

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1987

REMEDIES

(Monday, May 18, 1987)

Instructions to Students

- a) Time: 3½ hours
- b) Attempt FIVE questions but not less than TWO from any PART.
- c) It is unnecessary to transcribe the questions you attempt.
- d) 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.

PART I

QUESTION 1

"... A declaration by itself is concerned only with expounding the law upon a matter ..." Yardley, Source Book of English Administrative Law.

Discuss this statement and with reference to decided cases illustrate the weaknesses, if any, inherent in this remedy and whether there are any counter-balancing strengths.

QUESTION 2

"Strictly speaking rescission is the act of a party and not the act of a court: if the court makes an appropriate order this is little more than a judicial recognition of the fact that the expression by the party of his determination to repudiate the contract was an effective rescission of the contract." Phillip H. Pettit, Equity and the Law of Trusts.

Discuss this statement and indicate the grounds which may justify rescission by a contracting party and the considerations which may render this remedy unavailable.

QUESTION 3

In or about December 1979, Mr. Patience agreed to purchase Blackacre from Mr. Badjohn Wilks. The price agreed on was \$3,000 which Mr. Patience paid before he was let into possession.

Badjohn gave Patience a receipt which refers to Blackacre and the fact of receipt of the \$3,000 as "full payment and nothing further is owing".

The receipt was signed by Badjohn and Patience in the presence of a Justice of the Peace/Notary Public.

In January 1981, Badjohn informed Patience that he (Badjohn) was "cancelling" the contract because "the land is worth more now".

Patience replied: "that cannot be done!"

Some time in 1984, Badjohn repeated his intention to cancel the contract and gave Patience the option of paying an additional \$6,000 to complete the purchase. Patience asked Badjohn to leave the premises and never to return.

Patience understands that Badjohn's father is very ill and could die at any time and Badjohn who visits Patience's premises almost daily had indicated that he (Badjohn) was going to bury "the old man on Blackacre and nothing can stop it".

Advise Patience.

QUESTION 4

By contract dated December 15, 1974, Mr. Daniels agreed to sell Whiteacre to Mr. Pandry. The price was \$3,000. Possession was to be delivered on the completion date which was to be within ninety days of the signing of the contract. A deposit of 10% of the purchase price was paid.

In 1980 Pandry by his Attorney-at-Law served a notice on Daniels requiring completion within thirty days and making time of the essence. Daniels did nothing about the notice and Pandry did nothing until some time in 1984 when he commenced an action in the Supreme Court claiming specific performance of the contract. The Writ was served on the day before its expiration.

In 1979 Daniels had constructed a three-bedroom house which he let to a tenant who was given an option to purchase.

In 1980 Daniels retired from his job. He is suffering from hypertension and diabetes and one of his legs has been amputated.

Write a memorandum indicating whether and on what grounds Daniels can successfully resist Pandry's claim for specific performance.

P A R T I I

QUESTION 5

a) Mr. Mears sustained serious head injuries and brain damage in a motor vehicle accident for which he was partly to blame. Three years after the injury he sexually assaulted and maliciously wounded two women and raped and wounded a third. He was sentenced to a term of life imprisonment.

Prior to the injury Mears had been convicted and imprisoned on several occasions for crimes involving dishonesty and had a poor record of employment.

There is medical evidence that as a result of the injuries Mears had received in the accident he had undergone marked personality change. Mears was sued by his last three victims and he paid a total of \$126,000 in damages to them.

Mr. Mears wishes to take legal proceedings against the driver of the motor vehicle.

Advise him on the likely measure of damages recoverable.

b) Mr. & Mrs. T lived in a three-bedroom house with their eight children. Mr. T was a security guard and whenever Mrs. T was not pregnant she worked as a household helper at the minimum wage. They consulted Dr. Donothing and discussed the possibility of Mr. T having a vasectomy. Mr. and Mrs. T were assured that the vasectomy would render Mr. T. sterile. They signed the necessary forms and the operation was performed. One year later Mrs. T discovered that she was pregnant. On examination it was discovered that due to peculiar scar formation the operation on Mr. T was rendered ineffective. At the time Mr. and Mrs. T consulted Dr. Donothing this probability was known to the medical profession.

Mr. and Mrs. T have sued Dr. Donothing.

Advise on the heads of damages recoverable.

QUESTION 6

a) "The rule that a plaintiff who rejects a medical recommendation in favour of surgery must show that he acted reasonably is based on the principle that a plaintiff is under a duty to act reasonably so as to mitigate his damage."

Discuss this statement and with reference to case law illustrate the general application of the principle referred to.

b) Jillie was injured in a motor vehicle accident by reason of the negligence of Nervona. She was advised by Nervona's doctor to undergo an operation to her right wrist. She was told that this operation would restore 90% of her previous earning capacity within six to nine months. Jillie who dislikes hospitals and is afraid of surgery refuses to take the operation. She also believes that Nervona's doctor is "merely looking out for Nervona".

(i) Advise Jillie as to her prospect of success with regard to this item of her claim against Nervona.

(ii) Would your advice differ if Jillie is known to be a diabetic?

QUESTION 7

Mr. Donovan, whose wife was injured in a minibus accident on January 7, 1987, informs you that he wants to sue the owner of the minibus Mr. Run Jostle for the injuries suffered by his wife and the loss of her services. Mrs. Donovan, he tells you, is still in hospital. He also tells you that a person who has come from the U.S.A. says that if he (Mr. Donovan) and his wife were in the U.S.A. he could easily get a million dollars for his wife's injuries in addition to what he would get for loss of her services. Furthermore, that he saw in the Moon Newspaper where a 17-year old girl got a quarter million dollars and his wife is nearly four times that girl's age.

Advise Mr. Donovan.

QUESTION 8

a) Gilzene was forty, single and a labourer. On May 15, 1973, he was injured in the course of his employment when a rubber belt caught his left arm and pulled it out of its elbow joint. The machine was stopped but by that time his left arm was severed from the elbow.

The stump was repaired on the same day and Gilzene remained in hospital for two weeks. The disability in the left upper arm is total.

On March 21, 1980, damages were assessed by the Court as follows:

Special damages	- NIL
General damages assessed as follows:	
Loss of earning capacity	\$ 7,500
Pain, suffering and loss of amenities	\$12,500
Total damages	<u>\$20,000</u>

Indicate, giving reasons, whether there are any other heads of damages under which Gilzene could have obtained additional compensation.

b) Johnathan, a dentist, on May 25, 1985, had his left arm severed at the elbow and you are now negotiating a settlement on his behalf with Tort Feasor Insurance Company. You receive a letter from the claims manager offering general damages in the sum of \$20,000 which he says will be paid into Court if necessary. He tells you that the Court had made an identical award in a case where the injury was identical. (This is a reference to Gilzene's case indicated at (a) above.)

Prepare a memorandum in support of your client's rejection of this offer, indicating any other claim which you consider sustainable in the circumstances.
