

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1993

REMEDIES
(Monday, May 17, 1993)

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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Question 1

Promo Ltd (Promo) carried on the business of advertising agents and entertainment promoters. On January 1, 1992, Cephias, a part-time actor was by a contract in writing employed as Marketing Manager in Promo's advertising division. Under the contract which was for a period of 3 years Cephias was entitled to a monthly salary of \$5,000 plus commission based on the volume of sales generated by him, a travelling allowance of \$500 per month, a rent - free house and a yearly bonus as Promo may deem fit.

On December 31, 1992, Promo sold its advertising division to another company. Cephias continued to receive his monthly salary and was allowed the use of the house until March 31, 1993, when he was told by Promo that his services were no longer required. On May 1, 1993 Cephias secured employment as manager of a supermarket at a monthly salary of \$5,000.

Meanwhile, on December 1, 1992 Cephias agreed with Promo to appear in a local television drama it was producing in association with an American director. This director was on the look-out for talented local actors to appear in a production to be aired on a major United States network. By this agreement Cephias was to appear in the leading role earning \$4,000 for each of 10 episodes of the drama. At the start of the production Cephias' role was given to Ken and Cephias was given the chance to appear as an extra with no loss of pay. He refused this offer and withdrew from the production.

You are consulted by Cephas with a view to instituting legal proceedings against Promo. He seeks your advice as to any cause of action he may have against Promo and the likely measure of damages.

Advise him.

Question 2

Romulus was the owner of a property known as "Greenacres". He also owned a property called "Hillview", jointly with his brother Remus.

By an agreement in writing dated November 1, 1992, Romulus agreed to sell Greenacres to Cosmos for the price of \$100,000. He also paid the sum of \$2,000 to his attorney-at-law for preparation of the agreement and the cost of investigating title. He intended to use Greenacres for horticulture to cash in on the lucrative export market for cut-flowers. He estimated that he would make a net profit of \$100,000 in the first year of operation.

Romulus and Remus decided to sell Hillview. By a contract in writing dated December 1, 1992, made between Romulus and Cosmos, Romulus agreed to sell 1 Hillview to Cosmos for the price of \$500,000. The contract fixed the date for completion at April 1, 1993. In accordance with the contract Cosmos paid a deposit of \$50,000. In addition he paid \$20,000 to his attorney-at-law for preparation of the contract, the cost of investigating

title and preparation of the conveyance. At the time of entering into this contract Cosmos informed Romulus that he intended to convert Hillview into a hotel and entertainment complex.

On February 12, 1993, Romulus sold and conveyed Greenacres to Ophelia for the price of \$200,000. On April 1, 1993, he informed Cosmos that he would no longer be able to sell Hillview because Remus had changed his mind about selling.

Advise Romulus as to his liability in damages to Cosmos.

Question 3

You are consulted by Percy who a few days ago was awarded damages for personal injuries arising out of an accident on September 30, 1990. At the trial the judge found that Wilton was wholly to blame for the accident. You are told that certain evidence regarding Percy's condition was not led at the trial because the doctor who examined him was hospitalised during the trial and his notes could not be located. Since judgment Percy's health has worsened considerably and he is very anxious about his condition. He is also dissatisfied with the damages awarded by the trial judge. Further, Percy tells you that his car, which was involved in the accident, was a total wreck but so far he has made no attempt to recover for this damage.

Advise Percy.

Question 4.

In May 1991, Robbie acquired a second hand car for \$15,000. After the purchase he spent \$10,000 to repair, repaint and generally to make the car attractive. He used the car as a public passenger vehicle. He paid a fee of \$2,000 for licence and \$12,500 for insurance. He specialises in transporting tourists and visitors. He earned about \$450 per day and works seven days a week. He keeps the car in very good condition. A year after he started operations the car which he fondly calls 'Food Basket' (this name is printed in bold letters on the front windscreen) was severely damaged by Robot, while driving his own vehicle. Robot was entirely to be blamed for the collision.

The loss adjuster has reported the pre accident value of Robbie's car at \$20,000 and put the cost of repairs at \$21,000. Cars of the same age and make are available on the market. Robbie in his desire to repair 'Food Basket' borrowed \$25,000 from his bank at interest of 20% per annum. Robbie is unable to hire a replacement and Robot's employer offers Robbie a job as a sideman on a delivery van at \$150 per week. Robbie refuses on the ground that, " that type of work could damage my image as a tour operator"

Advise Robbie.

Question 5

Albert, a married man aged 40, was killed in an accident on January 1, 1992. Rupert was 80% responsible for the accident. Mary, Albert's wife in whose car he was a passenger was 20% to blame.

Albert and Mary now aged 35, had two children, Linda and Lorna now aged 6 and 4 respectively. Albert had another son, Charles now aged 10, from a previous relationship with Doris. He gave Doris \$100 per month for her and Charles' maintenance. In addition he paid \$60 per month for Charles' private tuition.

At the time of his death Albert was employed as a laboratory supervisor with the National Chemical Co. Ltd. He earned a gross salary of \$72,000 per annum and was given the use of a company car together with a monthly travelling allowance of \$500.

Linda and Lorna were devastated by their father's sudden death and had to receive family counselling. In addition Linda had to undergo psychiatric treatment for severe depression.

A few weeks before his death Albert had instructed his attorney-at-law to take legal proceedings to recover a debt owed to him by Owen, a business associate; but apart from writing a letter to Owen, the attorney-at-law took no further steps in the matter.

Albert left a will in which he appointed Phillip his executor and devised the matrimonial home and a piece of land to Mary. He also left two insurance policies valued at \$100,000 in which his estate was named as beneficiary.

Shortly after Albert's death, his employer pursuant to its pension plan made a payment of \$40,000 to Mary who under the plan is entitled to a monthly payment of \$2,000 for the rest of her life.

Phillip has just obtained probate of Albert's will and seeks your advice as to the causes of action available to him, and where appropriate, the measure of damages likely to be recovered in each case.

Advise Phillip.

Question 6

In May 1990, by an agreement in writing, Abe agreed to purchase a sawmill from Bill for the price of \$500,000. Pursuant to the agreement Abe made a deposit of \$100,000, the balance of the purchase price to be paid over a period of 3 years by equal monthly instalments.

It was also agreed that the property in the sawmill would not pass until payment of the final instalment. It was further agreed that if the purchaser made default in an instalment for a period exceeding 28 days the vendor was entitled "to rescind, and to retake possession of the sawmill ... And in such event all payments made hereunder by the purchaser to the vendor shall be forfeited to the vendor...."

Abe was in default with two instalments and on December 10, 1992 Bill rescinded, took possession of the sawmill and forfeited all payments.

Abe would like to recover the payments. He seeks your advice as to the likelihood of success.

Advise Abe.

Question 7

In 1990 Jasper, a bachelor, then aged 35, was employed as an auditor with Fiddle, Sticks and Co., a firm of chartered accountants, at a monthly salary of \$8,000. He was highly regarded by his employers and was being seriously considered for a partnership. Jasper had co-habited with Joy since 1974.

In June 1990, while crossing Dover High Road, Jasper was knocked down by a car driven by Pedro who was wholly to blame for the accident. Jasper sustained multiple injuries, the most serious of which was a spinal injury. He was rushed to the General Hospital where he underwent emergency surgery and was thereafter hospitalised for six weeks. At the end of this period all his injuries, except for the spinal damage, had healed satisfactorily. The spinal injury had left him paralysed from the waist down.

In August 1990, acting on medical advice, Jasper, accompanied by Joy, went to New York for further tests and treatment. It was confirmed that Jasper's paralysis was permanent and therefore he would be chair-bound for the rest of his life. Jasper then purchased a state of the art motor-powered wheelchair at a cost of US\$2,000. In order to finance his trip to New York, Jasper borrowed \$25,000 repayable over three years with interest in the sum of \$7000. The cost of medical and related expenses in New York was \$15,000. Joy's airfare and hotel accomodation amounted to \$4000. Joy would have stayed with her sister who lived in New York, but she preferred the comfort of a hotel.

Prior to the accident Jasper was an avid cyclist. He also conducted aerobic classes every week-end. On their return from new York Jasper spent six months in convalescence during which time he was cared for at home by Joy. In March 1991, Jasper returned to work at his pre-accident salary. However, he found that the partnership was given to another employee. During his absence from work he was paid only half his salary.

Jasper has difficulty coming to terms with his disability. He has become depressed and quarrelsome and as a result Joy left home in December 1991. He is now being cared for by his aunt, Fanny, a pensioner.

You are consulted by Jasper with a view to institute legal proceedings. He seeks your advice as to the measure of damages recoverable.

Advise him.

Question 8

Julius was the owner of a large parcel of land together with two buildings thereon, one in which he resided and in the other he carried on his business as a manufacturer of furniture. On May 1, 1990, as a result of the negligence of Rufus an adjoining landowner Julius' residence was damaged by fire which also destroyed his furniture factory. This caused the the residence to diminish in value by \$35,000. Notwithstanding, Julius carried out repairs at a cost of \$65,000.

However, he was unable to rebuild the factory at the then estimated cost of \$500,000. In any event rebuilding would have taken a year with an estimated loss of profit of \$300,000; therefore in August 1990, he purchased the 50 year residue of the lease of another building for \$300,000. In November 1990, he acquired the freehold in those premises for \$50,000. In November 1992, Julius sold the premises for \$800,000 and moved his business elsewhere.

Julius has obtained judgment against Rufus and the assessment of damages is due to be heard shortly. He seeks your advice on the measure of damages.

Advise Julius.
