

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2008

REMEDIES

(WEDNESDAY, MAY 21, 2008)

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

Jack Broman and his wife, Priscilla decided to build their home on a lot of land they had acquired in Mountain Ridge. They entered into a contract with Dean Porter an experienced contractor and builder to construct a four bedroom, three bathroom 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 by March 30, 2008, after a period of eight months.

Mr. Broman 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 2008, the completion date for the sale of his parents' home.

The Agreement provided that if the house was not finished by the agreed date the contractor would "pay to Mr. and Mrs. Broman the sum of \$10,000 per day as penalty for every day the breach continued". It was also agreed that "should there be any defect in the construction whether from bad workmanship, defective materials or failure to comply with design specifications the sum of \$250,000 was to be paid by the contractor".

The contractor completed the house on May 15, 2008, with one less bathroom than was specified.

Because of the contractor's delay the Bromans 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, due to lack of funds, 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. Broman experienced mild shock at the sight of the lizards and Mr. Broman had to pay \$800 to exterminators to get rid of them. Daily transportation costs for the family increased by \$250.

The Broman's son, Jack, 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. Broman consults you. He wants to know if in addition to the sums agreed upon he could claim for all the expenses he has incurred.

Advise Mr. and Mrs. Broman on their rights against the contractor.

QUESTION 2

John Radway , 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 Quiet approached and informed him that they had a warrant for the arrest of his son, Ron. Mr. Radway called Ron and informed him that some law officers were there to see him. A member of the police party, Constable Rabid asked Mr. Radway if he knew of Ron's whereabouts the night before. Mr. Radway said "Officer, Ron will be here presently, when he comes ask him, he is of age".

The officer slapped Mr. Radway in his face and accused him of being disrespectful. Inspector Quiet reprimanded Constable Rabid and apologized to Mr. Radway.

When Ron arrived, he was informed by Inspector Quiet 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. Ron laughed and said, "You must be joking".

Ron's twin brother, Don, who had come out with Ron pleaded with the Inspector that there must be some mistake as his brother was a law abiding citizen. Don told Ron not to go with the police and held on to his hand saying that Ron was his twin brother and was innocent. Constable Rabid and the other officer grabbed Don and dealt him a number of blows. Mr. Radway shouted at Constable Rabid "That's enough officer, you have exceeded your powers". Mr. Radway, Ron and Don were taken to a waiting police car. All this happened in full view of the neighbours. Don was handcuffed.

The three were kept at the police station until the following morning when they were released. While at the station Don was placed in a cell with ten other persons. They were given refreshments which Mr. Radway and Don refused to receive. Ron 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 Ron Rodney 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 3

Anton Piller, a Land Surveyor who was 30 years old at the time, suffered a serious injury on May 4, 2004, when a motor vehicle in which he was a passenger, and which was owned and driven by Marevo, was involved in a collision with another vehicle. It is likely that both drivers could be at fault.

Following the collision Anton was admitted to the Accident and Emergency Section of the Public Hospital. There he was examined by a doctor. The examination revealed he was suffering from a 1¾ inch laceration of the right cheek, two irregular lacerations of the nose, a fracture of the right seventh rib and dislocation of the right hip joint. He was fully conscious and there was no evidence of any damage to the central or peripheral nervous system. The injuries were attended to and on the following day the dislocated hip was reduced under anesthetic. He was confined to bed and the right leg was put in traction.

He was discharged from the hospital one month later by which time the facial wounds were healed and the pain from the fractured rib had subsided.

After being discharged Anton complained of pain in the right hip joint and he walked with a limp. He continued to complain of constant pain in the right hip joint.

On the advice of two surgeons Anton proceeded to Canada for treatment. They realized that Anton had “such a deep distrust in the local care that he complained that every examining physician and physiotherapist was causing him increased pain”. Furthermore, Anton was particularly annoyed that one consultant had prescribed physiotherapy instead of pain killers and insisted that he should have “absolutely no alcohol”.

Anton's trip to Canada was financed by a salary advance from his employers and a loan on which he had to pay interest at 20 percent per annum. Also, he took out travel insurance for the trip. Anton's wife accompanied him. She was on no pay leave from her job for the two months that she spent in Canada.

Anton is disappointed with the treatment "in foreign because it was no better than local". He is still feeling intense pain and is still walking with a limp. He cannot jog as he used to. He is disgruntled and angry because he is also of the view that the scar on his cheek might have affected his relationships.

Anton also tells you that a friend of his in Canada had told him that he should be a wealthy man when his case was finished.

Advise on the measure of damages and the bases on which the quantum will be computed.

QUESTION 4

- (a) Consider the equity of restitution and the ambit of the court's jurisdiction to recognize and give effect to it.
- (b) Arron Vale agreed to sell Wartvale to Mr. Hapi Purchas who signed a memorandum and paid as a deposit a sum equivalent to 20% of the sale price. Mr. Purchas has changed his mind about the transaction. The price of real estate has fallen and he thinks he can get a better deal for the same price. He approached Arron Vale with a proposal to renegotiate the price or refund the deposit because of market conditions. Vale's response was "No way! A contract is a contract and that's that".

His sole purpose at this time is to recover the money he has paid especially since the agreement does not mention anything about forfeiture.

Mr. Purchas consults you. Advise him.

QUESTION 5

Desrine and Dane are twins. They inherited 3 acres of land with a bungalow in the middle. It was quite a pastoral scene and the premises was called "Bliss". They owned it as joint tenants. The twins also inherited substantial sums under their uncle's Will.

While Desrine handled her money with care, Dane, who had many friends, was not as careful and he agreed to sell "Bliss" to Marcos for \$10.5M. At the time he signed the memorandum of agreement he told Marcos that Desrine was a co-owner "but since she would not like to see her twin brother on the roll of indigents she was sure to sign the agreement". When Dane presented the memorandum of agreement to Desrine she flatly refused to sign and cautioned him not to raise the subject with her ever again.

On the same day the agreement was signed by Dane, Marcos entered into an agreement with a land developer to sell Bliss for \$35M. When Dane heard about this transaction he told Marcos that he was no longer willing to sell "and in fact Desrine was totally opposed to the sale". Dane accused Marcos of having given the impression that he was purchasing Bliss as a holiday retreat for his family.

The price quoted to the developer was based on an appraisal which took into consideration the potential for development.

Dane consults you on the above. Advise Dane.

QUESTION 6

Vista Verlin is a radio announcer employed with Radio No. 1. She is 28 years old and unmarried. While she was on the road power walking early on the morning of June 28, 2006, she was attacked by two large dogs which bit her and inflicted several wounds all over her body and in her face. She was rescued by a security guard on a nearby construction site who had heard her screams and had come to investigate.

The owners of the dogs, Ora and Casley Davy, took Vista to Best Care Hospital where she was admitted in an unconscious state. Her wounds were attended to and anti-tetanus and antibiotic drugs were administered. She was sent home after six weeks in hospital with a requirement to attend the Out Patients' Department for dressing in respect of a wound on her left calf which had received several stitches and was still unhealed.

Since the incident Vista has an unsightly scar on her face. She is extremely fearful of going out on the road and she does not go walking anymore. Her sleep is very often disturbed by nightmares when she would awaken with loud screams. She is of the view that her life is now nothing but misery. Radio No. 1 has plans to expand their communication network by acquiring a TV station and she was promised a promotion. She is unable to concentrate on her studies for a law degree.

Advise Vista on the cause of action and measure of damages and the basis on which damages will be assessed.

QUESTION 7

Freedom Publications Ltd. and its editor Z. McRain, publishers of three newspapers, published material in their newspapers which a judge sitting with a jury found to be defamatory of the claimant J.P. Zayne, a well respected auditor. Subsequent to the first publication Mr. Zayne was suspended from his job as chief auditor.

Assessment of damages is set for next week. You are asked to prepare a memorandum in respect of the measure of damages and the likely method of computation to be employed by the tribunal in arriving at the quantum of damages.

Additional matters to be considered are:

- the first of the libellous publications was obtained from a reputable wire service;
- the second publication took place after the wire service had indicated the possibility that the matter was defamatory;
- the publications have wide circulation within the jurisdiction and amongst the diaspora in hard copies;
- the publications are on line and are advertised as “ streaming live on the www”;
- the publishers encourage on line readers to email their stories. Evidence was given by persons who had received two of the stories by email;

- the defendants pleas of truth, and fair comment on a matter of public importance failed;
 - after the pleas were rejected the defendants tendered an apology to the effect that “since the defences have failed there is no alternative but to apologize most profoundly”;
 - the highest award in defamation was made in 1998 in the sum of \$35M;
 - the merits of considering awards in personal injury cases.
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QUESTION 8

- (a) The doctrine of anticipatory breach does nothing more than present the victim of the breach with a choice between two difficult roads. Discuss.
- (b) National Bottlers Limited, your clients, entered into an agreement with Sugar Suppliers for the sale to them of a consignment of syrups to be delivered to your clients’ factory on July 15, 2008, 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 10, 2008 (and delivered on the same date) Sugar Suppliers wrote to your clients informing them that by reason of certain “business exigencies” they would not be able to supply the consignment of syrups on the same terms of payment as had been agreed. They “regret to require cash payment on delivery”.

The Managing Director of National Bottlers consults you. Advise him.
