendly disposal of the junked vehicles” under their control.

Advise Wheels on:

- (i) the likelihood of obtaining an injunction to demolish the building; and
- (ii) the basis on which any compensation for losses will be assessed and how the company should proceed in the circumstances.

QUESTION 4

Mr. Kamaki Bis is the owner of a chain of guest houses. He consults you and requests advice on how best he should approach the drafting of a contract whereby he, as owner, is contracting with Super Builders for the construction of a new hospitality unit for his chain. He already has an understanding with Super Builders but is particularly concerned because as contractors they, Super Builders, are relatively inexperienced.

From what he has heard about them they are ambitious but may be a little too casual. Although he still wants to contract with them, he does not have any time for litigation over unfinished or sloppy work.

Advise Mr. Bis how best to deal with his concerns taking into account the fact that there is still no guarantee that litigation could be excluded altogether. Give reasons for your advice.

QUESTION 5

On January 1, 2014, Hugo Rao, a foreign national, on his arrival at the airport in your country, was arrested on suspicion of involvement in narcotics trafficking and gunrunning. He was taken before a magistrate who ordered that he be fingerprinted and remanded in custody. He was booked to return before the Court the following week. Hugo was not brought back to Court until a week ago when the charges were dismissed and he was released.

Hugo is a citizen of a Latin American country and he was visiting for the purpose of learning the language, exploring the culture and generally enjoying himself. Not having heard from him, his wealthy parents had hired a private detective who tracked Hugo's whereabouts to your country.

With the aid of Right Eye, a local human rights group, he was traced to the lock-up where he had been kept from the time he was remanded in custody.

After his release, Hugo was taken to the National Hospital where he was kept for observation and treatment. During his stay at the hospital Hugo occupied a luxury unit in the Royal Wing.

While in the lock-up, he was subject to verbal and physical abuse. He was not permitted medical attention although he had contracted influenza. His request to call his embassy was refused and so was his request to call his parents. Further, the lock-up was more often than not crowded and dirty. He had forgotten what it was like to have clean clothes or enjoy freedom. He now occasionally has bad dreams. He is concerned about his mother whom he understands suffered nervous shock over his prolonged absence from home.

Advise Hugo on any rights or remedy he may have and how any damages in his favour should be computed.

QUESTION 6

The Managing Director of National Pastry consults you relative to the following:

Six months ago a motor car owned and driven by Norton Alford collided with a delivery van owned by National Pastry and driven by Mike Daley. It was not clear who was at fault. However, as a result of the collision the delivery van was damaged and National Pastry lost a vanload of assorted baked goods. Norton Alford's motor car was a wreck and Norton suffered a broken right leg.

They, National Pastry, paid a wrecker to tow the van to the mechanic's shop. The services of a loss adjuster were engaged. The incident is likely to result in loss of a no-claim bonus and a higher premium on insurance coverage for the coming year.

In order to keep their business going, National Pastry did not hire a replacement. They used a van which they already had in their possession. This spare unit was not as efficient as the damaged one. Repairs were done over a period of 21 days.

Advise the Managing Director.

QUESTION 7

Craig Motissan, an electrical engineer, was killed in circumstances which could render his employers, Kareema Refiners, liable in the tort of negligence.

Maria Motissan, his widow, tells you the above adding that Kareema Refiners has told her that they have instituted an enquiry into the circumstances and until there is a report, there is nothing they can do for her. She was also told that as things stood, Craig could have been partially responsible for the tragic outcome, in which not only he, but two other valuable employees perished.

She also tells you that she has had no further communication with Kareema Refiners and was minded to hire a private detective to check things out for herself. In the meantime, however, she and the children, Milton, 11 years old, Craig Junior, 14 years old and Harriet, who is 15 are really having a difficult time. Her mother-in-law, Auntie Sue Motissan was even more financially stressed. Aunty Sue is 68 and relied totally on her son for living expenses and health care. She

also tells you that the matrimonial home is in her name and Craig's and he paid the mortgage out of his salary.

Maria Motissan is seeking advice on any claims she, her children and her mother-in-law may have against Kareema Refiners and how she should prepare to make those claims. Her husband died leaving a will. She is the sole executrix and he has left all his real and personal estate to her and the children.

Advise Maria Motissan of any further information you require, giving reasons, and the approach likely to be taken by a court in affording relief to her, the children and Aunty Sue.

QUESTION 8

The issue of the adequacy of damages has a long history and seems to be gaining prominence in the modern Law of Remedies.

Discuss the above statement and illustrate your discourse with decided cases.

END OF PAPER