

FINAL DRAFT

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2007

REMEDIES

(WEDNESDAY, MAY 23, 2007)

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

Doriann a girl of 11 was knocked down by a bus owned by Public Trans Ltd. At the time of the incident the bus was driven by Alex Smart. Doriann was seriously injured and spent three months in the Grange Hospital. Doriann's mother Stella Gooden after giving you the above information, tells you that she has an appointment with Justin Sousa, the company's attorney-at-law who has invited her to attend his chambers to arrive at a settlement.

Miss Gooden who says that she has never done any such thing before, expresses a desire that you attend with her as her attorney-at-law because according to what she sees in the newspapers she does not intend to settle for less than \$5M. She says that as a result of the accident in March 2006, Doriann was so badly injured that she had to give up her job as a security guard to look after Doriann on a full time basis. As a result she is "severely out of pocket as it were and furthermore she has plans to repair her house out of the money."

Advise Miss Gooden -

- (i) On any claim Doriann may have against Public Trans Ltd and the measure of damages.
 - (ii) What is required in preparation for the meeting with Justin Sousa? Give reasons.
 - (iii) Draft a request for any document that may be needed under the circumstances.
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QUESTION 2

Venice Amari entered into an agreement to sell premises called Casa D'Ora to Cathereen Prince. The price was stated as \$14.5M. Ms Prince agreed to all the terms and conditions and the agreement was appropriately signed by both parties.

Some of the terms agreed to were that –

- ✚ The purchaser was to pay a deposit of 25% of the purchase price on the signing of the agreement.
- ✚ Completion of the sale was to be 120 days after the signing of the agreement.
- ✚ Time was of the essence and should the purchaser fail to honour all or any of the terms of the agreement the vendor was at liberty to rescind the agreement and take advantage of all rights at law or in equity including the forfeiture of the deposit.

Ms Prince who at the time of signing the agreement promised to pay the deposit within seven days has not yet paid it although a period of 60 days has passed.

A friend of Ms Prince told her that the price she had agreed to was twice the commercial value of Casa D'Ora and that the transaction was a “rip off”.

Ms Prince has now decided that she is not going to pay the deposit and that she is no longer interested in purchasing Casa D'Ora.

She has received a letter from Venice's attorney-at-law 'cancelling the agreement' and requesting that Ms Prince forward a cheque in the sum of \$3.625M as the forfeited deposit. In the letter Ms Prince is also informed that Venice intends to sue for damages for breach of contract.

Advise Ms Prince of any relief open to her and the basis on which she may obtain such if she is sued by Venice.

QUESTION 3

- (a) *“In awarding interest on assessed damages a tribunal enjoys a cluster of discretions.”*

Discuss and indicate how these discretions are exercised.

- (b) Manella Grant consults you and seeks your advice in respect of the following –

Manella is the “banker” for a “partner/syndicate/box” (‘partner’) scheme in which there are twelve members – all of whom are vendors. The scheme is the old fashioned one “where what you contribute is what you must expect – no more no less”. The scheme commenced on January 1, 2006, with each member agreeing to ‘throw a hand’ of \$20,000 per month until such time as it is wound up.

A member of the ‘partner’, Thomasine Gall, asked for and was given the first hand. Thomasine paid her hand in February 2006 but did not make any further contribution. She left the territory immediately thereafter.

Manella was forced to pay on behalf of Thomasine who is now back in the territory. Manella wants to sue Thomasine to recover the money as well as interest.

Advise Manella Grant.

QUESTION 4

Oswald Ingram, a farmer, occupied 40 acres of land on the northern part of your territory. One day last year he saw three men walking up and down on the land. When he enquired what their business was, one of them told him that he would find out “in a matter of days.”

The next week he received a letter from Middle Income Solutions Limited offering to buy the land to carry out a middle income housing development. Oswald telephoned the manager and informed him that the land was not for sale and he had no intention of selling. The manager’s answer was to the effect that “time will tell.” The manager also told Oswald that a sale would be profitable for the company as well as for Oswald and he was not prepared to take ‘no’ for an answer.

After several fruitless attempts to persuade Oswald, Middle Income Solutions Limited authorized its agents Dane and Villard to do whatever was necessary to force Oswald’s hand. They executed a plan to spray Oswald’s crops with a poisonous solution which killed the plants and contaminated the soil.

Notwithstanding his efforts, Oswald was unable to save the crops. Oswald was advised to vacate the land for at least a year because the spray solution was hazardous to human health.

He leased a small farm some miles away for one year and moved there with his wife and two children. The children, Ann and Trisanne, contracted dermatitis. The doctors concluded that this was as a result of exposure to the noxious solution with which Oswald’s land was sprayed.

The farm proved unproductive and Oswald returned to his land. He found that his house was demolished and two bull dozers were being used to clear the land.

Oswald consults you and seeks your advice on the cause(s) of action and remedies.

Advise Oswald.

QUESTION 5

Jim Castino and his wife Delia decided to build their home on a lot of land which they had acquired on Pass Side Range.

They entered a contract with Quick Builders Ltd to construct a four bedroom, two bathroom, two storey house at a cost of \$4.5M.

It was a term of the contract that construction would be completed and the house delivered to the owners (Jim and Delia) by March 30, 2007, after a period of eight months.

Jim and Delia, were at the commencement on the agreement, living with their two children and Jim's nephew in rented premises for which they paid \$53,000 per month.

The building agreement provided that if the house was not finished by March 30, 2007, "Quick Builders Ltd would pay to Jim and Delia Castino the sum of \$10,000 per day as penalty or liquidated damages for every day the breach continued."

The contract further provided that if "the Company failed to construct the house according to specifications the Company will pay by way of liquidated damages the sum of \$350,000".

The Company completed the house in April 30, 2007. One week after Jim and his family moved in, it was discovered that the stairs were defective and the size of the kitchen was smaller than the design had indicated.

You are also told that because they had given notice to their landlord in preparation for taking possession of their home they were forced to take shelter with a relative and the living conditions at the relatives' home were less than desirable. They are at a loss as to what to do because they cannot occupy the house because of the defective stairs and they are repaying the loan they had taken out with Builders Help Finance to finance the enterprise. They are quite frustrated and anxious.

Jim and Delia consult you in respect of the above.

Advise Jim and Delia on their cause of action and the considerations affecting any remedy to which they may be entitled.

QUESTION 6

Marciano is in the business of transporting heavy equipment. On March 20, 2007, while transporting an excavator belonging to Hugh Oliver to a workshop for minor repairs, the excavator fell from the transporter due to Marciano's negligence and landed on the rocks below the road. The excavator is severely damaged as a result.

Mr. Oliver has a very busy schedule for the hireage out of the excavator at an hourly rate of \$10,000.

At the time of the incident the excavator was working on a building site and had two more days to complete that job before embarking on another job at a site nearby.

Mr. Oliver is not financially able to pay for either the cost of repairs (which the loss adjuster has said would be uneconomical) or a replacement which would cost in the region of \$8.5M. Mr. Oliver is not even able to hire a substitute to carry out the several jobs he has contracted to do. He is very anxious and seeks your advice.

Advise Mr. Oliver.

QUESTION 7

Thirty-five year old Aldon Reynard, a commissioned land surveyor and football enthusiast, was injured as a result of negligence in a road traffic accident. The accident occurred on Majesty Road on March 3, 2005 and Astell Conway was entirely to blame. He was knocked unconscious and taken to Glenview Hospital. There it was discovered that he had suffered *inter alia* slight head injury with mild to severe concussion, a fractured right pelvis and dislocated left thigh bone. While in hospital he suffered severe bouts of epilepsy but this condition has been stabilized.

The fracture and dislocated bone were treated surgically and there were no severe complications. He was discharged in a wheelchair after nine weeks in hospital. Mr. Reynard purchased a wheelchair instead of hiring one as had been recommended. He refused to continue physiotherapy on the ground that the

physiotherapist “was far from gentle and caused him more pain than anything else”. He refused to attend for counseling.

One year after the accident, Mr. Reynard was not moving about as he should and was still wheelchair bound and experiencing excruciating pain at the slightest movement. He was convinced that he was “crippled for the rest of his life” and that Astell Conway will have to pay. His uncle Jimmy heard of his nephew’s plight and travelled from the U.S.A to see him. Uncle Jimmy was convinced that his nephew could get “better treatment in the States” and desires Aldon, accompanied by his mother and brother, to return with him to the U.S.A.

Aldon has been unable to work since the injuries. He has however, benefited from an accident insurance policy which he had taken out some years ago. From the proceeds he was able to pay his medical surgical and prescription expenses.

Aldon consults you and requests your advice on his cause of action and the basis on which damages will be assessed.

Advise Aldon.

QUESTION 8

By a contract in writing dated March 1, 2006, Maxim Erling a junior doctor, who had practised on his own as a general practitioner for only one year, was appointed as staff doctor for Lustre Chemicals Inc. Under the contract Dr. Erling was to be employed for a term of three years and Lustre Chemicals reserved a discretion to renew the contract for a further three years on such terms and conditions as they think fit.

Dr. Erling's entitlements included a base salary, housing allowance, entertainment allowance, company car or car allowance and mileage, lunch at the company's cafeteria, study leave, book allowance and a technological grant. However, Dr. Erling drove his own car.

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

In May 2006 there was an incident at the gate of the company's complex involving an intruder and the security guard. When Dr. Erling was called to the site of the incident he fainted when he saw blood flowing from the right arm of the injured guard. One of the workers who had been trained in first aid took charge of the situation and applied a tourniquet to the limb. He then proceeded to revive Dr. Erling. When asked by the management for an explanation in respect of this occurrence Dr. Erling apologized and disclosed that his response was the result of an abusive experience he had encountered as a child.

On October 1, 2006, Mr. Warren directed that all matters of employees' health should be referred to a recently hired junior doctor. The nurse and other paramedical staff were instructed by Mr. Warren not to receive any instructions from Dr. Erling.

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

In November 2006, Dr. Erling became anxious, frustrated and depressed.

On March 1, 2007, Dr. Erling was given a letter from Mr. Warren containing two cheques, one representing salary for March and the other one-month's pay in lieu of notice. In the letter he was told that his "emotional volatility was a cause for concern amongst the workers". Dr. Erling is now even more depressed and distressed than ever especially since he thinks that his professional reputation has been tarnished.

Dr. Erling consults you.

Advise Dr. Erling on any cause of action open to him and the measure of damages.
