

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1999**

REMEDIES

(Monday, May 17, 1999)

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 relevant territory.**
- (d) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED

QUESTION 1

Beris, who is 25 years old, suffered injuries to his spine and right arm in an accident for which MXY Ltd. are to blame. Beris is now wheelchair bound and also has 20% permanent partial disability in his right arm. The disability in the arm could have been significantly reduced if Beris had followed up the course of physiotherapy that was prescribed. The medical opinion also indicates that the course of physiotherapy would also have significantly reduced or even eliminated the depression which Beris complains of.

At the time of the injury, Beris was an apprentice to a tailor. His hospital and medical bills were paid by his parents who also provided him with food. Beris' action for personal injury is now being filed 5 years after the injury was sustained because there was great difficulty finding the only eyewitness to the accident which was a case of "hit and run". Beris was hit in the back and was taken to the hospital by the said eyewitness who is back in the jurisdiction after 4 years of absence.

Advise Beris' attorney-at-law on the measure of damages and the question of interest.

QUESTION 2

For the past 5 years Fancie Foodes Ltd. bought their supplies of fish and meat from F. & P. S. Ltd. (Fish and Poultry Suppliers Ltd.) Orders were placed and paid for one year in advance. For the Lenten season this year, F. & P. S. Ltd. supplied only half of the quantity of fish ordered by Fancie Foodes Ltd. F. & P. S. Ltd. supplied the full quota of chicken. When Fancie Foodes Ltd. complained about the short supply, Mr. Navettie, the manager of F. & P. S. Ltd.,

offered to make up the shortfall on the fish by supplying "an additional 500 kg of chicken at a heavy discount of 25%". He suggested that the discount could help to pay for advertisement and added that "many people still ate meat during Lent". Fancie Foodes Ltd. rejected this offer and the Manager, Mrs. Sensitiva, was quite outraged and disappointed by the actions of F. & P. S. Ltd.

Fancie Foodes Ltd. sent out scouts but were unable to find fish of the required quality. They borrowed U.S. currency at 8% p.a. to cover the cost of, and airfreighting fish to satisfy part of their needs. Their ordinary Lenten and Easter profits were cut by 75%. They lost profits on two special contracts to supply a total of 5,000 fish dinners at \$500 each dinner. Mrs. Sensitiva suffered mental distress and was hospitalised for 2 weeks. Fancie Foodes Ltd. paid all of Mrs. Sensitiva's hospital and medical bills and paid her wages for the 2 weeks.

Advise Fancie Foodes Ltd. on the measure of damages.

QUESTION 3

In an action for negligently caused injuries, John, aged 24, was awarded damages as follows -

General Damages	
Pain and suffering and loss of amenities	- \$500,000
Nursing care and attendance for the future	- \$350,000
Loss of earning capacity	- <u>\$450,000</u>
Total	= <u>\$1,300,000</u>

Special Damages

Cost of providing ramp and other facilities to accommodate his incapacity	-	\$350,000
Medical, Hospital & Nursing Care	-	\$650,000
Transportation	-	\$ 15,000
Special Diet	-	<u>\$ 65,000</u>
Total	=	<u>\$1,080,000</u>

The medical evidence at the trial indicated that there was no shortening of John's life expectancy and that he would need constant nursing care and attendance for the rest of his natural life. After the conclusion of the hearing and while John was being helped across the street, his wheelchair collided with a car and John and his cousin Wilcard who was with him, were killed on the spot.

The defendant's attorney-at-law consults you.

Advise him.

QUESTION 4

Jasper worked as a pharmacist with Neo Pharmacy Ltd. He had a three-year contract which started on January 2, 1999 and provides for the following -

- salary,
- lunch at the company's cafeteria if he was on the day shift,
- a snack if he worked nights,
- annual bonus if the cafeteria made profits,
- prescription drugs free (except in relation to STD's)
- not to be dispensed by the employee,

refresher and motivational courses to be organised by the company to enhance the employee's skills and to improve the employee's capacity for public relations and inter-personal interactions,

a favourable recommendation on termination by either side which will not be unreasonably refused - Reasonableness depends on what is for the benefit of Neo Pharmacy Ltd.,

dismissal will be by a majority of the Board of Directors on the recommendation of the Managing Director,

an option to renew for another 3 years.

One day the Managing Director, Mr. Wilfrid Tubman, saw Jasper dispensing sleeping tablets to a 'street person'. Jasper admitted that the 'street person' had not produced a prescription. Mr. Tubman asked Jasper if he was aware of the rumour that certain establishments were implicated in the death of Reno, a 'street person', from overdose of sleeping pills and alcohol. Jasper said "yes, so what?" Mr Tubman told Jasper "Very well, so take your things and go - now !"

Jasper called a talk show host (TSH) and informed him that the Manager of the uptown pharmacy, the Neo Pharmacy Ltd., just fired him because he helped the poor and did so in breach of the terms of his agreement. He was invited to send a copy of the agreement to TSH by facsimile. The matter was discussed on national radio for the better part of three days.

Jasper has been trying to get a job recommendation from Mr. Tubman. He is unable to get a job without this recommendation. He is under severe mental stress at this time. Jasper is 25 years old and he is afraid that he will not be able to work in this jurisdiction for the balance of his life. He wants to sue Mr. Tubman and the Neo Pharmacy Ltd. for damages for breach of contract.

Assuming that Neo Pharmacy Ltd. is in breach of contract, advise Jasper on the measure of damages.

QUESTION 5

Tina and John Renegade lived in a three-bedroom wooden house which they have just removed to a new site near to the basic school where Tina is employed as a teacher. The house was placed on 4 sturdy wooden pillars and they have been living there for the past two years. On January 10, 1999, due to negligent driving, a truck loaded with concrete blocks veered off the road and crashed into the house leaving it "as flat as a pancake". A 1000 gallon water tank connected to the house has been rendered useless for its purpose. The truck is owned by Reliable Removers Ltd. and without prejudice to liability, they are willing to pay compensation to Tina and John.

The house was built in 1997 at a cost of \$150,000. Furniture and furnishings in the house are valued at \$500,000. A valuer remarked that the remains of the house is only valuable for a good bon-fire but it was made of good materials. He valued the rubble at \$15,000. It is his opinion that a similar structure would cost \$350,000, more or less, as things are at present. The water tank was bought in 1997 for \$3,000.

Tina and John are presently living in rented premises. They pay \$5,000 per month. Instead of a short walk to work, Tina has to take the bus.

Advise Tina and John on the measure of damages.

QUESTION 6

Joel and Tricia Smith were married in 1992, aged 23 and 24 years old respectively. The marriage produced three children - Trixie, born in 1993, Joel Junior, born in 1994, and Darien, born in 1995. In 1996 Tricia left Joel and the children and went to co-habit with Tony Colours, an artist. On three occasions Joel took Pastor Michael Gopal, the clergyman who had ministered at their wedding, to speak to Tricia. On each occasion Tricia was adamant that she was not interested in the marriage. She urged Joel to get a divorce. On February 2, 1999, Joel was killed in an industrial accident at his workplace.

At the time of the accident, Joel was foreman of works at the factory and earned a monthly salary of \$45,000. He was also entitled to free housing and the use of a company car. He and his children and his parents were beneficiaries under a health scheme which was wholly financed by his employers.

Joel, the three children and their nanny occupied Joel's house for which the company paid Joel the market rental value. Joel's parents, who are both 67 years old, occupy an adjoining flat which was built for them.

Three days after Joel's death was announced, Tricia returned to the matrimonial home and was behaving as a widow very much aggrieved.

Joel left a will under which he appointed Pastor Michael Gopal sole executor. Joel left his house to the three children as tenants-in-common. He also left monetary gifts to his parents. Joel had been granted a decree nisi in January 1999.

Schedule of Joe's Expenses -

Household	\$15,000 monthly
Insurance premiums	\$2,500 monthly
Contribution to Welfare for the Poor	\$ 500 monthly
School Fees & Transportation	\$4,500 monthly
Clothes and sundries for himself	\$1,000 monthly
Maintenance for parents	\$1,000 monthly

Advise the executor as to the causes of action which may be brought and the measure of damages.

QUESTION 7

Delia occupied No. 6, Galrose Drive as tenant of Damion and Jezebel Lando. From the time Delia moved into the two-bedroom house she discovered that the plumbing was defective. When the rains fell the roof leaked like a sieve. She reported these and other defects to the landlords who were quite displeased that "this dirty gal can come from whey she come from to find fault with their good-good house".

The conditions at the house were so bad that Delia's 10 year old daughter has become asthmatic. Delia has incurred expenses of \$5,000 on doctors' fees and drugs. When Delia informed the Landos of this fact, Mr. Lando called his son Nigel, alias Ninja Champ, to come and "move this intruder out of his yard".

Nigel came out of his room and both he and Mr. Lando subjected Delia to a sound beating. Delia was, as a result, hospitalised in a serious condition for 6 weeks. During the time Delia was in the hospital, Damion, Jezebel and Ninja Champ visited the premises and took Delia's things out of the house and

changed the locks on the doors. The house has been repainted and the Landos have told Delia that the house has been rented to an "uptown" tenant. Meanwhile, Delia is living at her mother's home and conditions there are cramped and uncomfortable.

Advise Delia.

QUESTION 8

Joe and Angie Cadogan have recently returned from the U.S.A. They purchased a book from XYZ Bookstores entitled "All you need to know about Architects, Builders, Surveyors, Tradesmen and Other Professionals". They wanted to find a suitable builder to construct their house.

They perused the book and selected a firm of architects and builders - Ye Olde Architects and Building Contractors. They visited their offices and were favourably struck by their old world charm, courtesy and good manners. The Cadogans were served refreshments which somehow made them feel unusually relaxed and good humoured. Without making any attempt to investigate this company, they signed the company's standard form agreement, thus retaining the company to build their house. The contract provided, *inter alia* -

- that should the contractors fail to complete, finish and hand over the building on the completion date or breach the contract in any way, the contractor is liable to pay as liquidated damages, a sum equivalent to 10% of the value of the house.
- should the owner for any reason whatever fail to pay the requisite advance to the contractors or fail to hand over the building site to the

contractors on the commencement date, the owner is liable to pay to the contractors as liquidated damages, a sum calculated at 10% of the total cost of the building to be constructed.

Interpretation

"In these presents -

Contractors means Ye Olde Architects and Building Contractors;

Owner means Joe and Angie Cadogan."

The Cadogans desire to have their \$10.5 million house constructed over a 6-month period starting on July 1, according to the agreement between them and Ye Olde Architects and Building Contractors.

Advise the Cadogans on the payment clauses.
