

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
SECOND-YEAR EXAMINATIONS, 2000

REMEDIES

(Wednesday, May 17, 2000)

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

In January 1999, Miss Extremely Sharpe was a bright junior attorney-at-law, aged 35 years and earning an average of \$75,000 per month in private practice. About five years previously, she had embarked on studies in medicine as an alternative career in which she expected to make more money than in her pursuit of law. In fact, she had finished her final examinations that January (1999) when, on entering the elevator in the offices of Careless, Inept and Foolish, attorneys-at-law, a malfunction occurred and the elevator plummeted down six floors, crashing to the bottom of the shaft and severely injuring Sharpe.

She suffered a broken hip bone, multiple fractures to her ribs, a dislocated shoulder and severe spinal cord injury. She stayed in hospital for six months and at home for a further six months. She is only able to move with great difficulty and pain. However, she insisted on resuming her legal practice and has had to employ an attendant to assist her in moving around and getting to and from court. She has had to purchase and use special computer equipment to transcribe her notes.

The medical prognosis is that she will suffer a steady degradation of her automotive functions over the next ten years, at which point she will become a virtual paraplegic. She was previously an amateur lawn tennis player and also enjoyed playing golf and going to the movies. She was sometimes prone to depression but had been seeing a psychologist who has indicated that she was doing well in therapy and would have been able to manage on her own. This was just around the time of the accident.

However, the accident has thrown her into a severe state of depression as the prospect of being confined to a wheelchair, the spectacle of her practising law with her handicap, and of her not being able to fulfil her career goals, have all conspired to rob her of much of the joy of life. Her doctors have further indicated that her life expectancy is now reduced to 55 years.

Miss Sharpe, however, is of the opinion that any compensation package from Careless, Inept & Foolish should include -

- the cost of a house suitably equipped for her occupation;
- cost of nursing care provided by her sister Stella who gave up her job as a psychiatric nurse in England;
- Stella's services are to be valued according to the salary scales in force at her recent place of employment;
- reimbursement of wages she has already paid to Stella.

Miss Sharpe consults you.

Advise her on the appropriate measure of damages and the basis on which quantum of damages will be assessed.

QUESTION 2

William Swansdon, aged 28 years, an officer in the army who had benefited from accelerated promotion, suffered a severe attack of swine flu as a result of a vaccination administered by the Minister of Health. He also developed severe neurological problems, viz. GBS (Guillain-Barre Syndrome). The vaccine was administered to Swansdon as part of a programme of immunisation carried out by the Minister of Health to prepare the entire country to cope with the 'flu season' from September 1997 to March 1998. The programme of immunisation

was also designed to enhance the country's tourist image. A number of persons who had been vaccinated also suffered mild attacks of swine flu.

Mr. Swanson sued the Minister of Health and the Attorney General in negligence.

At the hearing of the suit, the defendants conceded that they were liable to compensate the plaintiff for -

- (a) pain and suffering and loss of amenities for the period of 60 days - the duration of the flu attack;
- (b) temporary total disability for the duration of the flu attack.

They also agreed special damages in respect of hospitalisation for 31 days, doctor's fees and medication in respect of the treatment of the flu, and cost of special diet during the hospitalisation and convalescing period.

The defendants refused to agree the cost of his wife's daily visits to the hospital and the judge disallowed this cost.

In respect of the plaintiff's claim for compensation for the severe neurological problems which had reduced him to a quadriplegic, the medical testimony advanced and accepted by the judge was that at the time the vaccine was administered, "the state of knowledge in the medical profession was that it was known that certain types of vaccine carried a risk of serious neurological problems and even death, but in so far as influenza vaccines were concerned, the literature was very sparse, so there was little or no evidence of any serious adverse effects". As a result, the plaintiff's claims for loss of earning capacity, cost of care, pain and suffering, loss of amenities, and permanent disability associated with the condition GBS were disallowed.

Eight weeks after the hearing, Swansdon's legal adviser, Mark, was able to access a medical journal which contained literature which showed that at the time the vaccines were administered it was known in medical circles that influenza vaccines, and particularly the vaccine that had been administered to Mr. Swansdon, carried the risk of the recipient's contracting GBS.

Mark consults you.

Advise him.

QUESTION 3

On January 15, 2000, the workmen of Randall Suppliers Limited were burning some rubbish in an open lot next to the property of Oilchems Limited. They failed to exercise proper control over the fire, and, helped by a strong breeze, the fire spread to the premises of Oilchems Limited. Before it was extinguished, it destroyed a disused warehouse which was rat infested and a taxi owned by Jukie Johnson, a customer who was transacting business at the wholesale outlet operated by Oilchems Limited.

Oilchems Limited had had plans to demolish the warehouse, which was valued at \$550,000, to accommodate a car park for staff and customers. The cost of the proposed demolition had been put at \$250,000.

The cost of removing the fire debris was \$150,000 and the restoration of the fire-gutted fence was \$35,000. Prior to the fire, Oilchems Limited paid \$40,000 monthly for pest control. Since the destruction of the warehouse, this bill has been reduced to \$10,500.

Jukie Johnson's taxi was at the time of the fire valued at \$250,000. He earned approximately \$1,500 per day and spent \$1,000 weekly for maintenance. He has applied for a road licence, but in the meantime he was plying the taxi trade illegally.

The manager of Randall Suppliers Limited, Ossie Randall, consults you on the above.

Advise him on the measure of damages in respect of the destruction of the property belonging to Oilchems Limited and in respect of Jukie Johnson's taxi.

QUESTION 4

Alvin, aged 40, died in an accident on January 1, 2000 for which Fred, an employee of Veritas Incorporated, was 80% to blame. Alvin's girl friend, Maria, in whose car Alvin was a passenger at the time, was 20% to blame.

Alvin left a will of which his wife Cindy, aged 37, is executrix. By the will, he devised the matrimonial home to his wife, although he and Cindy were registered as joint tenants of the property.

Alvin, who was a chemist, worked in the bauxite industry. He earned a gross salary of \$85,000 per month and was given a company car and an entertainment expense account. He was a competent worker and well liked by his employers who found him to be hardworking and loyal. He had the potential to achieve a higher level of employment with his employers or elsewhere.

His wife, their three sons Jon, Kyle and Alvin, who are aged 14, 11 and 10 respectively, suffered considerable grief at his death. His physically handicapped

brother Paul, aged 24, who was totally dependent upon Alvin, suffered nervous shock when he heard of Alvin's sudden death.

After Alvin's death, Cindy was told that Alvin had fathered a child, Sam, who is now 16 years of age and who had returned from New York with his mother, Hilda, to attend Alvin's funeral.

Cindy is considering a proposal of marriage from Thom who has been a tower of strength to her during the "trying days following Alvin's sudden death". She is convinced that she cannot manage three boys without the help of a responsible male influence in the home. Furthermore, Jon, Kyle and Alvin have become very attached to Thom who also likes the boys.

You have been asked to advise Cindy on the principles on which damages will be assessed in consequence of Alvin's death.

Advise her.

QUESTION 5

In December 1999, Aerated Beverages Limited, your clients, entered into an agreement with Sugar Processors to supply them with a consignment of syrups to be delivered to your clients' factory in time to meet the heavy Christmas demand for aerated and other sweet beverages.

On December 21, 1999, the contractual date for delivery, the delivery van, loaded with the consignment of syrups, collided with another vehicle while en route to your client's factory. The van was severely damaged and unable to

complete the delivery. There was no damage to the syrup which was expertly packaged in sturdy plastic containers.

A van owned by Run Jostle Limited was entirely to blame for the collision.

On hearing of the accident, your clients engaged a truck from Haulers and Carriers Limited (H & C Ltd.) to transport the syrups to their factory. The syrups were safely delivered and your clients paid H & C Ltd. \$12,000 for the transportation.

Your clients, with a very large number of orders to fill, had been operating on a 24-hour per day basis since mid-December 1999 and processing and bottling of drinks continued on an accelerated basis. Their warehouse was packed with crates of drinks.

A newspaper published on December 22, 1999, reported that a certain water source under the control of Water Suppliers Limited, had been contaminated. Water Suppliers furnish your clients with water. Your clients' general manager hastily submits samples of their processed drinks to the Bureau of Testing. The Bureau tested the samples and reported that all samples contained contaminated water.

The Bureau required a complete quarantine of your clients' warehouse, immediate recall of all drinks delivered from December 21, 1999, and closure of the factory for 14 days for decontamination procedures (including destruction of stocks of finished drinks) to be undertaken.

Your clients have complied with the directions from the Bureau and have also decided to publish a daily advertisement in the local newspaper informing the public that their factory is temporarily closed for re-organisation although supplies could be obtained from their newly established depot. They wish to rent

temporary premises and airfreight beverages from a neighbouring territory for distribution.

Advise your clients on the causes of action available to them, their measure of damages and the basis for computation of any quantum.

QUESTION 6

Stedroy Webb, his wife, Amy and their daughter Teneesha occupied a three-bedroom house at 6 Plumtree Way Road. Stedroy was a tenant of Rudyard who owned the premises. In April 1999, Rudyard received news that his wife and child, who had been in the U.S.A. for many years, would be returning in October 1999. As a result, he gave Stedroy six months notice to quit the premises, expiring on October 30, 1999, on the ground that he needed the premises as a residence for himself and his family.

Stedroy and his wife had saved some money over the years. They decided to build a four-bedroom house on a lot of land they had acquired in Mountain Vale. They entered into a contract with Sharkey, an experienced contractor and builder, to construct a three-bedroom, two-bathroom house at a cost of \$1.5m. It was a term of the contract that construction would be completed and the house delivered to Stedroy and his wife by October 30, 1999. Stedroy told Sharkey of the termination of his tenancy and impressed upon Sharkey the need to complete the house in a timeous manner.

Sharkey, on hearing what Stedroy said, scratched his head and said "we had better agree on some reinforcement". Sharkey explained that there should be a clause in the contract indicating the consequences of any delay. It was agreed that if there was any delay in the completion, Sharkey would pay by way

of liquidated damages, \$6,500 for each week of delay. Sharkey had problems getting materials for the job and did not complete construction until January 31, 2000.

On November 20, 1999, Rudyard met Stedroy at a bar and told him that unless he was out of the house within 24 hours, drastic measures would be taken against him.

Five days later, Rudyard and a police officer, Sgt. Lowbrow, and five other men visited and forcibly removed Stedroy and his family from the demised premises by throwing all their belongings at the street side. Rudyard subsequently changed all the locks and when Stedroy protested, Sgt. Lowbrow threatened to arrest him.

Stedroy was forced to hire a truck to move his belongings for storage at a warehouse for which he had to pay \$150 per day. He moved his family into a very poorly furnished boarding house in a very noisy area where he stayed until his house was completed. He had to pay \$500 per night for a room.

Stedroy's wife and daughter have become very depressed as a result of the whole experience.

Stedroy consults you as to the principles upon which damages, if any, will be assessed in his favour.

Advise him.

QUESTION 7

- (a) F & G Furnishers Ltd. (F & G Ltd.) sold two second-hand stone crushing machines to Quarries and Company Ltd. (Quarries), to be used in the course of their business. Quarries paid 10% of the price and agreed to pay the balance within 6 months. It was agreed that Quarries would pay interest at 10% p.a. on the balance.

Quarries also bought a tipper truck from F & G Ltd. on 6 months credit. There was no stipulation concerning interest.

Will Frank, the manager of F & G Ltd., informs you that the debts owing by Quarries are 6 months overdue. He wants to recover these debts with interest at 35% p.a. He consults you.

Advise him.

- (b) On May 17, 1997, Zarintha suffered minor injuries at her place of employment. Without obtaining legal advice, she decided that it was not worthwhile to sue her employers, Quality Ltd. Some time in 1998, Zarintha was made redundant. She received a generous sum as redundancy payment.

Zarintha's cash resources have dwindled and she wants to sue Quality Ltd. for damages, especially in view of her limp which is a consequence of her injuries.

She informs you that she has recently returned from the U.S.A. and she now realises that "according to how things go in the U.S.A., she is entitled to a lot of money for her injuries".

She further informs you that she has heard that she is also entitled to interest on the money she would get.

Advise Zarintha.

QUESTION 8

John Callaghan, an accountant, is a former employee of Eezi-Auditors. The following are the terms of his former contract of employment -

- He contributes 5% of his salary to a private pension scheme and his employers contribute 10%.
- He is not entitled as of right to his employers' contributions if he is dismissed.
- salary
- car loan
- transportation allowance
- meal allowance
- incentive bonus
- entertainment allowance
- annual study leave
- annual book grant

John, prior to the termination of his contract with Eezi-Auditors, discovered that his employers' approach to auditing was not in accordance with generally accepted auditing standards and that they would certify accounts that other auditors had declined to certify.

Members of John's former firm had quite recently faced disciplinary charges and John had given evidence in a frank and candid manner. Two of the partners in the firm were suspended from practice for 6 months.

All partners are displeased with John and have nicknamed him "Whistler" or "Squealer". He has been dismissed for "unpunctuality". He agrees that he has been to work half-an-hour late on two occasions.

John, who has been working with Eezi-Auditors for three years, has not taken up his book grant or study leave. Since his dismissal in January 2000, he is receiving a monthly sum of \$10,000 as unemployment benefit under a policy of insurance which he had taken out some years ago.

In the meantime, John is trying to get a job, but so far, those who have interviewed him have been negatively impressed by his association with Eezi-Auditors Ltd. He is frustrated, depressed and hurt.

Advise John as to his cause of action, if any, the measure of damages and the basis on which damages, if any, will be computed.
