

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

SECOND-YEAR EXAMINATIONS, 1998

REMEDIES

(Monday, May 18, 1998)

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

Mrs. Valentine's three-bedroom house was severely damaged by a fire for which Renegade Company Limited admits responsibility. Mrs. Valentine consults you and indicates that she is willing to settle for \$1.5 million as damages to compensate for the damage done to her house. She shows you a letter from Renegade Company in which her permission is requested for a valuer to enter the premises to evaluate the situation and thereafter to advise on the alternatives open to them.

Mrs. Valentine is at a loss as to why they would want to send anyone to the house since she had hired a photographer and paid him \$5,000 and sent the photographs of the damaged house to the Company. Mrs. Valentine further informs you that she intends to sell the damaged house which is on 2 acres of land and resettle in a more "presentable neighbourhood". She is already in contact with a prospective buyer. In the meantime, Mrs. Valentine is living at her mother-in-law's house which is some distance from her usual postal agency and supermarket. It is also far from her church. Whenever she goes to any of these places she now has to pay taxi fares instead of walking or using the bus. She pays her mother-in-law \$200 per week for the accommodation.

Advise Mrs. Valentine on the request made by Renegade Company Limited and on the measure of damages applicable to her situation.

QUESTION 2

Mr. J. O'Reilly calls himself a transport operator. He owns a car which he calls "Queen Vashti". He had bought this car at an auction in 1978 when the goods of a local celebrity were being auctioned for the payment of debts. Mr. J. O'Reilly is a former employee of the local celebrity who had employed him as the chauffeur who was assigned to drive for his wife.

Mr. J. O'Reilly considers "Queen Vashti" to be a very good and reliable car and very special. He specialises in driving tourists on sight-seeing tours during the week and occasionally on Sundays. On Saturdays he specialises in transporting brides and bridal parties. Mr. O'Reilly takes especial care of this car and while he does not drive it himself he selects the drivers with great care.

He earns \$20,000 weekly from the transport of tourists and \$5,000 weekly from transporting wedding parties. The driver receives tips which Mr. O'Reilly permits him to keep.

Every year Mr. O'Reilly receives commendation certificates from hotels and travel agents for reliability and punctuality.

On January 1, 1998, Mr. O'Reilly's car, valued at \$95,000, was extensively damaged as a result of a collision for which Edgar Phillistyn was entirely to blame. Edgar Phillistyn invited Mr. O'Reilly to his used car showroom and gave him the latitude to select a car of his choice from the wide array of used cars. The most expensive car in Edgar Phillistyn's showroom cost \$96,000. Mr. O'Reilly's car was repaired for \$100,000 and Mr. O'Reilly paid the mechanic an extra \$10,000 as an expedition fee so that the repair work could be done in 10 days instead of 15. So as not to spoil his reputation, Mr. O'Reilly

hired a Rover motor car to carry on his work. The schedule of Mr. O'Reilly's claim is as follows:

Repairs	-	\$100,000
Hiring Rover as substitute at \$1,500 per day	-	15,000
Expedition fee	-	10,000
Wrecker fee	-	1,500
Assessor's fee	-	<u>1,500</u>
Total		\$128,000 =====

Advise Mr. O'Reilly on the measure of damages

QUESTION 3

Ralph, an investment banker, resided and worked in New York. Sometime in 1996 he was persuaded by Lionel, the chairman of National Funds Limited, to return home and take the job of Investment Manager with National Funds Limited. In December 1996, Ralph returned home with his family at a total relocation cost of \$100,000.

On February 1, 1997, Ralph took up his new job on a three-year contract with an option to renew for a further three years if Ralph so desired. Under the contract he was entitled to a monthly salary of \$50,000, the use of a company car, and rent-free executive accommodation. In addition, he was entitled to share in the company's annual bonus scheme. Lionel, on behalf of the board, further assured Ralph that he would have a free hand in running the investment division.

By October 1997, the relationship between Ralph and Lionel became strained and Lionel began to run the investment division. Consequently, Ralph became very depressed and was diagnosed by his doctor as suffering from clinical depression.

On January 31, 1998, Ralph was dismissed from his position and was immediately offered the post of Human Resources Manager with the company, on the same terms and conditions. Ralph refused this offer and on May 1, 1998, became Financial Services Manager of First Bank Limited at a monthly salary of \$30,000.

You are consulted by Ralph who has obtained a default judgment for wrongful dismissal. He tells you that he is still suffering from depression and the medical bills are mounting. He seeks your advice as to his measure of damages.

Advise Ralph.

QUESTION 4

On May 19, 1997, Harold, aged 21, was injured whilst walking along Main Street when a slab of concrete fell from a building owned by Goodstone Limited. Harold was knocked to the ground and lost consciousness. He died two days later without regaining consciousness.

Harold is survived by his mother Maude, aged 45, his father Robert, aged 50, and a son Kevon, aged 1, who is cared for by Ruby to whom Harold was engaged to be married.

At the date of the accident, Harold was employed with National Shippers Limited as a customs broker at a monthly salary of \$5,000. However, he was due to enter the local university in August 1997 to pursue a degree in engineering. He intended to continue his employment during his three years stay at university. Harold gave Ruby \$500 per month for the support of herself and ~~Robert~~ ^{Kevon}, he saved \$1,000 per month and gave his mother \$1,000 per month to defray household expenses. In addition, he paid \$500 per month to Boo Peep Nursery where ~~Robert~~ ^{Kevon} was cared for on week days.

You are consulted by Maude who wishes to institute legal proceedings against Godson Limited. She seeks your advice on the measure of damages recoverable consequent upon Harold's death.

Advise Maude.

QUESTION 5

Mrs. Brenda deLano Parkinson, whose husband was injured in an industrial accident at his workplace, informs you that she wants proceedings instituted against her husband's employers for the injuries suffered by him. She had to give up her job to look after him and all her savings have been spent on doctors' and pharmacy bills. She admits that her husband, Walter deLano Parkinson (who is presently in a wheel chair) received his full pay for six months after the accident which occurred in July of 1996. Thereafter he was on half pay for another six months. He is supposed to undergo more treatment including physiotherapy, but there is no money to pay for this treatment. She says that as far as she sees his condition, he will not be able to work again, although the company's doctor says that there is a certain operation that could reduce the

disablement, thus allowing him to do some work. Mr. Parkinson, she says, is willing to take the operation, but she is entirely opposed to such a thing because she believes it will make him worse.

Advise Mrs. Parkinson on the measure of damages.

QUESTION 6

Devon is a security guard attached to Nonsuch Government Secondary School. On the night of April 20, 1998, thieves broke into the school and stole a number of items. The next day Corporal Solomon of the Criminal Investigations Department went to the school to investigate the matter. He met Devon at the school gate and immediately accused him of involvement in the break-in. Devon protested his innocence and accused Solomon of being vindictive because Laura, Solomon's former girlfriend, was engaged to be married to him (Devon). Solomon became very annoyed and in a loud voice told Devon that he was under arrest for breaking into the school. He then proceeded to handcuff Devon and locked him in the guard hut to await transport to the police station. The whole incident was witnessed by a crowd of children and teachers. After one hour, Devon was taken to the police station where he was released after ten minutes without any charges being laid.

You are consulted by Devon who tells you that the whole incident has left him traumatised. He seeks your advice as to whether he can recover damages, particularly aggravated and/or exemplary damages from Solomon.

Advise Devon.

QUESTION 7

Mr. and Mrs. Landel are returning residents and are interested in purchasing real estate for the purpose of constructing a guest house.

They are approached by Tommy Tout who introduces them to a real estate dealer, Ivan, who owns a parcel of beach-site land which has always attracted buyers but has never been sold. The Landels agree with Tommy Tout that this parcel is just what they need. Tommy Tout remarked that the land was a real money-earner.

Mr. and Mrs. Landel signed an agreement to purchase the land for \$10.5m. The contract provided that a non-reimbursable deposit of 10% of the price was payable on the signing and the balance on completion which was 90 days from the date of the contract.

About one month after the contract was signed, the Landels went to see Tommy Tout and told him that they were ready to complete. Tommy Tout looked puzzled and said "What?". Later he visited Ivan and said "Ivan, the people have money".

Two days after the meeting Tommy Tout presented the Landels with a letter from Ivan. The Landels were told that the deal was off because Ivan's wife, on learning of the impending sale, had lodged a caveat on the title and no amount of persuasion can succeed in getting her to withdraw the caveat. She was, in addition, threatening to ask the court to make a property division order. Furthermore, Tommy Tout said, such a piece of land is really worth \$15 million.

The Landels insist that they want to purchase the property. Advise them.

QUESTION 8

By a written agreement dated August 1, 1997, between Road-Max Pavers Ltd. and Industrial Estates Ltd., the former agreed to construct and pave 4 miles of road on the latter's estate at a total cost of \$800,000. Clause VI of the agreement provides as follows -

"Should the four miles of the new road agreed herein to be completed within 45 days from the 1st day of September 1997 be incomplete on the stipulated day or if there be any deficiency in the surfacing or in other aspects of the road work, the contractor stands liable to pay liquidated damages in the sum of \$10,000 for every day the failure to complete and/or the several deficiencies remain in evidence. Said sums will be withheld from the moneys in the owner's hand."

The road was completed 20 days late due to unavailability of material, and soon after completion, cracks began to appear on the surface.

Maxwell, the managing director of Road-Max Pavers Ltd., seeks your advice as to their liability under Clause VI to Industrial Estates Ltd.

Advise Maxwell.
