

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

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MONA, KINGSTON, 7, JAMAICA

LEGAL EDUCATION CERTIFICATE

SECOND YEAR EXAMINATIONS, 1997

REMEDIES

Monday, May 19, 1997

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.

1997
Peneelie**QUESTION 1**

On March 30, 1995, Marlene was severely injured when a car in which she was a passenger ran off the highway. Dylan, the driver of the car was completely to blame for the accident.

Marlene suffered crush fractures to the lumbar spine and pelvis and a fractured collar bone. She spent one year in hospital and on her discharge she went to live with Dylan. They were married in April 1996. She would have to be cared for indefinitely. Indeed, Dylan has provided such care since her discharge from hospital and will continue to do so for the foreseeable future.

Prior to the accident Marlene, who is now 26 years old, was employed by Techsys Limited as a computer programmer at a monthly salary of \$10,000. She was soon to be promoted to divisional supervisor at a salary of \$15,000 per month. She is unable to return to work. Her hobbies included aerobics and tennis. Indeed she represented her country in the world championship of tennis and has won prize money and trophies in national and regional competitions.

The assessment of damages in an action by Marlene against Dylan comes up for hearing next week. Marlene seeks your advice as to her measure of damages and her entitlement to interest on her damages.

Advise Marlene.

QUESTION 2

On July 10, 1996, Michael, aged 45, sustained severe injuries when his car collided with a truck owned and driven by Gopal. Michael was partly to blame for the accident. After the accident Michael was admitted to hospital in an unconscious state where he died on September 1, 1996, without regaining consciousness.

At the time of the accident, Michael was the managing director of Superb Bank Limited employed at a monthly salary of \$30,000. He was also entitled to free housing and the use of a company car. He spent most of his income on his family.

Michael was survived by his wife Colleen aged 40, a son, Samuel, now aged 9. He also had another son Errol, now aged 11, from a relationship with Margaret but he never contributed to Errol's upkeep.

Michael left a Will under which he appointed Colleen his sole executrix and beneficiary. Colleen has just obtained probate of Michael's will and seeks your advice as to the institution of proceedings and the measure of damages recoverable against Gopal.

Advise Colleen.

QUESTION 3

Sheldon and Mario are the joint owners of business premises in the city. Sometime in January 1995 they decided to sell the property to take advantage of rising real estate prices. Sometime later Mario told Sheldon that he was no longer interested in selling because it would be more profitable to renovate and sublet the premises. Sheldon disagreed and was adamant that he wanted to sell.

On June 14, 1995, Sheldon entered into a contract with Sunil for the sale of the premises to him, at the price of \$600,000. Sunil paid the sum of \$2,000 for preparation of the agreement and the ^{COST} ~~cost~~ of investigating title ^{and} \$60,000 by way of deposit.

Sheldon permitted Sunil to enter into possession of the premises pending completion on September 15, 1995, time being of the essence. On entering into possession Sunil found a man occupying two rooms of the premises. This man was in fact a former tenant whose tenancy was determined by notice and against whom Sheldon had instituted ejectment proceedings.

From the date of the agreement Sheldon tried his best to persuade Mario to join in the sale but Mario steadfastly refused to sell. On September 16, 1995, Sunil repudiated the contract and issued a writ against Sheldon for breach of contract.

You are consulted by Sunil who tells you that he intended to subdivide the premises and let the units on long leases thereby earning a net

profit of \$600,000. He further instructs you that the property is now worth \$800,000.

Advise Sunil on the measure and quantum of damages.

QUESTION 4

Ruth, a journalist, worked for several years as a journalist with Goodnews Limited, publishers of the "Glorious Daily" newspaper. In addition, she hosted a weekly talk show on the then lone television station ABX TV.

On March 1, 1995, by a written agreement, Ruth was employed by Goodnews Limited as a talk-show host on its newly launched "Channel 10 TV". Under the agreement, Ruth was to host a show for two hours each week-day for a period of five years at a monthly salary of \$20,000 plus after show refreshments, if she had guests, and the use of the company car. Ruth was also given the option to renew the agreement for a further five years if she so desired. She was also given complete editorial freedom.

In the written agreement, Ruth agreed to relinquish her position as a journalist with the "Glorious Daily" as well as the weekly talk-show on ABX TV.

Sometime in January 1996, Carol, Chairman of Goodnews Limited, warned Ruth not to criticise the editorial policy of the "Glorious Daily" on her shows. Ruth ignored the warning and on subsequent episodes of the show Ruth persistently

criticised the papers' stand on social issues. As a consequence, Ruth was dismissed from the show by Carol. At the time of her dismissal, however, Carol offered her the job of sub-editor on the "Glorious Daily" with no loss of benefits. Ruth had refused to take up this offer. She is at present unemployed. ABX TV has refused to re-hire her and rival newspapers have no vacancies. Ruth is rather distressed because she understands from friends that in journalistic circles, she, Ruth, is being viewed as a viper who will sting even it's most gracious charmer.

Advise Ruth.

QUESTION 5

On December 1, 1995, Carlton became the tenant of an apartment owned by the Ministry of Housing. On moving into occupation Carlton discovered that the plumbing was defective and has made several complaints to the Ministry without success. Indeed, he visited the Ministry at least once every week.

Two days ago the apartment was flooded with filth and water because of the defective plumbing. Carlton went to the Ministry to complain once again. As he entered the premises a clerk shouted "you again, what you want now?" Before Carlton could respond she told the security guard "you better put this man outside, a fed up with him." Harold, the guard then held Carlton from behind, pushed him from the building whereupon Carlton fell to the pavement and sustained a cut to the forehead.

Carlton returned to the building and asked the guard to call an ambulance but the guard placed him in handcuffs and called the police.

You are consulted by Carlton who tells you that he felt humiliated because a large crowd had witnessed the incident and that despite his protest the police took him to the nearby station and charged him for disorderly conduct. He was released on his own bond and told to make his own way to the hospital.

Advise Carlton on his entitlement to aggravated and exemplary damages.

QUESTION 6

David was the owner of a four-year old mechanical digger which he hired out at a daily rate of \$1,000. He was in the habit of replacing the digger every five years. On June 20, 1995, while the digger was being transported to a building site it fell from the transporter, over an embankment into the sea. Marcus the owner of the transporter was completely to blame for the accident. The digger was damaged beyond repair.

David, who shortly before the accident had ordered a new digger from the local agents, decided to hire a substitute digger at the rate of \$500 per day. He could have purchased a substitute digger on the local market but he preferred to await the delivery of the new digger, which was due in the country within two weeks of the accident. However, because of industrial action on the port the new digger was delivered 12 weeks late.

Advise David on the measure of damages in an action against Marcus.

QUESTION 7

Containers Limited, manufacturers of containers for household, business and other uses, wish to expand their plant capacity and have agreed with Excel Contractors for the construction of a factory for making paper and plastic containers and for recycling waste paper and plastic. Containers Limited wanted to be the first in the recycling market.

It was agreed that the factory should be completed within 45 weeks from the date of the final approval of the plans. A term in the contract provides that "if the period of 45 weeks is exceeded Excel Contractors shall pay by way of compensatory damages the sum of \$500,000 per week for each week of delay and for each week that the plant is non-functional because of any defect in construction."

Excel Contractors completed ten weeks after the stipulated time and Containers Limited found out that a major competitor had already started recycling from a prefabricated factory which was hastily imported and assembled.

Advise Containers Limited.

QUESTION 8

Norton D'Esene, aged 30, was employed by Superwheel Limited, manufacturers of motor vehicle tyres, tubes and accessories. He held the position of District Supervisor of Process.

On January 10, 1994, he was severely injured and is now confined to a wheelchair. On May 12, 1997, an award of damages was handed down in his favour against Utility Company Limited who was found vicariously liable for the negligence of Arthur Speedy, an employee who had been driving Utility Company's vehicle when D'Esene was injured.

The award was for inter alia pain and suffering, loss of amenities, future care, cost of alterations to his house, loss of future earnings.

The Manager of Utility Company consults you and informs you that Superwheel Limited has closed its manufacturing enterprise and redundancy pay is being worked out for all its employees including Norton D'Esene. He also informs you that at the hearing evidence was received to the effect that Mr. D'Esene was a very likely candidate for promotion to the position of District Manager of Superwheels' island operation within two years after the retirement of the present District Manager. Evidence was also received of the prospect of a long and distinguished tenure with Superwheels.

Advise the Manager of Utility Company Limited.
