

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1990

REMEDIES

(Monday, May 21, 1990)

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.
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QUESTION 1

Mr. Alec Smart informs you that he wants you to prepare a draft building contract to be signed by Reneging Building Contractors Limited which he intends to employ to construct a building for use as a supermarket and warehouse. He wants you to put a clause in the contract so that if "Reneging breaks the contract in any way by even a nail out of place or a day late the company will have to pay a good sum of money". He wants you to describe the clause as a "damages clause". He wants the amount to be sufficiently large so that the company would find it more economical to complete the job than to break the contract. He tells you to get hold of copies of other building contracts and use your judgment to select a good figure that would make sense because Reneging has a lot of resources. He says that he does not want "to threaten them with a feather".

Advise Mr. Smart.

QUESTION 2 ✓

Mrs. Coveta Monni whose husband was injured in a road accident informs you that she wants to sue the owner of a minibus for the injuries suffered by her husband who was a passenger in the said minibus at the time of the accident. Mr. Monni is still in the Central Hospital. This is the twelfth week since the accident and Mr. Monni is not making any progress.

Mr. Monni's uncle who likes to be called "Ed" tells you that he flew from the U.S.A. to see his brother and he is far from satisfied with his brother's condition. He wants to remove him from Central Hospital and place him in a hospital in New York. Ed believes that the doctors in this country are not as skilled as those in New York. Mrs. Monni has asked you to handle the case.

- (a) State giving reasons, what additional information you require.
- (b) Prepare the documents necessary to ascertain the injuries suffered by Mr. Monni.
- (c) Ed wants to know if there is any objection to placing Mr. Monni in a New York hospital and whether he can get an advance payment to cover "bills to date".

Advise.

QUESTION 3

Mr. Fortune's motor car was damaged in a motor vehicle collision for which XY Company's driver was entirely to blame. At the time of the collision Mr. Fortune was transporting a number of persons including May, his 18 year old daughter who had been on her way to attend an interview for a typist position with a prospective employer. As a result of the collision, May who suffered no personal injuries was unable to keep the appointment.

Advise on measure of damages in each case.

QUESTION 4

Jason Elridge III is the owner of a 1914 Bentley motor car which is called "The Carriage". "The Carriage" is a family heirloom. He is under an obligation to maintain "The Carriage" and to bequeath it to his son on the terms of his father's will. "The Carriage" has always been used to transport newly-weds. Many newly-weds who were unable to hire "The Carriage" have been permitted to be photographed near it.

This car was extensively damaged in a collision with a Bedford truck driven by Edgar Philistyn who admitted liability for the accident.

According to the adjusters' report "The Carriage" should be considered a total loss since repairs would cost three times as much as a new model.

Jason has in the meantime hired a new Jaguar motor car as a substitute until he can find enough money to repair "The Carriage" which he insists on repairing.

Advise Jason.

QUESTION 5 ✓

Mr. Canary consults you and gives you the following information:

"Some weeks ago Mrs. Canary obtained judgment for personal injuries suffered in a motor vehicle accident and damages were assessed. At the trial the defendant Mr. Robbins was found wholly liable. During the trial Mrs. Canary's attorney-at-law omitted to lead evidence of certain changes in Mrs. Canary's physical and mental condition which had deteriorated prior to the trial. During the trial Mrs. Canary was at times rather incoherent. The doctor who had treated Mrs. Canary was out of the island at the time of the trial. When Mrs. Canary had been told of this she had flown into a rage and shouted, 'Doctor or no doctor I want this whole thing finished. I am tired of it'. The doctor is now back and Mrs. Canary is unable to stand or walk and her speech is incoherent. No appeal is pending. Mr. Robbins has discovered that Mrs. Canary had been advised by her doctor to undergo surgery to 'reduce the likelihood of these complications arising', but she had flatly refused.

Mrs. Canary's motor car was very badly damaged and no claim was made in the case just completed."

Advise Mr. Canary.

QUESTION 6

- (a) Discuss the legal bases for the award of general damages in the case below which was continued by the deceased's personal representative.

Trial: 1/2/75

Deceased - Mason/Contractor earning \$200,000 per annum injured on May 20, 1972 when a motor vehicle in which he was a passenger ran off the road and overturned. He died whilst action was pending.

Personal Injuries

- (1) Loss of consciousness
- (2) Fracture dislocation of cervical spine
- (3) Loss of sensation in the trunk and limbs with complete loss of voluntary movement in limbs.

Hospitalisation and Treatment

Admitted to Varsity Hospital. Treated on skeletal traction until 22nd June, 1972. In July 1972 he was removed to a rehabilitation centre. His condition deteriorated. He developed severe spasms and was unable to sit in a chair. In April 1973 he was re-admitted to Varsity Hospital and had an operation to his spine. Medical opinion was that the Plaintiff would be completely disabled for the rest of his life and would need assistance and attention always. The Plaintiff's enjoyment of life was severely affected and his life expectancy was shortened. He died on March 28, 1974. Action had been commenced in 1973

Award:

Special damages : \$9,961.00

General damages : \$4,000.00.

- (b) You are representing Mrs. Campbell, the administratrix of the estate of her late husband Hudson Campbell, whose medical history was

similar to the plaintiff in the case at (a) above. Mr. Campbell died on January 1, 1987, while the litigation was pending. He was 45 years old. He was a Life Underwriter who had in the year prior to his injuries won the prize for writing more than \$1 million in insurance business. He also won the prize for having the least number of lapsed policies. He had good prospects of becoming a Branch Manager. There are two children of the marriage.

The defendant's insurers in a bid for an out-of-court settlement have indicated to you that they are being guided by local precedents and have offered the sum of \$6,000 as general damages. They have indicated that their generosity springs from the fact that some time has elapsed since an award of \$4,000 was made in a similar case.

Write a memorandum in response to this letter.

QUESTION 7

(a) The Neo Fashion Hotel refused to accommodate Mr. Joe Jangles and his wife and 18 year old son although they had been booked to holiday there for seven days. The Jangles were properly dressed and appeared to be persons of good character.

The booking clerk told Mr. Jangles to "stand outside and wait until the manager was contacted". Mr. Jangles said he would rather his wife and son sit while he waited at the desk. The clerk told the Jangles not to sit. After a telephone conversation the clerk said to Mr. Jangles "sorry sir but I can't check you in - boss's orders". "However", he continued, "there is a little place down the road and they are not as fussy about their clientele as we are".

Advise Mr. Jangles.

(b) The facts are as above except that the hotel is Government owned and run. Mr. Jangles who refused to leave the hotel premises was grabbed, pushed, shoved and beaten in the hotel lobby by the hotel security guard who had been summoned by the clerk to "put out an intruder".

Advise Mr. Jangles.

QUESTION 8 ✓

In June 1987, David, an exceptionally intelligent schoolboy aged 8, was knocked down by a car whilst crossing the road. Jack the driver of the car accepted liability. David's father Andy is a consultant physician at the City Hospital and his mother June is a systems analyst with Orange Computers Limited.

As a result of head injuries sustained in the accident David now suffers from frequent epileptic fits which will continue for the rest of his life. A recent medical report indicates that David will never be able to function beyond a mental age of 6.

Jack has agreed to compensate David and Andy seeks your advice on the measure of damages.

Advise him.