

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2006

REMEDIES

(FRIDAY, MAY 19, 2006)

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

Mrs. Carmella Jensen consults you in respect of her daughter Nellita who was injured in a bus accident on her 14th birthday on December 15, 2005. She tells you that Nellita who was hospitalized for some time is now at home recuperating and is receiving physiotherapy and other treatment as an out patient. However, she had to give up her job as a secretary to take care of Nellita.

Mrs. Jensen tells you further that she has a letter from a lawyer Mr. G.R. Johnson representing the Bus owner, Transporters Incorporated, inviting her to indicate how much she will accept in settlement of Nellita's claim. She says that she is not knowledgeable in these matters but she has read in the newspapers that people have received millions of dollars as compensation for injuries. In any case she wants you to act on behalf of Nellita because she is not "entirely comfortable" dealing personally with a matter like this.

- (i) Advise Mrs. Jensen generally.
 - (ii) How would you proceed in preparation for any meeting with Mr. G.R. Johnson? Give reasons for the steps you think you are required to take.
 - (iii) Draft one of such communications you may need.
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QUESTION 2

On July 12, 2004, Tarissa Claxton, a firefighter, was involved in a motor vehicle accident for which she is partly to be blamed. The other party to the accident is Yves Sarong.

Tarissa who is 25 years old suffered serious injuries to her back and right leg. She also suffered injuries to her face and multiple abrasions about her body. Immediately after the accident she was taken to the Casualty Department at the General Hospital. She had to wait for six hours before receiving medical attention. During that time she experienced excruciating pain.

Tarissa spent ten weeks at the hospital during which time she underwent surgical operations to her leg in order to have the bones correctly aligned. After each operation she experienced pain ranging from intense to moderate. She baffled the medical doctors by reacting unfavourably to any pain-relieving medication they prescribed.

After her discharge from hospital Tarissa was chair-bound for a number of weeks. She complained that prolonged standing produced severe pains and distress especially since she was allergic to pain relievers.

When the fracture was fully healed it was observed that there was a 1½” shortening of the right leg which caused her to walk with a pronounced limp. The injuries to her face produced a number of scars.

Tarissa’s hobbies include singing and drama but since the accident she can no longer face an audience or walk gracefully on stage. In fact, her limp is overly emphasized when she wears tight jeans. She no longer receives any invitations to act in plays or sing at concerts for which she used to receive honoraria.

Further, she has been relegated to a desk job at her work place. She misses being an active firefighter and she has discovered that prolonged sitting is just as painful as prolonged standing. Tarissa has gained quite a lot of weight and is feeling most distressed and depressed.

Tarissa fears that she could lose her job at any time. She has exhausted all her leave including sick and departmental leave. She says that she was quite fortunate in that her uncle Jimmy in the U.S.A. had been paying the premiums on an accident insurance policy which had been taken out on her 18th birthday. The payments under this policy came in handy to pay her medical bills.

Advise Tarissa on the measure of damages and the basis on which damages will be computed and apportioned.

QUESTION 3

Mrs. Marcos, a seamstress, is banker for a “partner” (syndicate, box, turn, sou-sou) with 12 members. Each member agreed with her to “throw” \$10,000 per month. It was agreed that Melanie Pepperson should get the first “draw”. Each member will “draw” a total of \$110,000 plus his/her “hand”. Melanie Pepperson got the first draw on January 31, 2005. After that no one was able to locate Melanie Pepperson and Mrs. Marcos had to pay on her behalf. That “partner” had run its course and a new one is in place.

Melanie Pepperson is back in the country and Mrs. Marcos wants her money.

Mrs. Marcos consults you on the above.

- (i) Advise her on any remedy available and the validity of her decision to pay on behalf of Miss Pepperson; and
 - (ii) Whether she could claim interest as well.
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QUESTION 4

Samuel Solono, an accountant, is tenant of a house on a state-owned housing estate. In December 2005, he was served with notice to quit by the State Housing Authority (SHA) on the ground that he was in arrears of rent for a period of more than one year. He ignored the notice. Four months ago, three security guards from the SHA accompanied by a police officer went to his house to eject him.

He showed them receipts which indicated that his rent was paid up-to-date and that he had never been in arrears. The police officer threatened to arrest him for forgery and “uttering forged instruments”. They proceeded to remove his personal effects from the house. Mr. Solono attempted to stop the removal of his goods whereupon the police office grabbed him and handcuffed him to a rail in full view of a large crowd of neighbours. His household goods were placed on the street and one of the guards locked the door and took Mr. Solono’s keys.

Mr. Solono was released two hours after he was handcuffed to the rail. Two months ago the SHA discovered the error and he was restored to his house. During the period of exclusion he had to shelter himself and his family at his mother-in-law’s house which proved inconvenient. Furthermore he lost his job due to the distance he now had to travel resulting in him becoming unpunctual on a regular basis.

You are consulted by Mr. Solono who tells you that he feels very humiliated. He instructs you to take legal proceedings against the SHA.

Advise him on any cause(s) of action which may be open to him and the measure of damages.

QUESTION 5

On September 1, 2005, Harry Olson aged 45 and sole breadwinner in his family was killed in an accident for which he was in no way to be blamed. At the time of his death he was a travelling salesman earning \$50,000 per month on commission. During his travels in the rural districts he would buy farm produce and sell at a profit to market vendors as well as supply his home with fresh fruits and vegetables.

Harry owned a car which he paid a driver to ply as an unlicensed taxi. The arrangement was that the driver would pay to him (Harry) the sum of \$1,500 per day. The balance of earnings was to be divided between the driver's wages and the maintenance of the car. The driver kept faithfully to the arrangement.

Harry was a caring family man and something of a handy man and on weekends he stayed with his family. He painted and fixed anything that needed painting and fixing. He did the odd jobs around the home and he helped with the children. He paid the mortgage on the matrimonial home and bought groceries.

He is survived by his widow, Jenny aged 40, children viz Eddie aged 10 who is mentally and physically handicapped and in need of constant care and attention; Katia aged 16 who has just successfully completed advanced level examinations.

Harry is also survived by Tom aged 17, the child of a pre-marital relationship with Nora. Apart from the occasional gift at Christmas and on Tom's birthdays, Harry did not support Tom financially.

Harry left a Will of which his widow is executrix. In it he left all his real property to Jenny and all his personal property to Jenny to divide amongst herself and the children as she sees fit.

Jenny paid funeral expenses amounting to \$250,000 out of a joint savings account.

Jenny consults you. She complains of "great grief" and that the children are very sad and cry themselves to sleep at nights.

Advise her on the causes of action consequent on her husband's death and the basis on which damages will be assessed.

QUESTION 6

Dalina, an attorney-at-law of two years standing, was on January 1, 2005 engaged by Dossier Mario & Company, a prominent legal firm to work in their estate department.

Under the terms of her employment she was to receive a salary of \$70,000 per month together with housing allowance, entertainment allowance, lunch in the firm's cafeteria and the use of one of the firm's cars. Bar association annual fees and annual practising fees were to be paid by the firm on her behalf.

Her employment was for three years in the first instance with an option on the part of Dalina to renew for a further three years. At the end of each year she was to receive a bonus as the firm deemed fit.

On April 1, 2006, Dalina was dismissed by the firm and given two months' salary in lieu of notice. Her dismissal letter which she shows you alleges that she "was invariably unpunctual for appointments with clients, ill-mannered and unprofessional towards clients and all employees of the firm".

The letter further indicates that her "attitude displayed either a settled perverseness or an entrenched inability to distinguish right from wrong". The letter cited as an example an episode where she "spilled coffee on the clothing of an associate and refused to apologise".

Dalina denies the allegations in the letter except that she vaguely remembers the "ultra-sensitive response of a fellow associate who had accused her of spilling coffee in the lunch room".

She said that from her first day at work one of the partners had made improper advances to her. She declined his invitation to intimacy.

On the day of her dismissal she attempted to clear her desk but was stopped by the HR Manager who ordered the firm's security guard to put her belongings in a large box which was deposited at her feet. She had to take the box outside the building in the company of the security guard who had orders to insist that she hand over the keys to the firm's car.

Two days after the event, Mr. Mapp in a "without prejudice" letter personally apologized for the manner in which she was "shunted" out of the firm's premises and on behalf of the firm offered to re-employ her at one of the firm's less

“strategic offices provided she sought psychiatric counseling - a suggestion which the firm had made a few months after your engagement”.

Dalina claims that her character has been tarnished. She has applied to six firms and has been interviewed by all without any success. She has been humiliated and embarrassed and word is out in legal circles that she is unprofessional. It is her view that she should be appropriately compensated and the firm should be punished.

Advise Dalina.

QUESTION 7

Don Dornelly, a manufacturer of containers for various purposes, decided to expand his business. He contracted with Biotex Ltd. for the manufacture and assembling of a bottle-making plant. It was agreed that the work should be completed within thirty weeks from the date of the contract which was signed on January 2, 2005.

The contract stipulated that “if the period of thirty weeks is exceeded Biotex Ltd. shall pay by way of penalty the sum of \$25,000 for each week of delay...”

There was a delay of ten weeks by Biotex Ltd. in completing the plant, which period coincided with a prolonged dock strike and two weeks of road blocks.

On the basis of his expectation Dornelly had signed two contracts for the supply of bottles to Trendy Bottlers and Evanes, bottlers of drinking water. Dornelly is in

breach of these contracts which themselves contain provisions for liquidated damages on breach.

Furthermore, for the ten weeks, Dornelly had to pay wages to workers he had recruited for his expanded production.

In the meantime, by a separate agreement, Dornelly hired from Biotex a number of portable cabins to augment his office space. The period of hire was twenty weeks but Dornelly could terminate the hire by giving one week's notice and the payment of \$25,000. After ten weeks Dornelly terminated the hire by giving the requisite notice. He is contending however, that he is not obliged to pay the sum of \$25,000 on the ground that it is unconscionable.

Advise Dornelly as to his rights and liabilities.

QUESTION 8

On March 25, 2006, Mr. Rainford parked his motor car in his yard at 25 Riglow Road and went into his house to have a snack. While he was preparing the food he heard what sounded like a loud explosion and he felt as if his house had been shaken by an earthquake.

He felt some relief when he realized that there had been no earthquake. But to his dismay he discovered that the sound he had heard was caused by the impact of a van which veered off the road, crashed through his wall fence, collided with his taxi and damaged the front porch of his house. Four chairs, including his favourite chair where he normally ate his lunchtime snack, were totally crushed. Mr. Rainford broke out into cold sweat, got a headache and lost his appetite.

Mr. Rainford's loss adjuster indicates that the cost of repairs to the car is \$145,000 which is \$5,000 more than the pre-accident value. Mr. Rainford made inquiries about a replacement and found that he could purchase a car for \$140,000 but this would not be in any way a reasonable replacement. He has so far neither repaired nor replaced the car.

With regard to the damage to his house, a valuer's report indicates that the overall value of the premises has been negligibly affected in that the property 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 \$150,000 and reinstatement of the fence would cost \$30,000.

The porch chairs were five years old, and with the exception of Mr. Rainford's favourite chair, each could be replaced at a cost of \$2,500. Mr. Rainford's favourite chair was made of mahogany and was brought at an auction for \$1,500. To replace such a chair would take \$15,000 at this time.

Mr. Rainford 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 embarrassment.

Advise Mr. Rainford on the likely measure of damages.
