

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

SECOND YEAR EXAMINATIONS, 1995

REMEDIES

(Monday, May 15, 1995)

Instructions to Students

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

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Vitriola Berianne was until December 12, 1994, employed to Vector Limited as a word processing clerk. Her contract of employment was for three years and had started on January 2, 1994. Vitriola tells you that she was dismissed without notice or any pay in lieu of notice. Her salary and benefits were as follows -

Basic Pay	-	\$20,000 monthly
Uniform & Shoe Allowance	-	5% of basic pay
Transportation Allowance	-	2 1/2% of basic pay
Groceries at wholesale price		
Lunch at half price		

Opportunity to purchase shares at a 75% discount in Vector Limited if the resolution to that effect was passed at Vector's Annual General Meeting.

Because of embarrassment and depression, Vitriola failed to seek employment until early April 1995 when she registered with a 'placement consultant' and paid a non-refundable fee of \$10,000 to the consultant who agreed "to find a job of similar status and pay" for her. She also agreed to pay in advance each month thereafter, 'a refresher' of \$1,000 on the 1st of each month until a job was found for her. She has paid one of these 'refreshers'.

In April 1995, she enrolled in an advanced word processing and management seminar. This course cost her \$10,500. The aim of this course was to offer training to persons with 'executive' potential. After four weeks she was 'discovered' by a talent scout and is now working as an executive under secretary for one of Vector's competitors. She has agreed to pay the talent scout ten percent of her first three months salary. Her present salary after deducting the talent scout's fee is more than her basic salary from Vector Limited.

Vitriola desires to know whether she can recover from Vector Limited her salary and benefits for the remainder of the contract term and all monies she has spent to obtain employment.

Advise her.

QUESTION 2

Mazra Barfin owned No. 16 Pink Lane jointly with her adult daughter Kandaysi. She agreed to sell the premises to Mr. H. Jakob at a price of \$2.5 million. A contract was signed that, inter alia, the purchaser pay on the signing of the contract, a deposit of 10% of the selling price and completion was to be within 90 days of the date of the agreement. Mr. Jakob duly paid the deposit.

Ms. Barfin spent \$200,000 (part of the deposit) to discharge a mortgage on the premises and to prevent the mortgagees from exercising the power of sale and put the premises up for auction as they had indicated they would do by letter which predated the transaction with Mr. Jakob. All this was unknown to Mr. Jakob until he received a letter from Ms. Barfin indicating that she was no longer interested in selling No. 16 Pink Lane to him and that he could have his deposit back as well as any expenses incurred.

Mr. Jakob has discovered that Ms. Barfin and Kandaysi have signed an agreement to sell the premises to Record Makers Ltd. for the price of \$4.5 million which is the present market value.

Advise Mr. Jakob.

QUESTION 3

Miss Myra Jamies-Spiv is a dressmaker. She gets orders for dresses from the owners of three boutiques who supply her with materials and the desired designs. She has a small dress shop at her home and she also sews clothing for friends and relatives. She earns a steady income of about \$1,200 weekly, but her income weekly could sometimes be as high as \$5,000.

Miss Myra owned two very old but very reliable sewing machines which she traded in to New and Re-Conditioned Machine Specialists from whom she bought three new machines. Each old machine was valued at \$5,000 and she paid the cash price of \$25,000, plus 12 1/2% tax, for each new machine. Allowance was made for the trade-in value of each old machine.

When Miss Myra went to the offices of New and Re-Conditioned Machine Specialists she insisted on speaking to the manager and showed him her letters of commendation from the boutiques she supplied with clothing. She told him that she desired to make her business more efficient with the new machines.

The machines were delivered about two months ago and as Miss Myra says, "they just cannot work - no sewing can be done with them".

She asked the manager to refund her money and take back the machines, but he refused. She paid \$10,000 to a repairman to examine and "see what he could do with them", but his verdict was that they were "obsolete junk" and their parts were "unusable in today's context". She has no money and will not be able to do any sewing until she collects monies owed to her or until her children send her money on her birthday in August and at Christmas. "I may

be able to buy a machine by December, God willing", she says hopefully. She has lost the contracts with the boutiques.

She seeks your help.

Advise her.

QUESTION 4

Central Water Authority supplies water to Best Flats, a block of 24 apartments owned by Alti Skivwell. Each apartment has a separate meter in the name of each occupant. The meter in respect of the common laundry area is in the name of Alti Skivwell who collects from each tenant an equal part of the bill for this area.

During January, occupants of the apartments and their workers suffered constant stomach upsets and skin ailments. Investigations pointed to the quality of the water. Complaints were made to Central Water Authority which published a notice in the newspaper testifying to the purity of its water supply.

It was discovered that notwithstanding the complaints, Central Water Authority took no step to investigate and their advertisement continued to be published. The Consumer Affairs Standards Bureau was asked to test the water. It was discovered that for the past months the residents of Best Flats and other areas were receiving untreated water. In addition to the physical sufferings, the residents are very angry and frustrated and they feel that they have been insulted and embarrassed by Central Water Authority. They say that Central Water Authority should be "punished by damages".

Advise Alti who tells you that the residents want him to sue Central Water Authority.

QUESTION 5

Olaf Seversen's car was damaged by a minibus owned by Otis Cellulitis and driven by Edgar Phillistyn. Mr. Olaf, as he is called, had brought this car with him from Scandinavia in 1955. He does not send the car to his mechanic. His mechanic has to visit his home and work on the car under his (Mr. Olaf's) supervision. He gets parts from Scandinavia. It is the only car of this type in the territory.

Otis Cellulitis tells Mr. Olaf that "whether Edgar is right or wrong, I am not interested, but I will have your jalopy fixed if you send it to my mechanic".

Mr. Olaf, who was offended, said his car was no jalopy and he would have it fixed and the bill sent to Cellulitis.

Mr. Olaf sent his mechanic's report and an adjuster's report to Mr. Cellulitis. The adjuster's report described the car as a constructive total loss and did not advise repairs. The adjusted cost of repairs was \$85,000. Mr. Cellulitis offers to buy the damaged car from Mr. Olaf for its full pre-accident value of \$40,000. Mr. Olaf has refused the offer.

Advise Mr. Olaf, for whom the car has great sentimental value.

QUESTION 6

Mr. and Mrs. Newman approached Consultants Limited to seek information on reputable builders. They were given a huge book marked "DIRECTORY - A COMPILATION OF NAMES AND ADDRESSES OF BUILDERS, ARCHITECTS, TRADESMEN AND OTHER PROFESSIONALS". They perused this book and selected Sophisticated Construction Company because Mrs. Newman liked the sound of the name. When they enquired if there was a fee for this service, they were told "not at all, it's free, no fee".

They subsequently found Sophisticated Construction Company and entered into a contract to have their house built by this company.

They signed the company's standard form contract which contained, inter alia, that the "structure, the subject matter of this contract, shall be completed and delivered to the owners at the end of 12 calendar months from the handing over by the owners of the site Penalty: In the event of a failure to complete or deliver within the contract time the builders are liable to forfeit the balance payable on this building contract."

One year has passed since the commencement of the construction. The building is only partially built. It is still to be roofed and shuttered.

The Newmans have already paid \$1.2 million and have retained the sum of \$300,000 to be paid if completion and delivery are effected in accordance with the contract. You are told that the \$300,000 is not sufficient to complete the house. They are also blaming Consultants Ltd.

Advise the Newmans.

QUESTION 7

Mary Jane Baker, a counter clerk in a drug store, was severely injured when she was knocked down by a car driven by Mr. Hard Driver. Mary Jane's Uncle Bilton, who lives in the U.S.A., consults you. He tells you that Mary Jane, who is 22 years old, is paralysed and is unable to use her feet.

It was this news of Mary Jane's plight that caused him to pay a visit and to date he has lost two weeks' pay of US\$2,500 per week plus the airfare and the exorbitant cost of hiring a car. He says that Mary Jane's parents, who are able-bodied retired teachers, are not capable. He intends to take Mary Jane to the U.S.A. for treatment.

He further says that in the U.S.A. Mary Jane would be entitled to \$5 million and \$3 million for exemplary damages. He wants you to make these claims in the "court papers" because when he went to speak to Mr. Hard Driver about compensation, Mr. Hard Driver abused him "most shamefully, called Mary Jane bad names and expressed regret that she had not died". "A man who does these things", says Uncle Bilton, "should be punished, I dare say".

Advise Uncle Bilton.

QUESTION 8

Simon was a 40 year-old chemical engineer with Chempet Industries Limited, manufacturers of fertilizer. He earned a gross salary of \$7,000 per month and was entitled to a housing allowance of \$700 per month. Chempet had permitted Simon to use the

company's car assigned to the plant manager until that officer returned from study leave in six months time. Simon had recently purchased his own home where he lived with his wife Freida, also aged 40, and his two children, Rick and Steve, aged 10 and 8 respectively. Simon was the sole support of his family. He paid the mortgage of \$2,000 per month on the home and gave Freida another \$2,000 per month to look after groceries and household expenses for the family.

Freida has another child, Ria, now aged 15 by a previous association, and Ria has recently come to live with Simon and his family. Freida receives \$200 per month from Ria's father for Ria's maintenance and support.

In December 1994, Simon, who was on his annual vacation leave, dropped in to the plant to have a 'Christmas drink' with his co-workers in his department. While there an explosion occurred and Simon was killed. The explosion was caused by the negligence of production personnel in operating a boiler at too high a pressure. Simon left no will.

Chempet Industries Limited has now consulted you in relation to the above and seeks your advice as to the cause(s) of action for which it may be liable and the assessment of compensation pertaining thereto.
