

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2001

REMEDIES

(Wednesday, May 16, 2001)

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

Maria Van de Weg consults you and tells you the following:

On February 10, 2000, her husband Tony was seriously injured as a result of the negligent driving of Ms. Aggie Noble. He suffered severe head, spinal and abdominal injuries. He has been in the hospital since the accident and was deeply unconscious for two months. Tony is a motor mechanic who, prior to the accident, owned and operated his own repair and maintenance garage.

Since the accident, the garage has been closed and thieves have looted the building and taken all the tools and equipment.

Before the accident, Tony enjoyed excellent health, was a good family man and an active member of All Stars Cricket Club of which he was the captain. She fears that her husband will never be the same again and may undergo a personality change of some sort.

Just when Mrs. Van de Weg thought that things could never be worse, her son Junia, aged 12, was injured on November 1, 2000 when a bus owned by National Transport Company on which he was a passenger, being negligently driven by Oswald, collided with a utility pole. Junia had to be hospitalised. He is now at home recuperating and his father is still in the hospital.

Nothing has been heard from Ms. Aggie Noble but the National Transport Company's lawyer, Ralph Waldo Emerson McYung, has indicated by letter that National Transport has admitted liability and is willing to compensate Junia.

She considers this a ray of hope because all her resources have been exhausted on medical and hospital bills. She has been forced to give up her job as a basic school teacher to be available to visit with her husband and son daily. She is still being treated for 'stress'.

Advise Mrs. Van de Weg in respect of both claims.

QUESTION 2

You are consulted by Mrs. Marco Polino, a grief-stricken widow, who tells you that that her husband, who was an engineer with International Oceanic Salvage Ltd., was killed in an accident at one of his employer's work sites. She further instructs you that the company has admitted liability for her husband's death and is desirous of settling her claim as soon as possible.

Outline in detail what information you would require from Mrs. Polino and the reasons you require such.

QUESTION 3

Mr. Ravi owned a second-hand motor car which he had purchased two years ago for \$140,000 and which he used for private and domestic purposes as well as to operate as an unlicensed taxi.

On March 25, 2001, he parked his car in his yard at 25 Riglow Road and went into his house to have a snack. While he was searching in the refrigerator for some cheese he heard what seemed like a loud explosion and he felt as if his house had been hit by something like an earthquake.

He rushed to the front door and was relieved to find that there had been no earthquake.

To his dismay, however, he was faced with damage from another source. The sound he had heard was caused by the impact when a car having veered off the road, crashed through his wall fence, collided with his taxi and damaged the front porch of his house, crushing, *inter alia*, four chairs including his wife's favourite chair.

Later when his wife saw the damaged porch and her crushed chairs, she collapsed from fright, experienced nervous shock and had to be hospitalized.

Ravi's mechanic's report which was confirmed by a loss adjuster, indicates that the cost of repairs to the car is in the region of \$145,000. Ravi also made enquiries about a replacement and found that he could purchase a car for the same sum. He neither repaired nor replaced the car.

With regard to the damage to his house, a report furnished by a valuer indicates that the "overall value of the premises has been negligibly affected in that the freehold prior to the incident would sell for \$2.5M. and would fetch the same amount at this time as the market stands. However, replacement of the porch would cost \$250,000 and reinstatement of the fence would cost \$30,000". The porch chairs, with the exception of Mrs. Ravi's favourite, were five years old and new ones would cost \$2,500 each, making a total of \$7,500. Mrs. Ravi's favourite chair was made of mahogany. It was bought at a sale. Such a chair costs \$12,500 at this time.

Mr. Ravi does not wish to sell his house. He desires to repair his car, his fence and his house, but at present he has no money. He wants to sue Jimmel Ltd., the owner of the car that has caused him so much loss and inconvenience.

Advise Mr. Ravi on the likely measure of damages.

QUESTION 4

Don Invernue is a promoter of popular entertainment during festival month celebrated in January each year.

In August 2000, Don 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 \$6 million for use of the complex during the upcoming festival month.

On August 28, 2000, Reliable Contractors Limited, (Reliable), building contractors, were awarded a contract by Don to construct the complex. The contract provided that the date of completion would be December 28, 2000, failing which Reliable would pay a penalty of \$3,000 per day for each day of delay.

In addition, the contract provided that should there be any deficiency in the construction, whether due to poor workmanship, sub-standard building materials or design defect, Reliable would pay to Don the sum of \$3.5 million as compensation.

Due to a severe shortage of material, Reliable was unable to complete the construction on the date stipulated, but did so on March 1, 2001.

Furthermore, it was discovered that there was evidence of defective workmanship and that Reliable had used sub-standard materials in the construction. An assessor's report indicated that any rectification would cost \$3 million.

Don, in addition to the above, tells you further that during festival month he was forced to hire alternative venues at exorbitant fees and as a result, he

suffered a severe loss. His reputation as an impresario was tarnished and it is his view that the amount he should claim for the breach of the 'time clause' is \$6,000 instead of \$3,000 per day to accord more realistically with what he paid for alternative venues.

Advise Don.

QUESTION 5

You have been consulted by Deana Petado to whom damages have been awarded for personal injuries. She informs you that shortly after the injuries, she suffered several bouts of epilepsy whilst at the hospital.

The agreed medical evidence given at the hearing of the assessment of damages was that there was no likelihood that she would experience any further epileptic seizures.

As events proved, Miss Petado 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 damages for the epilepsy, the mental distress and all the money she has to be spending.

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

QUESTION 6

On December 1, 2000, Duffy became the tenant of an apartment owned by the Ministry of Housing. On moving into occupation, Duffy discovered that the plumbing was defective. He made several complaints to the Ministry without success. Indeed, he visited the Ministry at least once every week. He complained bitterly about the amount of money he was spending as a result.

Two days ago, the apartment was flooded with filth and water because of the defective plumbing. Duffy went to the Ministry to complain once again.

As he entered the premises, a clerk named Jinna shouted "You again! What you want now?" Before Duffy could respond, Jinna told the security guard, "You better put this man outside, ah fed up with him". Darby, the guard, then held Duffy from behind, pushed him from the building, whereupon Duffy fell to the pavement and sustained a cut to the forehead.

Duffy returned to the building and asked Darby to call an ambulance, but Darby put him in handcuffs and called the police.

You are consulted by Duffy who also 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 Duffy.

QUESTION 7

By a contract in writing dated May 1, 2000, Johnson, a junior medical practitioner, took up an appointment as staff doctor with Chemco Inc. Under the contract, Johnson was to be employed for a term of three years and he would be entitled to a further three years if he so desired. His entitlements included salary housing allowance, company car or car allowance, lunch at company's cafeteria, book allowance and a technological grant.

Shortly after taking up his appointment, the relationship between Johnson and Malachee, the Chief Executive Officer, became strained because Johnson had voluntarily and against the wish of Malachee, carried out a survey of safety regulations and made certain recommendations relative to improvements in measures for the protection of employees.

On October 1, 2000, Malachee directed that all matters of health and safety should be referred to Charles, a junior colleague of Johnson.

Johnson was left with very little to do. He found the situation untenable and spoke to Malachee about his problem. The Chief Executive Officer seemed rather indifferent and reminded Johnson that he (Johnson) was being paid.

Subsequently, Johnson became anxious, frustrated and depressed. He became accident prone and injured himself when he walked into a glass door. He refused to eat lunch in the company's cafeteria. He was obliged to spend three weeks away from work.

On his first day back at work, he was given a letter containing a cheque for one month's pay in lieu of notice. In the letter he was told that he was "unreliable and unprofessional by reason of his emotional volatility which lent itself to a great degree of accident proneness".

Johnson consults you and, in addition, tells you that he thinks that his dismissal was 'engineered'.

Advise Johnson.

QUESTION 8

(a) Miss Belle Outgoing is a university student, aged 20. Her main hobbies are swimming and lawn tennis. She has devoted a lot of time to her tennis and was the university's ladies singles champion last year. Presently, Miss Outgoing is associating somewhat exclusively with Scamper, a law student, aged 22.

In February 2000, Miss Outgoing was involved in a vehicular accident and sustained injuries to her face and left leg. As a result of the accident, she had to withdraw from a tennis tournament for which she was preparing some months before.

As a result of the injuries, there are unsightly scars on her left leg, but the scarring on her face is moderate. There is an even chance that cosmetic surgery may effect some improvement. However, Miss Outgoing is afraid of surgical operations and has refused to undergo cosmetic surgery to her face.

Scamper had made it clear to Miss Outgoing at the start of their relationship that he was not interested in marriage. Miss Outgoing tells you, also, that notwithstanding Scamper's indication at the outset, she still believes that her disfigurement has prejudiced her prospect of marriage to Scamper. She is disinclined to pursue her hobbies because of the scars.

Advise Miss Outgoing.

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(b) Tim sustained an injury to his left leg when he was knocked down by a motor car negligently driven by Endell. Before Tim's suit against Endell was heard, he was shot in the same leg by an intruder who broke into his house. The leg had to amputated. Endell is worried that he may be liable in respect of this development.

Advise Endell.
