

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2015

REMEDIES

(AUGUST 13, 2015)

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

A year ago Pedrino was involved in a collision with a haulage truck owned and driven by Edgar Phillistyn. Both Pedrino and Edgar are blaming each other for the incident. Pedrino suffered severe crush fractures to both lower limbs. The doctors at the National Hospital tried valiantly to avoid amputations but to no avail. Pedrino was permitted to seek medical help abroad. The diagnosis and prognosis from the local and foreign orthopaedic specialists were identical. When Pedrino went to the U.S.A. he was accompanied by his wife, his two teenaged sons, a household helper and a practical nurse. He spent three weeks in the orthopaedic wing of the State Hospital abroad.

Pedrino, who is wheelchair-bound, is depressed over the drastic change that has taken place in his life. He has declined psychological counselling and is apparently developing a dependence on alcohol. Pedrino, who was 45 years old at the time, is a commissioned land surveyor. He has lost interest in his profession. He thinks that his life is ruined. He can no longer play the sports he liked or take part in road races. He is angry and resentful. He wants to sue Edgar Phillistyn “for every cent Edgar has”.

What claims would you advise him to make and how will a tribunal approach the issue of compensation.

Advise Pedrino.

QUESTION 2

Beckham V. Drake is editor of “Sun Rising News” a broadsheet newspaper which circulates 500,000 copies in hard text throughout the region and in the diaspora. The paper also has unlimited circulation on www.SunRising.com. “Sun Rising News” is published by Cosmic Rays Inc. which also publishes a sibling evening tabloid called “Sun Rays at Dusk”.

Mr. Drake consults you in respect of a letter he has received from an attorney-at-law alleging that his client A-Z Auditors has been defamed by material published in both the “Sun Rising News” and repeated in “Sun Rays at Dusk”.

On perusal of the letter you note that an apology is being demanded and legal action is threatened against Beckham V. Drake, Cosmic Rays Inc., Classic Printers and Excel Bookstore which has outlets at the airports and hotels.

Mr. Drake admits publication of the material as alleged. He instructs you that he can prove that the material published is true. He, however, understands that Classic Printers and Excel Bookstore have each begun negotiations with A-Z Auditors with a view to out-of-court settlements and their lawyers are working out suitable apologies for publication.

Mr. Drake states that he is in search of a lawyer who will be able to get the truth out of any witness that A-Z Auditors may bring to court. He says that he has listened to the lawyers who appear during commissions of enquiry and he believes that you are just as good. He said he is not interested in offering any apology just yet.

Advise Mr. Beckham V. Drake.

QUESTION 3

“The law of restitution has progressed from quasi-contract to restitutionary damages and, in some respects, is attempting to undermine the primacy of the compensatory measure.”

Discuss the above statement with illustrations selected from decided cases.

QUESTION 4

Camilee Tensing is an accountant who works from home. She has a number of clients including doctors, lawyers and other persons who need help with accounting matters.

Five months ago, she drew a cheque on ABC Bank where she maintained a savings and a current account. She drew the cheque in favour of her electrician who had done work on a number of appliances at her home.

The cheque was returned by the bank. It was marked "Return to Drawer – NSF". At all material times the balance in Ms. Tensing's account was more than enough to cover the amount on the cheque which was to the value of \$4,500.

- (i) Advise Ms. Tensing of any cause(s) of action open to her and any available remedy.
 - (ii) Indicate whether and the extent, if any, to which your advice would be different if Ms. Tensing was the proprietor of a small supermarket.
-

QUESTION 5

Hiochtane Smyth was 12 years old last January when he was injured in a disused factory building owned by Astello Limited (the Company), sugar producers and manufacturers. The factory building, along with machinery, has been idle for the past two years. It is located many miles from any school or residential district.

Angella Smyth, Hiochtane's mother, consults and gives you the above summary. She hands you a letter which is ostensibly signed by Marge Ramney, legal counsel for the Company. In the

letter Ms. Smyth is invited to visit the Company's head office to discuss the matter of Hiochtane's "alleged injury on the Company's premises". The invitation is said to be given "without prejudice".

Ms. Smyth wants to retain you to attend with her as her legal representative.

You agree to accompany Ms. Smyth.

- (i) What steps would you take in preparation for advising and representing Ms. Smyth?
Give reasons.
- (ii) Prepare a response to Marge Ramney's letter.

QUESTION 6

Jonnell Swaby, computer programmer, was awakened from sleep two days after New Year's Day 2015, by police. He was not actually in his bed but had fallen asleep on a couch before the TV which was still on. It was about 6:00 a.m.

He was taken to the police station along with his three telephones, his laptop and desktop computers.

On reaching the station, one of the officers said to another, "Put this scammer boy with some friends in number 2". By then Jonnell was fully awake and realized that something was wrong and that it was not a bad dream. He shouted, "I am no scammer! What is going on? What have I done?" The same officer said, "Alright hacker boy you will soon know". Jonnell asked for permission to call a friend to inform the friend where he was and that he needed a shirt. The officer said, "Nothing doing. Where you will be will be quite warm so you don't need a shirt."

Jonnel started sweating profusely with fright and requested permission to call his lawyer. The officer said, "Sorry, sir, but not at this time." He was also refused the opportunity to call his neighbour.

His phones and computers were searched and he was interrogated throughout the night. During the interrogation an officer gave him a shirt. He was also given sandwiches and lemonade which he declined. One officer said, "Scammers and hackers only eat KFC." Loud laughter followed. A senior officer came and said, "Young boy, go home and from this day on keep out of bad company." He was released without any charge.

When Jonnel asked for his telephones and his computers, the officer informed him that the numbers were still being investigated and as soon as that was done they would either return them or return for him. Jonnel consults you.

Advise him.

QUESTION 7

Al Benson is a pharmacist who has, until recently, been working with Up-scale Med-Centre, (Med-Centre) as Senior Pharmacist.

In early March this year, Benson took ill on the job and was hospitalized for three weeks. On April 2, Med-Centre's General Manager, Kelso Bramwell, telephoned Benson's home and requested him to return to work the next day. Benson explained that he had an appointment with his doctor and he felt obliged to attend because it was his first post-surgery appointment. Benson kept the appointment with his doctor and, on April 4, Kelso Bramwell called Benson's home and instructed him to turn in his keys and collect his cheque.

Benson is 60 years old and has been working with Med-Centre since he was 30 years old. When Med-Centre recruited him, he was a Division Head in a pharmaceutical company. At the time of his recruitment, Med-Centre had just opened and the manager wanted an experienced and

outstanding pharmacist. Their search led them to Benson who was approached and encouraged to leave his position with the pharmaceutical company. Benson's financial package with Med-Centre includes salary, transportation allowance, late shift meal allowance, incentive bonus, medication at 50% discount, subscription to pharmacology magazines, housing and entertainment allowance and income tax allowance (100%).

The incentive bonus was payable at year end and is at the discretion of the Board of Directors. Whenever there was a salary increase no incentive bonus was granted. There has been no salary increase to Benson or any other pharmacist at Med-Centre for the last two years. Benson has not yet re-entered the job market. He is receiving a monthly sum of \$600,000 as illness and unemployment benefit under a policy of insurance which he had taken out some years ago. Benson has been told that Kelso Bramwell has been spreading negative rumours about him. He is worried over his future. His doctor has advised that his anxiety is impeding his full recovery. Benson consults you.

Advise Benson.

QUESTION 8

Kay & Co., driving instructors, owned a year-old car which they used in their business. The car was destroyed by fire, earlier this year, when it was being refuelled at a petrol station, owned and operated by Xtra Gas Suppliers. One week after the incident, there was a change in the law which required, on pain of penalty, that only specially equipped dual controlled vehicles should be used by driving schools for instructional purposes.

Ted, the Manager of Xtra, is minded to settle with Kay & Co. but he has difficulties with the items being claimed as losses by Kay & Co. The items of loss being claimed are:

- The cost of a new dual controlled motor car
- Cost relating to licensing and insurance

- Loss of profits for eighteen weeks from the date of destruction of the vehicle to the date when Kay & Co. should have begun to put the imported vehicle into operation
- Interest at 16% per annum on the loan acquired to purchase the dual controlled motorcar
- Custom broker's fee
- Transportation cost and the inconvenience of having to negotiate a loan to finance the importation of this specially equipped car
- Interest

Ted is of the view that Xtra should only be liable for the cost of replacing the vehicle that was destroyed. He thinks that a claim for loss of use of that vehicle for 14 days is tolerable. He is also of the view that Xtra should not be concerned with the fact that Kay & Co. had to borrow money in order to comply with the law.

Ted consults you. Advise him.

END OF PAPER