

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1996**

REMEDIES

Friday, May 24, 1996

Instructions to Students

- (a) Time: 3½ 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

By a contract in writing dated May 1, 1995, Joseph, a medical practitioner, took up an appointment as staff doctor with National Oil Co. Ltd. Under the contract Joseph was to be employed for a term of 3 years and he would be entitled to a further 3 years if he so desired. He was to be paid an annual salary of \$250,000, a housing allowance of \$36,000 per year and he was given the use of a company car. In addition, Joseph was given the right to share in the annual bonus scheme of the company.

Shortly after taking up his appointment the relationship between Joseph and Forbes, the chief executive officer, became strained because of Joseph's recommendations regarding certain health and safety measures for the protection of employees. Consequently, on October 1, 1995, Forbes directed that all matters of health and safety should be referred to Clarence, a junior colleague of Joseph's. As a result Joseph was left with little to do and thus became very depressed and had to seek medical attention.

On February 1, 1996, Joseph was dismissed by the Board of Directors of National Oil Company Ltd. and given 6 months salary in lieu of notice. The car was immediately taken from him. He feels humiliated and embarrassed by the way he was treated by the company and he has fallen into a deeper state of depression.

Advise Joseph as to his likely measure of damages in an action for wrongful dismissal.

QUESTION 2

On October 21, 1995, Kelvin, aged 35, a shift supervisor with National Iron Works Ltd., was killed at his work place when an iron bar which was being loaded on to a truck knocked him to the ground. He is survived by his widow Bessie, aged 30, and two children of the marriage, Naomi, aged 7, and Jeff, aged 4. Kelvin is also survived by another child, Brian, aged 14, from a previous relationship with Jean. Apart from the odd gift at Christmas, Kelvin made no contribution to Brian's maintenance.

At the time of his death Kelvin was earning a gross salary of \$84,000 per annum. Kelvin, a devoted family man, looked after his family well. He saved an average of \$1,000 per month and apart from \$500 which he kept as pocket change, he spent the rest of his earnings on his household. He was a handyman and did most of the minor repairs to the matrimonial home and to small appliances. He also cultivated most of the vegetables used by the household.

By his will made in January 1990, Kelvin named his brother, Carlton, as the sole executor and gave his entire estate to Bessie.

Bessie seeks your advice on the commencement of proceedings against National Iron Works Ltd. and the likely measure of damages recoverable as a consequence of Kelvin's death.

Advise Bessie.

QUESTION 3

Horace is the joint owner of commercial property in the city and the sole owner of a house in the suburbs. In 1995 he was contemplating emigrating to Canada, but wished to dispose of his property before doing so.

By two separate written agreements made on September 1, 1995, he agreed to sell to Mavis the commercial property for \$500,000 and the house for \$300,000, the date set for completion in both cases being November 30, 1995.

Mavis was let into possession of the commercial building where she carried out extensive renovations at a cost of \$60,000 with a view to using the premises as a dry goods store. In the meantime, she approached Peoples' Bank Ltd. to secure financing for the balance of the purchase price of this property. She paid the bank \$10,000 for survey and management fees, having previously paid her attorneys-at-law the sum of \$2,000 for preparation of the agreement and the cost of investigating title in respect of this property. In fact, this property was jointly owned by Horace and his brother Harry who, on numerous occasions, had expressed to Horace his desire to sell.

On November 30, 1995, Horace wrote to Mavis informing her that he could not proceed with the sale of the commercial building because Harry refused to join in the sale and that in the circumstances he would not proceed with the sale of the house.

You are consulted by Mavis with a view to instituting legal proceedings against Horace. She informs you that pursuant to the agreements, she deposited \$50,000 on the commercial premises and \$30,000 on the house. She also paid her attorneys-at-law \$1,000 being the cost of the preparation of the agreement and the cost of investigating title in respect of the house. She seeks your advice as to the measure of damages in her action against Horace.

Advise Mavis.

QUESTION 4

Braveboy is a promoter of popular entertainment especially during festival month celebrated in January each year.

In August 1995, Braveboy decided to cash in on the shortage of entertainment venues by building an entertainment complex in the city centre. Indeed he had secured contracts worth \$5 million for use of the complex during the up-coming festival month.

On August 28, 1995, Contex Ltd, building contractors, were awarded a contract by Braveboy to construct the complex. The contract provided that the date of completion would be December 28, 1995, failing which Contex Ltd. would pay to Braveboy the sum of \$2,000 per day for each day of delay.

Shortly after Contex Ltd. began construction they entered into a contract with Road Haulage Ltd. whereby the latter agreed to provide transport during the period of construction. This agreement further provided that either party could determine the contract by giving one week's notice and upon payment of \$10,000. On October 1995, Contex Ltd. determined the contract with Road Haulage Ltd.

Due to a severe shortage of material, Contex were unable to complete the construction on the date stipulated, but did so on March 1, 1996.

You are consulted by the managing director of Contex Ltd. who informs you that Braveboy is claiming payment of \$2,000 per day during the period of delay and Road Haulage is demanding payment of \$10,000.

Advise Contex Ltd. whether they are liable to pay the amounts claimed.

QUESTION 5

In June 1994, Kenton and Kate, a newly married couple, purchased a townhouse at Knobsville Terrace, a new up-scale development. Security at the townhouse complex was provided on a 24-hour basis by an old watchman.

Rampole, the owner of a parcel of land adjoining the complex, was engaged in the landscaping of his land and in the process changed the course of a natural water-course. During November 1994, there was heavy rainfall causing

a large amount of water from Rampole's land to accumulate against the rear wall of the townhouse. As a result, the wall collapsed causing extensive flooding and damage to the furniture and fixtures in the townhouse.

On November 30, 1994, Rampole accepted liability for the damage to the townhouse and promised to repair the damage within one week. In the meantime, because the townhouse was uninhabitable, Kenton and Kate were forced to move in with Kate's parents. Rampole delayed in executing the repairs and thieves and vandals broke into the townhouse, stole a number of items of furniture and vandalised the walls, ceilings and bathrooms.

Kate became very depressed at this state of affairs and had to seek medical attention. Kenton, an accountant, took time off from work, without pay, in order to concentrate on having the townhouse repaired.

Advise Kenton and Kate regarding the measure of damages against Rampole.

QUESTION 6

On December 18, 1995, Paul, aged 30, whilst crossing Main Street, Pentonville, was knocked down by a truck driven by Peter who was totally to blame for the accident. Paul sustained severe spinal injury in addition to multiple abrasions to the face and a compound fracture of the right femur. He was rushed

to the St. Jude's Medical Centre, a private hospital, where he underwent emergency surgery. He was hospitalised for 6 months at a total cost of \$12,000. On his discharge from hospital Paul was paralysed from the neck down, but his other injuries had healed satisfactorily.

Paul was advised by his doctor that the paralysis was likely to be permanent but an experimental surgical operation available in London may give him a 30 percent chance of regaining some movement in his upper limbs. Paul travelled to London accompanied by his wife Mary, where tests indicated that he would not benefit from the surgery. The cost of this trip amounted to \$60,000, including \$20,000 for Mary's airfare and hotel accommodation.

Prior to the accident, Paul was employed with P.J. Hammer Engineering Ltd. as a machinist at a monthly salary of \$10,000. He was paid his full salary for the duration of the period he spent in the hospital.

Advise Paul.

QUESTION 7

You have been consulted by Rita Upstaje to whom damages had been awarded for personal injuries. Shortly after she had received the injuries she suffered a few bouts of epilepsy. The evidence given at the hearing of the assessment of damages was that there was no likelihood that she would experience any epileptic seizures in the near future.

As events proved, she has, since the award was handed down, experienced several epileptic seizures of varying degrees of severity. She is very distressed.

She informs you that she desires to bring another case to recover for the epilepsy and all the money she has to be spending.

Advise Miss Upstaje whether she can bring another action and if not, what course of action is open to her.

QUESTION 8

Johnson and Company owned a 7 year old Ritzye motor car which they used for giving driving lessons to learner drivers. This motor car was completely destroyed by fire at the premises of X Gas petrol station where it had been taken for refuelling. The car was valued at \$150,000 and was one of two vehicles used by Johnson and Company in their driving school. Each car was used for teaching for 14 hours per day at \$200 per hour for each student. Instructions were offered seven days a week. There was never any shortage of students. X Gas has offered to pay reasonable compensation.

After the destruction of the motor car, a set of regulations were hurriedly enacted to require that every vehicle used for giving driving instructions shall be dual controlled. Such vehicles were available new on the market at a price of \$250,000. The company does not have the money to purchase two dual controlled cars and it would require about 10 weeks to negotiate a loan which would cost something in the region of 25% p.a. In the meantime, the company had to rent a dual controlled car to carry on the business at \$3,000 per week.

Advise Mr. Johnson, the managing director of Johnson and Company, as to the measure of damages.
