

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST-YEAR EXAMINATIONS, 2005

REMEDIES

(FRIDAY, MAY 20, 2005)

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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## QUESTION 1

Jon Stedroy and his wife, Adria, decided to build their home on a lot of land they had acquired in Mountain Side. They entered into a contract with Bilton Webb, an experienced contractor and builder to construct a four bedroom, three bathroom house at a cost of \$2.5M. It was a term of the contract that construction would be completed and the house delivered to the owners by March 30, 2005 after a period of eight months.

Mr. Stedroy told the contractor that he desired to move into the house with his wife and two children because he and his family were housed in his parents' home which was up for sale. His parents were moving into smaller premises, which would be ready by the end of March 2005, the completion date for the sale of his parents' home.

The Agreement provided that if the house was not finished by the contract date the contractor would "pay to Mr. and Mrs. Stedroy the sum of \$10,000 per day as penalty for every day the breach continued".

The contractor completed the house on May 15, 2005.

Because of the contractor's delay the Stedroys had to store their goods in a warehouse at a cost of \$500 per day. Hireage cost for transporting the goods to the warehouse amounted to \$4,500.

The family moved into a very poorly furnished boarding house in a very noisy area where they stayed until the house was completed. The cost of staying there was \$1,000 per night for two rooms. The rooms were very dusty, poorly ventilated and infested with lizards.

Mrs. Stedroy experienced mild shock at the sight of the lizards and Mr. Stedroy had to pay \$800 to exterminators to get rid of them. Daily transportation costs for the family increased by \$250.

Jon Junior developed asthma and had to be treated. Doctors' fees and medication amounted to \$4,500. Hireage for transporting the household goods to the finished house amounted to \$4,000.

Mr. Stedroy consults you.

Advise Mr. Stedroy on his rights against Mr. Webb, any recourse to which Mr. Webb may resort and the viability of such recourse.

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## **QUESTION 2**

On May 26, 2002, Zaleta, an inventory clerk, suffered injuries at her place of employment. The next year she was made redundant and since she received a generous sum as redundancy payment she decided (without informing or consulting anyone) that it was not worthwhile to sue her employers, High Quality Ltd.

Zaleta's cash resources have now dwindled and she wants to sue High Quality Ltd. for damages, especially in view of her limp and a scar on her forehead which are undoubtedly the consequences of her injuries.

She informs you that she has recently returned from the U.S.A. and she now realizes that "according to how things go in the U.S.A. she could be a multi-millionaire" if she should take the matter to court.

She further informs you that she understands that she could get “bank interest” as well.

- (i) Advise Zaleta.
  - (ii) What response would you anticipate from High Quality Ltd. in respect of any claim for interest?
  - (iii) What documents would you require in your pre-litigation preparation?
  - (iv) Draft a letter of request for any one of these documents.
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### **QUESTION 3**

- (a) Aerated Beverages Limited, your clients, entered into an agreement with Sugar Products Suppliers for the sale to them of a consignment of syrups to be delivered to your clients’ factory on July 15, 2005 in time to meet the heavy Emancipation holiday demand for aerated and other sweet beverages. A period of two months’ credit had been agreed.

By letter dated May 24, 2005, (and delivered on the same date) Sugar Products Suppliers wrote to your clients informing them that by reason of certain “business exigencies” they will not be able to supply the consignment of syrups on the same terms of payment as had been agreed. They “regret to require payment on delivery”.

Advise Mr. Lombard, the managing director of Aerated Beverages Limited, what alternatives are open to him and the consequences of each.

- (b) Tashena consults you and seeks your advice in respect of the following facts:

She is the 'banker' for a 'partner' scheme in which there are twelve members. This scheme is an old fashioned scheme where "what you contribute is what you must expect - no more, no less".

The scheme commenced on January 1, 2005 with each member agreeing to 'throw a hand' of \$10,000 per month until such time as it is wound up or dissolved.

Noveline who received the first draw in January 2005 has refused to participate further.

Advise Tashena.

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#### **QUESTION 4**

Marcino, is in the business of transporting heavy equipment. On May 20, 2005, while transporting a mechanical digger to a building site, the mechanical digger fell from the transporter and landed on the roof of a house below the road. The mechanical digger is owned by Clyde Drane and the house is owned by Mr. Beversley.

The digger was damaged beyond repair and is now in the middle of Mr. Beversley's house, which is substantially damaged.

A very distraught and anxious Marcino consults you in respect of the above.

Advise Marcino.

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### **QUESTION 5**

Forty-five year old Mr. Rocky Rodney, commissioned land surveyor and cricket enthusiast, was injured as a result of negligence in a road traffic accident, which occurred on the Main Road on January 1, 2004. He was knocked unconscious and taken to hospital where it was discovered that he sustained a fractured right pelvis and dislocated thigh bone. He spent three weeks in hospital.

After his discharge from hospital and because he still experienced severe pains, he moved around in a wheel chair which he had purchased, although he was told that wheelchairs could have been obtained for hire.

After three weeks of daily physiotherapy he was able to graduate to moving around on crutches which he borrowed from his uncle Jimmy who had bought them two years before. After one month of using the crutches they were replaced by a very ornately decorated walking stick, which was double the price of an ordinary cane.

One year after the accident, Mr. Rodney was able to move about without the assistance of the walking stick and to resume work at the Ministry of Land. However, his right leg is shorter than the other and he has a pronounced limp.

Permanent partial disability is assessed at 30%, with a high possibility of further deterioration resulting in the onset of arthritis. Further he is unable to jog or even walk without pain and he has not been selected to play for his club. He has gained quite a bit of weight.

Mr. Rodney consults you with a view to commencing litigation against Decors Ltd. the owners of the vehicle which was involved in the accident.

Advise him on the principles on which damages are likely to be assessed.

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### **QUESTION 6**

Estovers Contractors Ltd. are defendants in an action. The plaintiff/claimant Marcello Camden commenced the action last July and had obtained an interlocutory injunction/court order restraining them from carrying on their building operations until the action was heard and determined on its merits.

The causes of action are breach of covenant and trespass. As a condition of obtaining the interim relief the plaintiff/claimant by his counsel gave the usual undertaking in damages, that is to say "to abide by any order this court may make as to damages in case this court shall hereafter be of the opinion that the defendant shall have sustained any by reason of this order which the plaintiff/claimant ought to pay".

The plaintiff/claimant has discontinued the action because an independent surveyor's report has shown that the boundaries are in order and there is no breach of covenant and no trespass.

The defendants who had complied with the injunction/court order had ceased their building operations. While the work was at a standstill some building materials, which were already on the ground, were either dissipated by the elements or stolen. Contracts for future supply of materials, fixtures and electrical, plumbing and other services had to be cancelled. These contracts have to be re-negotiated and the prices have now escalated.

Estovers Contractors Ltd. had laid off all casual workers but had retained their skilled workers at half pay so that they could resume building operations reasonably quickly. Furthermore, and most distressing to them the defendants are unable by reason of the injunction/court order to comply with the time clause in the building contract, which required them to complete the construction of a block of six apartments by the end of July, 2005.

The manager of Estovers Contractors Ltd. consults you on the above.

Advise the manager.

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### **QUESTION 7**

James Conway, the vice principal of a very well known school, was in the garden at his home in Rosedale when a party of policemen headed by Inspector Kool approached and informed him that they had a warrant for the arrest of his son, David. Mr. Conway called David and informed him that some law officers were there to see him. A member of the police party, Constable Rage asked Mr. Conway if he knew of David's whereabouts the night before. Mr. Conway said "Officer, David will be here presently, when he comes ask him, he is of age".



The officer slapped Mr. Conway in his face and accused him of being disrespectful. Inspector Kool reprimanded Constable Rage and apologized to Mr. Conway.

When David arrived, he was informed by Inspector Kool that they had reasons to believe that he was implicated in the importation of and dealing in arms and ammunition and they had a warrant for his arrest. David laughed and said, "you must be joking". David's twin brother, Dan who had come out with David pleaded with the Inspector that there must be some mistake as his brother was a law abiding citizen. Dan told David not to go with the police and held on to David's hand.

Dan was warned that he was obstructing the police in the course of their duties. Dan then uttered a barrage of insults and expletives saying that David was his twin brother and was innocent. Constable Rage and the other officer grabbed Dan and dealt him a number of blows.

David and Dan were taken to a waiting police car. Both were handcuffed but Inspector Kool ordered Constable Rage to take the handcuffs off David. All this happened in full view of the neighbours.

David and Dan were both kept at the police station until the following morning when they were released. While at the station they were given refreshments, which Dan refused to receive. David however, received his but declined to eat because he was too disturbed.

It subsequently transpired that the police had made a mistake. The warrant had in fact been issued for the arrest of David Camray who lived in the same area.

Advise as to the causes of action open to the parties and the measure of damages in each case.

## QUESTION 8

By a contract in writing dated May 1, 2004, Joneal Baxter, a junior medical practitioner of two years experience, was appointed as staff doctor by Chemco Inc. (Chemco). Under the contract Dr. Baxter was to be employed for a term of three years and Chemco reserved a discretion to renew the contract for a further three years on such terms and conditions as they think fit.

Dr. Baxter's entitlements under the contract include a base salary, housing allowance, entertainment allowance, company car or car allowance and upkeep, lunch at the company's cafeteria, study leave, book allowance and a technological grant. However, Dr. Baxter drove his own car.

Shortly after taking up his appointment the relationship between Dr. Baxter and the Chief Executive Officer, Mr. Marbury, became strained because Dr. Baxter had, against the express wish of Mr. Marbury, brought in a "safety consultant" to carry out an evaluation survey of Chemco safety regulations and to make recommendations relative to improvements in measures for the protection of employees.

The safety consultant who was asked not to return to Chemco's premises has sued Chemco for breach of contract.

On October 1, 2004, Mr. Marbury directed that all matters of employees' health should be referred to Dr. Charles, a recently hired junior doctor. All employees were asked to see Dr. Charles for all their health and medical needs. The nurse and other paramedical staff were instructed not to receive any instructions from Dr. Baxter.

Dr. Baxter was left with very little to do. He found the situation untenable and spoke to Mr. Marbury about the matter. Mr. Marbury seemed rather indifferent

and reminded Dr. Baxter that his (Baxter's) presence at Chemco "represented a waste of money, which is being presently tolerated".

In November 2004, Dr. Baxter became anxious, frustrated and depressed. He refused to eat lunch in the company's cafeteria. He became accident-prone and injured himself when he walked into a glass door. As a result he was obliged to spend three weeks away from work.

On his first day back at work, Dr. Baxter was given a letter from Mr. Marbury containing two cheques, one representing salary for November and the other one-month's pay in lieu of notice. In the letter he was told that he was "unreliable, uncooperative and unprofessional and his emotional volatility lends itself to accident proneness to an intolerable degree". Dr. Baxter is even more depressed and distressed than ever especially since he thinks that his professional reputation has been tarnished.

Dr. Baxter consults you.

Advise Dr. Baxter.

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