

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST-YEAR EXAMINATIONS, 2004

REMEDIES

(FRIDAY, MAY 21, 2004)

Instructions to Students

- (a) Time: 3 ½ 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.
- (e) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Mr. Carrimo Jacks is wheelchair bound as a result of injuries to his spine and back which he sustained in a motor vehicle accident. Mr. Jacks is of the view that the owners of the coach, Tours Ltd., which was involved in the collision, are entirely to blame. The coach was driven by Edgar Phillistyn, Jr.

Tours Ltd. have not accepted liability but is prepared to enter "without prejudice negotiation" for the purpose of an out-of-court settlement.

In fact there has been correspondence between Mr. Jacks and Tours Ltd. for the past two years, with Mr. Jacks writing letters to Tours Ltd. every month. In their last letter to Mr. Jacks, Tours Ltd's attorneys-at-law stated that they found some of Mr. Jacks' claims "preposterous and bordering on gold-digging". Their letter also suggested that instead of scandalizing Tours Ltd. on talk shows and bombarding the company with meaningless letters he "should overcome his suspicion of lawyers and instruct learned counsel on the matter".

The negotiations have been deadlocked because Mr. Jacks is asking for \$20M in full compensation from Tours Ltd. Tours Ltd. request supporting evidence of his claims and have suggested that he consult with their medical adviser with a view to undertaking surgery to ameliorate his pain and suffering and reduce the alleged disability.

Mr. Jacks consults you and you realize quite early in the consultation that Mr. Jacks' cause of action will be statute-barred on December 27, 2004.

Mr. Jacks has instructed you to continue the negotiations on his behalf. Advise him briefly on:

- (a) How you intend to proceed in preparation for the negotiations.

- (b) The measure of damages and basis for computation.
- (c) Draft a letter to be sent to Tours Ltd.
-

QUESTION 2

Jose Maxo is the owner of a light aircraft which crash-landed and damaged a building on a private airstrip owned by Joe Welt. Mr. Maxo wants to claim damages against Joe Welt in respect of the following:-

- Cost of replacing his aircraft.
- Fuel jettisoned before the crash.
- Three trips abroad to inspect a replacement (airfare, taxi fares and hotel accommodation).
- Import duties and other outgoings in respect of the replacement.
- Loss of earnings by reason of inability to transport luxury agricultural and horticultural produce for his clients.

Mr. Maxo acknowledges that subsequent to the crash he was questioned by the police, who had been alerted by Joe Welt. He tells you that he believes that Joe Welt was irate that he (Maxo) had brought his property to the attention of the public and the police. Welt is threatening to sue him for compensation for damage to his building and for "stigma damages" because his (Welt's) land and his name are now for the first time being associated with underhand business.

Advise Mr. Maxo on the measure of damages in respect of his claim and any possible claim that Mr. Welt could have against him.

QUESTION 3

Thirty-year-old John Flag was employed with Toyo Ltd. as Managing Director under a three year contract which expires August 11, 2005. His employment was terminated when at a meeting of the shareholders he was removed as a director.

His remuneration package with Toyo Ltd. was as follows:

- Base salary - \$6M per year
- Housing allowance – 20% of base salary
- Entertainment allowance – 10% of base salary
- Performance related maximum bonus 25% of base salary in each of the first two years and 15% of base salary in the third year
- Book and Information Technology allowance 10% of base salary.

The discretionary "signing-on" bonus of 40% of base salary which had been promised at the beginning of the term of employment has not been paid.

Mr. Flag admits that the "signing-on" bonus was the strongest factor which had induced him to accept employment with Toyo Ltd. instead of renewing his contract with Toyo's competitor Legla Ltd. which is the only other user of the skills and expertise he possesses. Mr. Flag further states that following the meeting (at which he was dismissed) he has experienced distress, frustration and depression.

He says that he has been reliably informed that his removal was part of Toyo's preparation for a merger with Legla Ltd. and that his dismissal was made a condition precedent by Legla Ltd. This knowledge has aggravated his feelings of distress since Toyo and Legla are the only users of his skills and expertise within the territory.

Mr. Flag consults you. Advise him on any cause(s) of action open to him, the measure of damages and the bases for computation.

QUESTION 4

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. On September 2, 2003, 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 \$75,000. He was also entitled to free housing and the use of a company car. He, his wife, his children and his parents were beneficiaries under a health scheme which was wholly financed by his employers. Joel was considered by his employers as a valuable worker.

Joel, Tricia and the three children 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 their use. Joel did many odd jobs at home such as vegetable gardening, painting the house and mending furniture. Joel's expenditure on himself and his family are contained in the schedule below.

Joel left a Will under which he appointed his Pastor, Mr. Michael Gopal, sole executor. He left his house to Tricia for life, remainder to the three children as tenants-in-common. He also left monetary gifts to his parents.

Schedule of Joel's Expenses:-

Household	\$25,000 monthly
Insurance premiums	\$ 2,500 monthly
Contribution to Welfare for the Poor	\$ 500 monthly
Lunch & transportation for children	\$ 4,500 monthly
Clothes and sundries for himself	\$ 1,000 monthly
Maintenance for parents	\$ 1,000 monthly
School Fees	\$45,000 per annum

Advise the executor as to the cause(s) of action which may be brought, the measure of damages and the bases for computation.

QUESTION 5

Pioneer Limited, building contractors, specialising in the construction of high rise buildings were awarded a contract by Marina Enterprises to construct a 200-room hotel on the Seaward Coast, lands facing a beach. The completion date stipulated in the contract was March 31, 2004. The contract further provided that if construction was not completed by the agreed date then Pioneer Limited would pay the sum of \$150,000 per day for each day of the delay.

The contract also provided that for any failure to build according to plan, or for any other breach Pioneer Limited was liable to pay to Marina Enterprises the fixed sum of \$6.5M.

Marina Enterprises had simultaneously entered other interlocking agreements. The first with Hotel Furbishers who had contracted to start furnishing the hotel on April 2, 2004. The agreed completion date for the furnishing was May 31, 2004.

The second, a lease agreement with Holiday Resorts whereby Holiday Resorts would operate the hotel for ten years from June 1, 2004. Marina Enterprises have obliged themselves to pay liquidated damages if they are in breach of the time clauses with Hotel Furbishers and with Holiday Resorts respectively.

Due to a series of problems with materials and labour, Pioneer Limited were only able to complete the construction on April 30, 2004.

The manager of Pioneer Limited consults you. Advise him.

QUESTION 6

Stedroy leased premises from Rudyard and paid rent on a monthly basis. In January, 2004 when Rudyard increased the monthly rental Stedroy threatened to have his lawyer write a letter to Rudyard.

Sometime in March, Rudyard visited the premises and told Stedroy that he (Rudyard) was "ending the lease with immediate effect". Stedroy responded with peals of loud laughter. Rudyard reminded him of the proverb that the best laugh is the last one. Stedroy was even more amused at the misquotation.

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

After a few minutes the police officer suggested to Rudyard that "under the circumstances" Rudyard should use his own van to move Stedroy's belongings. Stedroy however, declined Rudyard's reluctant offer. He hired a truck for which he had to pay \$1,500 to move his belongings for storage at a warehouse for which he had to pay \$350 per day.

Stedroy moved his wife and two daughters into a very poorly furnished boarding house in a very noisy and dusty area where he is staying until he is able to find a suitable house within his limited financial range. He has to pay \$800 per night for a room. Stedroy's wife, Ann, and the children (Sue and Gillian) have become very depressed as a result of the whole experience. Gillian has now been diagnosed as asthmatic. The doctor has suggested that the change in living conditions is the cause.

Mrs. Stedroy had to relinquish her job and Stedroy now has to change buses to get to work.

Stedroy consults you. Advise him as to the cause(s) of action and the principles upon which damages, if any, will be assessed.

QUESTION 7

F & G Suppliers Ltd. sold two second hand coaches to Transporters Ltd. to be used in the course of their business. Transporters Ltd. paid 20% of the price and agreed to pay the balance within 6 months at the rate of interest of 25% p.a. on the full balance.

Transporters Ltd. also bought a brand new luxury coach from F & G Suppliers Ltd. on six months credit. There was no stipulation concerning payment of interest. Transporters Ltd. had bought the new coach for use on their lucrative luxury route.

Fabian, manager of F & G Suppliers Ltd., informs you that the debts owed by Transporters Ltd. are nine months overdue. He wants to recover all debts with interest at 35% p.a.

Advise Fabian.

QUESTION 8

Nineteen year old Bertie Jones modeled sports wear for Exclusive Make Menswear. On May 19, 2002, Bertie was involved in an accident for which Allister was 75% to blame.

A medical report prepared in 2003 indicates that Bertie's injuries include:

Fracture with dislocation of the cervical spine between the fifth and sixth cervical vertebrae; compound fracture of the tibia and left humerus; fracture of the left patella; damage to the left radial nerve.

Before the injuries, Bertie earned \$10,000 per week. He modeled at hotels (local and international). He always received free food, entertainment and lodgings. Whenever he travelled abroad on his employer's business his airfare, ground transport and hotel accommodation were all paid for by his employers. In addition to his salary, Bertie was entitled under his contract to a clothing allowance and three sports suits each year.

After the accident his uncle came from the U.S.A. and removed him to a hospital in New York. His mother and sister accompanied him. He saw his mother every day and his sister only on Sundays.

Bertie, who is mentally alert, consults you. Advise him on:-

- (a) any further information including documentary evidence which is necessary to assess his claim for damages;
 - (b) the measure of damages and the basis on which any quantum will be calculated.
-