

NORMAN MANLEY LAW SCHOOL LIBRARY
COUNCIL OF LEGAL EDUCATION
MONA, KINGSTON, 7. JAMAICA

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1992

REMEDIES
(Monday, May 18, 1992)

Instructions to Students:

- (a) Time: 3 1/2 hours.
- (b) Answer FIVE questions only.
- (c) In answering any question a student 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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&
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Question 1

Connie is an attorney-at-law. On January 1, 1990, she was engaged by Crabb, Mole & Company, a prominent legal firm, to head their estate department. Under the terms of her employment, she was to receive a salary of \$10,000 per month together with a housing allowance and the use of one of the firm's car. Her employment was for three years in the first instance with an option on the part of Connie to renew for a further three years. She was to receive a bonus as the firm deemed fit, at the end of each year and after six years with the firm, she would be made a partner.

On April 1, 1991, Connie was dismissed by the firm and given six months salary in lieu of notice.

You are consulted by Connie who wishes to institute legal proceedings against the firm. She tells you that from her first day at work, Crabb, a partner, suggested that they become intimate friends but she refused. However, he continued to make improper advances. Their relationship became strained leading to her dismissal. On the day of her dismissal she attempted to clear her desk but was stopped by Crabb, who ordered the firm's security guards to put her belongings in garbage bags which they deposited at her feet. She was then marched off the premises, followed to the parking lot by two security guards and made to hand over the firm's car. Two days after her dismissal, Crabb apologised for his behaviour and, on behalf of the firm, offered to re-employ her on the same terms but she refused.

Since her dismissal, Connie has started her own practice. She

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tells you that she feels humiliated and embarrassed by the events before and after her dismissal and word is out in legal circles that she was dismissed for dishonesty.

Advise Connie as to her cause of action and the measure of damages.

Question 2

On December 1, 1991, Carl, an accountant, was killed in an accident for which Fred has accepted liability. He is survived by his wife Janice, aged 35 and their six year old son, David. Carl also had another son, Tommy, aged 11 by a previous marriage with Libby. He made monthly payments of \$600 to Libby for her and Tommy's support.

At the time of his death, Carl was employed at a salary of \$8,000 per month. He was the owner of a house, valued at \$300,000 which was subject to a mortgage. He paid monthly mortgage instalments of \$2,000. His mortgage loan was partly secured by a life insurance policy the proceeds of which was used to liquidate the loan.

Carl left a will under which he appointed Michael his executor and left all his real and personal property to Janice and Libby.

In April this year, Michael obtained probate of Carl's will

and seeks your advice as to the causes of action available to him and the measure of damages in each action.

- (a) Advise him.
- (b) How would the measure of damages be affected if Carl was partially to blame for the accident?

Question 3

Rohan, aged 27, is an engineer. In January 1989, he was hired by Lam Associates, a leading firm of consultant engineers at an annual salary of \$96,000. He showed great promise and after one year with the firm, he was being groomed to head a major department at an annual salary of \$150,000.

On May 1, 1990, Rohan was involved in a motor vehicular accident for which Carlos was wholly to blame. He sustained severe back injuries causing paralysis from the waist down. He had to undergo two surgical operations at a cost of \$20,000. The cost of surgery was met from a non-contributory group health insurance scheme maintained by Lam Associates. A medical report indicated that a further operation may result in some improvement in Rohan's condition, but he refused this surgery on the ground that he had suffered enough.

During his illness and convalescence, Rohan was paid only half his normal salary by Lam Associates. He however received the equivalent of half his salary from the "Engineers' Benevolent Fund".

On May 1, 1991, Rohan, who is now confined to a wheelchair, returned to work at his pre-accident salary. There is now no prospect of him heading the major department.

Advise Rohan as to his measure of damages.

Question 4.

Harry was the owner of a yacht valued at \$200,000. He used it mainly on weekends but during the Easter holiday period, he raced her in the local regatta. He has won several trophies and cash prizes in these races. On November 1, 1990, a barge owned by Acme Shippers Ltd. collided with the yacht which was totally destroyed. Acme Shippers accepted liability for the accident.

On November 7, 1990, Harry ordered a new yacht of the same type from National Boats Ltd., a shipbuilding firm in Canada. He was told by the builders that they no longer made that model. He therefore ordered a new model, with far more sophisticated features at a price of \$350,000. The new yacht was delivered on May 31, 1991. In the meantime, Harry, who sometime in October 1990 had

registered for the 1991 regatta, could not take part.

You are consulted by Harry who wishes to institute legal proceedings against Acme Shippers Ltd., which is contending that they are not liable for the cost of a new yacht. Harry wants to claim \$2,000 per week for loss of use and says he was extremely disappointed when he missed the regatta.

Advise Harry on his likely measure of damages.

Question 5

On January 1, 1990, Denise, then aged 24, was involved in an accident for which Charles is totally to blame. Shortly after the accident she was admitted to a private hospital in an unconscious state and did not regain consciousness until six weeks later. Medical reports indicate that she suffered severe head injuries and it was unlikely that she could ever lead an independent life.

Denise was discharged from hospital on July 1, 1990 and her mother, Doreen, who was then employed as a secretary at \$3,000 per month, gave up her job to care for her daughter. Doreen also spent a total of \$700 for visits to the hospital during her daughter hospitalization. Denise's hospital and related medical expenses amounting to \$4,000 were paid by Frank, to whom she was engaged to be married.

At the time of the accident and until June 30, 1990, Denise was employed as a social worker earning \$4,000 per month. After the accident she was paid a lump sum of \$500,000 under an accident insurance policy effected by her and is now in receipt of \$1,000 per month under this policy.

Denise, who represented her country in hockey, is now in a state of chronic depression and is particularly worried about her prospects of marriage, since Frank has since married someone else.

Denise has taken legal proceedings against Charles and the hearing of assessment of damages is set for June 30, 1992. She seeks your advice on the likely measure of damages and her entitlement to interest.

Advise Denise.

Question 6

Selwyn who manufactures plastic containers for use in the food and beverage industries, decided to expand his business. He entered into a contract with Biltex Ltd. for the manufacture, delivery and erection of a bottle-making plant. It was agreed that the work should be completed within twenty weeks from the date of final approval of the drawings. The contract stipulated that "If this period of twenty weeks is exceeded Biltex Ltd. shall pay by

way of penalty the sum of \$10,000 for each week of delay ...". There was a delay of ten weeks by Biltex Ltd. in completing the plant which period coincided with a prolonged dock strike. During the strike Selwyn's entire operation came to a standstill because all his raw material was held up at the port.

In the meantime, by a separate agreement, Selwyn hired from Biltex a number of portable cabins to augment his office space. The period of hire was twenty weeks but Selwyn could terminate the hire by one week's notice and the payment of \$15,000. After ten weeks Selwyn terminated the hire by giving one week's notice but contends that he is not obliged to pay the \$15,000.

Advise Selwyn as to his rights and liabilities.

Question 7

Robert owns a beach house built on lands rented from Clem. In June 1988 while Clem was in the process of cutting a nearby tree he caused branches to fall on Robert's house resulting in extensive damage to its roof and eastern wall. Clem at first accepted liability and promised to have the house repaired but shortly thereafter he denied all liability.

Robert and his family used the house on approximately two weekends each month. On the weekends that he did not use the house

Robert rented it out at a price of \$4,000 per weekend. Robert, due to financial difficulties in his business, was unable to effect the necessary repairs the cost of which in June 1988 was estimated to be \$25,000.

By December 1988, the roof had caved in and the house became uninhabitable. Thieves and vandals have broken in. Furniture and the refrigerator were stolen. The plumbing and electrical fixtures have been vandalised. The house is now in a state of ruin and the cost of repairs would amount to \$75,000.

In June 1989, Robert brought an action against Clem in negligence and has recently obtained judgment. The question of damages has been referred to assessment and he seeks your advice on his measure of damages.

Advise Robert.

Question 8

Produce Ltd., wholesale distributors of chickens, contracted to deliver 50 cartons of chickens to Fast Foods Ltd. caterers, on December 15, 1991. Fast Foods Ltd. intended to use the chickens in the preparation of lunches which they had contracted to supply on December 22, 1991, to two large institutions for their seasonal celebration.

On December 21, Fast Foods Ltd. kitchen staff on unpacking the unopened cartons which had been stored in a freezer, discovered that they contained chicken necks and backs and not whole chickens. Fast Foods Ltd. informed Produce Ltd. but was informed that all the chickens had been sold out and that Fast Foods Ltd. would have to do their best with the necks and backs. Fast Foods Ltd. informed Produce Ltd. that they had no intention of using the necks and backs and that Produce Ltd. should arrange for their collection immediately. To avoid spoilage the necks and backs were stored in the freezer.

In order to fulfil his contracts, Fast Foods Ltd. sent an agent out of town to purchase as many chickens as possible. The agent was only able to purchase half the required quantity of chickens. Since these chickens were not roasters, the barbecued chicken was tough and the quantity was quite inadequate.

Fast Foods Ltd. informs you that with the approach of the Easter festivities they had been expecting good business but none of their regular clients had approached them. They still have the cartons of necks and backs in storage despite repeated requests to Produce Ltd. to collect them.

Advise Fast Foods Ltd. as to the measure of damages against Produce Ltd.
