

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1991

REMEDIES

(Monday, May 20, 1991)

Instructions to Students

- a) Time: 3 1/2 hours
- b) Answer FIVE questions only
- 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.

QUESTION 1

Stephen, a garment manufacturer, decided to expand production to supply the expanding export market. In fact he had just secured a contract worth \$5million to supply a foreign company with children's clothing.

On January 1, 1990 Stephen entered into a contract with Ace Ltd. Building Contractors, for the construction of a new factory. The factory was to be completed by June 30, 1990. The contract also provided, inter alia:

- a) that in the event of non-completion by the date stipulated the contractor shall be liable to pay to Stephen, by way of liquidated damages the sum of \$10,000 for each month of delay, and
- b) that if the factory is not completed according to specifications or the contractor fails to clean the site after completion, the contractor shall pay, by way of liquidated damages the sum of \$25,000.

The factory was completed on November 1, 1990. This resulted in the loss of the \$5m contract. Further Ace Ltd. refused to clean the site on completion. Stephen subsequently cleaned the site at a cost of \$10,000.

By a separate agreement Stephen hired a truck from Ace Ltd. to transport finished garments to the docks. The duration of this agreement was to be 2 years, either party being at liberty to terminate the agreement by 2 weeks notice and the payment of \$5,000. On the expiration of 3 months of this agreement Ace Ltd.

Give 2 weeks notice to terminate the agreement but contended that they are not liable to pay the \$5,000.

Advise Ace Ltd. as to its liability to Stephen.

QUESTION 2

Cedric is a tenant of a house on a state owned housing estate. In January 1991, he was served with a notice to quit by the State Housing Authority, on the ground that he was in arrears of rent for over one year. He ignored the notice. Two weeks ago security guards from the authority went to his house to eject him therefrom. He showed the guards receipts which indicated that his rents were paid up-to-date and that he had never been in arrears. The guards nonetheless proceeded to remove his personal effects from the house. Cedric attempted to stop the removal whereupon one of the guards grabbed him and handcuffed him to a rail in full view of a large crowd of onlookers. He was released an hour later on completion of the removal. Two days later the Authority admitted that they made an error and allowed Cedric to re-enter the premises.

You are consulted by Cedric who tells you that he feels humiliated. He instructs you to take legal proceedings against the Authority.

Advise him on the measure of damages.

QUESTION 3 ✓

In 1989 Richard then aged 40 was employed as a research chemist with Elite Foods Ltd. at a monthly salary of \$6,000. His employers provided him with rent free accommodation and the use of a company car.

On May 1, 1989 Richard was involved in an accident for which Frank has accepted liability. One month later Richard died in hospital from injuries sustained in the accident.

He is survived by his wife Jane aged 35 and a son David aged 10.

Richard contributed the monthly sum of \$3,000 to the maintenance of the household. He also owned a life insurance policy the proceeds of which, amounting to \$200,000 has since been paid to Jane, the beneficiary named in the policy. Further by his will he devised to Jane one lot of land valued at \$50,000.

Shortly after his death the Staff Association at Elite Foods Ltd. made a payment of \$40,000 to Jane to be used to defray the cost of David's education.

Jane suffered considerable grief from Richard's sudden death and had to seek medical attention for acute depression. However she is now fully recovered and is on the verge of accepting a proposal of marriage from Leon an old boyfriend.

Frank is anxious to settle the matter out of court and Jane seeks your advice on the measure of damages consequent upon Richard's death.

Advise her.

QUESTION 4

(a) Paul is the owner of a house situated on a hillside abutting a public road. On October 1, 1989, the local authority excavated part of the road to construct a drain. The excavation caused the adjoining land to subside, with consequent damage to Paul's house.

On January 31, 1990, in an action against the authority Paul was awarded damages for damage to his house. On July 10, 1990, after some heavy rains there was further subsidence stemming from the excavation, causing further damage to Paul's house. On December 1, 1990, Paul issued a writ against the local authority claiming compensation for damage to his house.

Advise Paul as to whether he is entitled to recover any further damages.

(b) Jack, a joiner, was injured at work in 1989, which resulted in the loss of the left eye and injury to the right eye. He took legal action against his employer ^{Peter} Jack, a furniture manufacturer. One week ago, Jack was awarded damages which did not include a sum for loss of future earnings. It transpired at the hearing that Jack returned to work months after the accident and was so employed at the date of hearing. Indeed Peter told the court that he would continue to employ Jack indefinitely. Three days ago Jack's sight suddenly worsened and he was dismissed by Peter because he represented a danger to himself and fellow employees.

Jack seeks your advice as to whether he can recover any further damages.

QUESTION 5

In 1986 John, a taxi driver, acquired a used 1980 luxury car. It was particularly suited to his needs, as he transported tourists who preferred the comfort afforded by such a car. Shortly after the purchase, John had the car converted to right hand drive and the engine was re-conditioned. He earned \$500 per day.

In January 1990, the car was extensively damaged in a collision with a lorry driven by Mike who accepted liability. The pre-accident value of the car was \$30,000. Mike's adjuster estimated that it would cost \$30,000 to repair the car. A comparable replacement was not available locally and it would cost \$60,000 to import one. John decided to have the car repaired and, for this purpose, he applied for a loan. The loan was approved and disbursed two months after the accident. John would have been unable to undertake the repairs without the loan.

In early March, 1990, John delivered the car to Richard to be repaired. On March 31, 1990 the repairs were completed but on this same day the car was completely destroyed by a fire for which Richard accepted liability. Because of the unavailability of the car John lost a contract valued at \$5,000 with National Hotel, for the transport of delegates attending a conference held in April 1990.

John now wants to institute proceedings against Mike and Richard and seeks your advice on the measure of damages.

Advise him.

QUESTION 6

Kenton is a research chemist and in 1989 was employed to National Drugs Ltd. where he was engaged in some pioneering research on a new drug to treat diabetes. Aubrey, the chief executive officer of Colonial Chemicals Ltd. (CCL), persuaded Kenton to join CCL as head of research and development, which he did on May 1, 1989, under a written agreement for three years. The agreement was renewable for a further three years at Kenton's option. Kenton was to receive a monthly salary of \$20,000, rent free accommodation, the use of a company car "and such bonus (if any) as the directors shall from time to time determine". In addition Aubrey on behalf of CCL promised Kenton a free hand in the running of the research and development department.

By December 1989 the relationship between Kenton and Aubrey became strained and the board of CCL ordered that Kenton be assigned to administrative duties with no loss of benefits. The boards' action caused Kenton to suffer from bouts of severe depression for which he had to seek medical attention.

On April 1, 1990, Kenton was dismissed by CCL and given one month's salary. He was immediately offered re-employment as deputy director of research and development with no loss of benefits. Kenton did not accept this offer. On May 1, 1990 Kenton secured employment as a lecturer at a technical college at a monthly salary of \$5,000.

Advise Kenton as to his action for wrongful dismissal.

QUESTION 7

On June 1, 1989, Simon a self-employed accountant was involved in a collision with a vehicle driven by Clem. Simon was partly to blame for the accident. He sustained fractures to the right arm and right leg and bruises to the face. He was hospitalized for three months. Upon his discharge from hospital he convalesced at a private nursing home for one month at a cost of \$2,000 excluding the cost of medication which amounted to \$500.

The cost of Simon's medical and related expenses was defrayed from a personal accident insurance policy. At the time of the accident he was earning \$5,000 per month. During his hospitalisation and convalescence he received \$2,500 per month under the insurance policy.

Simon has since recovered from his injuries except that he now walks with a pronounced limp due to a shortening of the right leg. He has spent \$800 for special shoes. A recent medical report has stated that the shortening can be partially corrected by surgery. The operation could be performed locally at a cost of \$30,000. However Simon had the surgery in Miami at a cost of \$35,000 because he had no faith in the local post-operative care. He financed the operation by means of a loan with interest at 20 percent per annum.

He still experiences some pain in the right leg which pain is likely to continue for the rest of his life. He will also have to use special shoes for the rest of his life.

You are instructed by Simon to institute legal proceedings against Clem.

Advise him -

- (i) on his measure of damages;
- (ii) what items should be pleaded as special damages.

QUESTION 8

In March 1990, Mary aged 25, a laboratory technician employed with the City Hospital, was injured at work and the hospital accepted liability. She sustained crush fractures to both hands and the right hand had to be amputated during an emergency operation. In addition the thumb and first finger of the left hand were amputated in a subsequent operation.

At the time of the accident Mary was earning \$3,000 per month. She was recommended by the hospital to pursue a course in advanced pathology which would have made her the only one of her kind in the country. She returned to work six months after the accident and had suffered no loss of wages. Although she cannot now perform her former duties the hospital has decided to keep her employed without any reduction in wages. However her duties now consist of odd-jobs around the laboratory.

Prior to the accident Mary's hobbies were table tennis and netball. She can no longer engage in these activities.

You are consulted by Mary who instructs you to institute legal proceedings against the hospital. She tells you she is very

depressed because she cannot now pursue the advanced course.
Further, she fears that because of her injury she will never marry.

Advise Mary as to her measure of damages. ✓
