

NORMAN MANLEY LAW SCHOOL  
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 1989

REMEDIES

(Friday, June 2, 1989)

Instructions to Students

- a) Time: 3½ hours
  - b) Answer FIVE questions.
  - c) In answering any question a student may reply by reference to the Laws 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.
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QUESTION 1

In 1985, the plaintiff Paul, aged 26, was severely injured in an accident. He had been married for 15 months and was a junior architect in a large firm of architects earning \$37,000 per year gross. He had graduated the year before from the University with an honours degree and had been showing talent and promise in his chosen field.

Paul's skull was fractured and he suffered severe brain damage. He was unconscious for several hours. He had several operations and received treatment in three private hospitals. Gradually, he regained some of his faculties but the residual impairment is described by all the doctors as "very serious". In particular, his memory, power of concentration and his emotional control are grossly impaired. He is unable to hold an intelligent conversation and whereas he was of a light-hearted disposition before the accident, he is now easily irritated and very obstinate.

Physically, there is some amount of strength in his limbs but the brain damage had adversely affected his ability to perform co-ordinated movements with the left hand and his gait is unsteady especially on the left side.

Paul now lives with his parents aged 48 and 55, both civil servants and they with the assistance of a nurse, look after him with great care and sad devotion. His wife Marlene looked after him for a while but she found the pressure of coping with his changed personality too much for her and left him two years ago. She has now filed for divorce.

Paul lacks insight into his condition and therefore becomes angry, frustrated, and sometimes depressed when he is unable to study or work or effectively converse or engage in any of the many sporting activities he enjoyed before the accident.

All the doctors agree that Paul will never be able to work for the rest of his life.

The defendants have admitted liability in the action you commenced on Paul's behalf and the case comes on for assessment of damages next month.

Advise as to the principles on which damages in Paul's favour will be assessed.

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QUESTION 2

The deceased, aged 30, died intestate on the 1st March, 1987 from injuries he received in an accident caused by the negligence of X Company Limited. He left a widow aged 25 and three children aged 5, 3 and 2 years and his mother aged 67 years to whom he had contributed \$100 per month.

He was employed as an electrician in a medium-sized manufacturing company at a salary of \$2,500 per month. He was skilled in his trade and had good prospects in his job.

He was a sober and frugal man, did not smoke or drink and was very devoted to his children and to a lesser extent his attractive wife. He looked after the gardens and kept his home supplied with fresh vegetables and ground provisions from a small farm plot he cultivated at the rear of the house. He had purchased that house in 1986 in his name with the assistance of a mortgage from his employers.

To help support herself and the children, the widow, who did not work while her husband was alive, took a job last year in the fashion designing trade in which she had some training and is now earning \$16,000 per year. Three months ago she became very friendly with a co-employee and is thinking of accepting his proposal of marriage.

You have been asked by the insurers of X Company Limited to advise them on the principles on which damages against their insured fall to be assessed. You have been instructed that the oldest child has taken her father's death very badly and has had to see a psychiatrist once or twice already. It is felt however, that she will come to terms with it by the time she starts going to high school at age 12 or so.

Advise X Company Limited.

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QUESTION 3

Your old friend George came to see you for advice on the following problems:

(a) His 17 year old son Mark has been banned by the principal of his school from participating on behalf of the school in the up-coming Inter-Secondary School Athletic Competition.

Mark is an outstanding athlete and had been training hard for the event and would easily have won selection on the team. Talent scouts from major overseas universities attend these events every year and George feels that if Mark competed, he would by his performance catch the eye of some of these scouts and probably get a track scholarship to study dentistry at one of these universities. You have looked at the Rules of the competition on which the Principal based his decision and you feel that there are arguments for and against the construction which the principal has placed on the relevant provisions, Mark has continued training notwithstanding the ban but George has observed that he is doing so with less enthusiasm, that he has stopped studying, is often depressed and has begun to talk of quitting school.

(b) A non-profit charitable organization which receives financial assistance from the Ministry of Youth and from private sources has recently

acquired the large lot of land which adjoins his house. With the help of several volunteers and notwithstanding written protest from him, the organization is proceeding at a fast pace to erect a concrete structure on the land to house a skills-training facility for over 100 under-privileged boys. The construction, which is about half-way completed and on which more than \$2,000,000 have reportedly, already been spent, is in breach of a restrictive covenant affecting the land and when completed, will interfere with his right to light and the excellent view of the hills which he has enjoyed for the past 20 years. Further, the organization has started to arrange go-cart racing every week-end on a track it built on the premises. The activity has caught the interest of a large section of the public including other residents in the area but the noise from it George says, is driving him mad. Many week-ends he has had to go off to an in-expensive guest house in the country to "find some peace".

Advise him.

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#### QUESTION 4

In 1986 the brakes of a lorry owned by the defendant failed to hold as the vehicle descended a steep hill and the lorry collided into a medium sized grocery and bar owned by Artemus, extensively damaging the building and injuring a customer, Aaron, who had been having a few drinks. The business had to be closed.

In 1987 a firm of attorneys filed separate actions on behalf of Artemus and Aaron which were consolidated and tried last month. At the trial the defendant withdrew the defence of inevitable accident which up to then he had maintained and the actions proceeded as contested assessments of damages.

The Judge found, in the action in which Artemus was plaintiff that the building was not repaired at or shortly after the accident because Artemus did not have, and could not raise, the \$100,000 which it would have taken to do so and that the cost at trial was \$180,000. He awarded \$100,000 with interest to Artemus plus loss of profits for 4 months, the period he found it would take to complete the repairs. He expressed sympathy for Artemus' position but said he had to leave out of account altogether the consequence of impecuniosity.

In Aaron's suit the Judge found as facts that at the time of the accident Aaron was employed as a casual worker in the construction industry and had been so employed for three months previously. He had been out of a job for many months before that because of the scarcity of demand for workers of his type. His employers paid him his wages in full during his hospitalization and recuperation and notwithstanding the permanent disability to his left eye, they had taken him back at full wages after his recovery. The Judge made reasonable awards for special damages and pain and suffering and loss of amenities but made no award in relation to or arising from Aaron's future employment prospects and, further, made no award of interest on the damages.

You have been asked to consider the probable outcome of appeals against these aspects of the Judgments and with particular reference to the Artemus action, to review the authorities which are likely to be relied on by each side.

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QUESTION 5

(a) State the rule in BAIN v FOTHERGILL and discuss concisely and with reference to decided cases the scope and application of the rule and present judicial attitude to it.

(b) Your client, Local Promotions Limited, recently held a fun day at a popular spot on the Island's south coast. The company had signed a contract with Tafari-I, a leading reggae singing group for the group to appear and perform, and the day before the fun day, spent a total of \$12,500 in erecting a platform for the group's performance, doing some special electrical installations and hiring a back-up band to accompany the group on that day. Tafari-I failed to appear. The event was however, well attended and the business manager of the company has told you that he cannot say what extra profit, if any, the company would have made if the group had appeared and performed.

Advise the company whether they can recover the \$12,500 from Tafari-I and if so on what principle.

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QUESTION 6

Your client, Barcon Limited, consults you for advice on the following matters:

(a) The company put its tug into dry-dock on February 1 for repairs under a contract with Areo Limited, that the work would be completed and the tug redelivered by February 15, and that \$500 was payable "by way of liquidated damages" for every day of delay in delivery of the tug duly repaired. On February 8, the company inspected the work and, satisfied that the repairs were progressing satisfactorily, agreed in writing on that date to hire the tug to Pier Owners Limited for 6 days, commencing on February 16. Pier Owners Limited made it clear to Barcon Limited that it had to have the tug on the 16th and the agreement contained a provision that Barcon Limited would pay Pier Owners Limited \$10,000 "as compensation" if the tug was not delivered on that date. Barcon Limited advised Areo Limited of the hireage contract on the day it

was signed. Unfortunately, the workers at Areo Limited went on strike and the repaired tug was not delivered to Barcon Limited until February 22. Areo Limited has written the company admitting their breach of the repair contract but has not made any offer of settlement and Pier Owners Limited has written the company claiming \$10,000 plus interest.

(b) The company has a contract with a statutory corporation to construct some factories on the waterfront as part of a Free Zone development. The company sub-contracted the sewerage works to Ball and Company Limited, who did the engineering studies and commenced construction but abandoned the job when it was half-way through because of a personal difference between the company's Project Manager and the Managing Director of Ball and Company Limited. The company stands to lose substantial sums of money on the main contract by reason of this stoppage of work and would like to force Ball and Company Limited to return to the site to complete the sub-contract as soon as possible.

(c) Susan, the Managing Director's daughter, got married recently at a small private wedding. The professional photographer whom she had paid to take the wedding photographs did not show up. She is therefore without even one wedding picture. One of the guests who had a small camera, took some photographs, but 'they did not come out'. Susan has suffered considerable mental anguish, aggravated by the fact that the photographer has not even sent a word of apology. The Managing Director wants to know what damages, if any, his daughter can recover.

Advise the company.

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QUESTION 7

Your client, Howard, was a supervisor in the Kingston office of Telecon Limited, a large utility company. He had ably served the company for the last 10 years and was liked and respected by the supervisory staff and by the unionised line workers.

The General Manager, however, disliked Howard for certain personal reasons having nothing to do with the job and you have been fully briefed as to that aspect of the background of the matter.

In November, 1988, a heated argument developed between Howard and another supervisor about certain matters relating to the overtime roster for workers. The General Manager intervened, cursorily enquired of the other supervisor what the problem was and before receiving a full report dismissed Howard on the spot without pay. Howard was so shocked and embarrassed that he left the premises without even clearing out his desk drawer. His feeling of pride and worth were injured and he is concerned that persons in the community who hear of his summary dismissal may think he did something dishonest.

At the date of his dismissal, Howard was getting a salary of \$3,000 per month gross and he had the use of the company van on week-ends. The company normally gave an end-of-year bonus of approximately 4 weeks salary to its supervisory staff and though this was a matter solely within the discretion of management to decide, Howard received a bonus at the end of each of the four years since he became supervisor.

Shortly after Howard was dismissed, the Office Manager who was sympathetic to his cause, sold him the company van he had been driving at book value which was about half of its market value.

Howard consults you and shows you a letter signed by the Managing Director of the company in which an admission was made that his dismissal was wrongful. He tells you that he wants his job back and/or substantial compensation. He says that he has been seeing some of the

A did not have the money to buy cattle from other sources to keep the butchery and meat shop going and had to close them down. His Bank had loaned him the \$25,000 he used to buy B's herd but in view of the probable drying up of his cash flow as a result of the adverse developments affecting his herd, it refused to advance him any further money. A therefore gave up to another wholesale meat supplier, the two lucrative supply contracts he had with two supermarkets and is doubtful whether he would get these contracts back if and when his operations returned to normal. Another supermarket with which he had a supply contract and which has not found alternative source of regular supply is threatening to sue him for breach of contract.

Advise A as to the assessment of damages in his favour against B.

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workers and is convinced that they are pressuring the company through their Union to re-employ him and he has not sought another job as he wants to be available when he is recalled .

Advise him.

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QUESTION 8

A was a cattle farmer with a herd of about 100 head. He also ran a slaughter house and meat shop supplied by weekly slaughters from his own herd.

B induced A to purchase B's entire herd of 20 head of cattle by a representation, known by B to be false but not forming part of the contract, that the herd had been tested by the veterinary surgeon and found to be free of a certain deadly disease which had been affecting cattle in the other end of the Island. The fact was that the vet had not been to B's farm for over a year.

A paid B \$25,000 for the 20 head and pastured them with his other cattle. His own herd had, the week before, been certified by the vet to be free of the disease.

It turns out that at the date of purchase, B's cattle were carrying the disease and within two weeks they had infected several head of A's original stock. Officers of the Ministry of Agriculture, acting under statutory authority, ordered A to destroy the 20 head he purchased from B and 35 head of his original stock, valued at \$50,000, which were showing signs of the disease. They ordered that the other 65 head of cattle be kept by A at his expense under certain very expensive 'quarantine' type conditions and that no further slaughter from the herd was to take place for 6 months.