

COUNCIL OF LEGAL EDUCATION

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SECOND YEAR EXAMINATIONS, 1994

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MGNA, KINGSTON, JAMAICA

REMEDIES

(MONDAY, MAY 16, 1994)

Instructions to Students

- a) Time: 3 1/2 hours
- b) Answer FIVE (5) 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 territory.
- d) It is unnecessary to transcribe the questions you attempt.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

By agreement dated January 2, 1993, Mr. N. Troperner, the owner of Orion Hotel, agreed to sell the Orion Hotel to Mr and Mrs Roly Poly who were returning residents. Completion was to be within three months. The Polys paid a deposit of \$155,000 being 10% of the purchase price. Mr. N. Troperner by his attorney-at-law wrote to the Polys indicating that the deal was cancelled and they should collect their deposit.

The Polys obtained an order for specific performance against Mr. N. Troperner and on February 28, 1994, the Hotel was transferred to them.

- (a) Advise the attorney-at-law for the Polys on the measure of damages for the delay in performance.
- (b) The facts are the same except that at the hearing, the application for specific performance had to be abandoned as it was brought to the attention of the court that specific performance was no longer possible as a prior purchaser with an enforceable agreement had just lodged a caveat forbidding any transfer.

Advise the attorney-at-law for the Polys.

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QUESTION 2

Mr. Nortorne's motor car was extensively damaged on March 1, 1994, by a delivery van owned by National Pastry Ltd and driven by their agent Mick Dutton. Mr. Nortorne shows you a letter addressed to him by National Pastry's insurers. The letter contains an offer to pay \$55,000 compensation on the following basis:

Pre-accident value	\$70,000
Salvage value	<u>20,000</u>
Loss	50,000
Assessor's Fee	1,500
Loss of use	<u>3,500</u>
Total Loss	<u>\$55,000</u>

Mr. Nortorne also shows you his mechanic's report indicating that the cost of repairs is \$185,000. He further tells you that he earns \$500 daily operating his taxi. While Mr. Nortorne does not dispute the pre-accident value of his car he is not prepared to accept the offer.

Advise him.

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QUESTION 3

Ben Broadmoor, aged 30, was employed as an accounting clerk in a Department Store earning \$24,000 per annum.

On his way to work in a taxi one morning a mini-bus crashed into the taxi and Mr Broadmoor was injured. He died four weeks after the collision. He was married with 2 children, aged 5 and 8 years respectively. He was an excellent worker and the chance of his promotion to inventory supervisor at the end of the year was very real. The job would have meant a 75% increase in his salary and substantial fringe benefits such as a car and housing allowance.

He paid \$250 per month as rent for a house owned by his grandfather. His wife who was 28 years old earns \$1,000 per month. He paid for groceries and was saving for a house of his own. He contributed \$100 weekly to his mother's welfare. He was a smoker and a betting and fishing enthusiast and for the most part well-dressed. He took his eight year old son fishing some Saturdays.

Ben's grandfather died one week following Ben's funeral. Ben's widow learns that the grandfather left the house in his will as a gift to Ben who had died intestate.

Advise Ben's widow.

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QUESTION 4

Sodas and Stuffs Ltd operated a large manufacturing complex, specializing in soft drinks, ice cream and yoghurt.

On December 20, 1992, while the factory was being operated at its maximum capacity in an effort to meet the increased demand of the season, Electricity Supply Company suspended the power supply to Sodas and Stuffs Ltd for non-payment of electricity charges amounting to \$1.5 million. A machine operator, 45 year old Denis Tinder, sustained injuries when the fingers of his right hand were crushed by a machine which had stopped unexpectedly. The raw materials which were actually being processed for soft drinks, ice cream, and yoghurt, had to be dumped. Several batches of mixtures which were awaiting to be processed had to be dumped. Ice cream and yoghurt which were in storage also perished.

Sodas and Stuffs was unable to supply its regular customers and meet the increased demand. Heavy losses were suffered as a result. The company was able to sell some of the finished goods in storage at a fraction of the cost to street vendors who left litter on the compound. Some of the ice cream was sent to childrens' homes and an infirmary.

The power supply was restored late on December 24, 1992 when it was discovered that Sodas and Stuffs Ltd was not in arrears at the time of the outage.

(a) Advise Electricity Supply Company.

- (b) What would your advice be if Sodas and Stuffs Ltd had on December 21, leased for two months a generator and was able to supply its customers and maintain normal operations?

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QUESTION 5

Mr. D. St. Citizen, his wife, his children and a friend were at Mr. D. St. Citizen's home viewing a documentary on the "Wonders of the Underwater World" when about 4 armed members of the Security Forces burst into the family room where they were. One of them seized Mr. D. St. Citizen. Another put handcuffs on him. They marched him at gunpoint to a police vehicle that was parked on the road. Mrs. D. St. Citizen screamed and fainted. Next door neighbours looked on while the police were escorting Mr. D. St. Citizen to the waiting car.

The friend who was present, Mr. Simon, was a Deacon in the church which the D St. Citizen family attend. He took Mrs. D. St. Citizen to the hospital where she was treated for nervous shock.

Mr. D. St. Citizen was searched and put in a cell where he was interrogated throughout the night until he fainted from a combination of sleeplessness and beatings.

The police had received a report from an ex-employee of Mr. D. St. Citizen that "drug barons" usually met at Mr. D. St. Citizen's

home to plan "drug moves". This turned out to have been false and groundless.

Advise on the measure of damages.

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QUESTION 6

Barnard Oillie had been employed with Swallow Airline as Manager of local Operations. He had at first been employed on a three-year contract. At the end of that period his contract was renewed on the basis of indefinite tenure.

In addition to his basic salary he was entitled to motor car, house and entertainment allowances. It was a term in his contract that he was obliged to submit reports on the numbers, occupations and connections of the guests he entertained. He was entitled to free travel for himself and his wife and two children to any destination served by Swallow Airline if seats were available during the tourist season. He gets a bonus at the end of each year and the Regional Manager may approve school fees allowances for the children.

Bernard Oillie now consults you and shows you a letter from the regional manager of Swallow Airline giving him the opportunity of going to work as assistant manager in their French Department and intimating that if he should refuse that offer he would be paid three month's salary in lieu of notice of dismissal.

Advise Barnard Oillie.

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QUESTION 7

Olivia Beanie Spratt who operated a thriving variety stall in Regina Market, suffered severe injuries when a van owned by Public Utility Company Ltd collided with her while she was lawfully walking on a pedestrian crossing.

The injuries resulted in complete paralysis from the waist down. At the time of the incident Olivia was 34 years of age and travelled every fortnight to Curacao to purchase supplies.

She spent twelve weeks in hospital and after she was released underwent physiotherapy twice a week for 28 weeks. She is now confined to a wheelchair.

While she was in hospital her stall was vandalised and her goods were stolen. She is unable to travel and purchase supplies as she used to. Her daughter Brenda who is 19 years old gave up her job as a store clerk to care for her mother while she was in hospital. Her salary was \$300 per week. Brenda still has to care for her mother who is now afraid to be left alone. Olivia's savings have been exhausted and Brenda uses her own resources to purchase food and medicine and to pay the rent.

Advise Olivia.

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QUESTION 8

Jo-Jo Billings owns a two storey building in the city. Excavators Ltd has been employed by the owner of land adjoining Jo-Jo's premises to do certain works which involved blasting. Engineers and experts employed by Excavators Ltd visited Jo-Jo's premises and compiled a schedule of cracks and defects in Jo-Jo's building. A copy was given to Jo-Jo. After the blasting operations Jo-Jo's building was seen to be leaning precariously towards the road.

The manager of Excavators Ltd verbally accepted liability and sent in their engineers to examine the building. Jo-Jo also employed engineers to carry out examination.

The engineers concurred that the building suffered from an original design defect and might have been weakened by the earthquake of January 1992 (although they were not sure of this seeing that the building had withstood that quake) without visible signs apart from minor cracks.

Jo-Jo was advised to evacuate the upstairs where he and his family lived and to close his business downstairs. The building was considered unsafe. Remedial work at that time cost approximately \$600,000.

When the manager of Excavators Ltd saw the report he promptly denied liability on behalf of his company.

Jo-Jo removed to rented quarters and pays \$6,500 monthly for rental. Moving his family and business cost \$12,500. His children

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were upset at having to move and he lost several of his customers.

He has sued Excavators Ltd. The case is set down for hearing next Wednesday.

Advise Jo-Jo on the measure of damages bearing in mind that at this time the cost of the remedial works has doubled, the building has been vandalised, and Jo-Jo does not have the money to finance the works.

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