

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2009

REMEDIES

(WEDNESDAY, MAY 27, 2009)

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

Amati signed an agreement with First Rate Contractors Ltd. to build a two-storey conference centre to meet the demand for conference space by churches, private sector groups and the Government. Amati already had advance bookings for use of space during January and February 2009.

The agreement includes the usual terms relative to quality of workmanship and materials to be used and time for completion. The agreement provides further as follows -

*“Liquidated Damages and Remedies for Breach*

*If the contractor/builder shall fail to build the structure according to specifications then said contractor/builder shall pay as liquidated damages the sum of \$1.5M.*

*If the project is not completed on the stipulated date the contractor/builder shall pay to the owner the sum of \$5,500 for every day that the contractor/builder should be in breach.”*

The building, which was built at a cost of \$12.7M, was completed on January 31, 2009, thirty days late. Two months after the handing over, the ceiling in one of the conference rooms collapsed, injuring a worker. It was subsequently discovered that the ceilings in all the rooms on both floors were not built according to specifications. The worker is claiming compensation from Amati.

Advise Amati.

## **QUESTION 2**

Mrs. Edna Wray, a grocer, consults you. She is the banker for a partner with 12 members throwing 14 hands. Mrs. Wray throws 2 hands and another member, Vince, also throws 2 hands. The other members throw one hand each. It was agreed that Vince would get the first and second draws.

The partner started in May last year with each member throwing \$10,000 per hand each month. Vince received a draw at the end of the first and second month. He has not paid any money to the partner since.

Repeated attempts to connect with him via telephone have proved fruitless. Mrs. Wray tells you further that the only reason she accepted Vince as a member is because he came highly recommended by Vanessa Pepperson, a well-known personality who wrote and signed a recommendation that Vince was “a reliable individual who works hard and pays his debts promptly”. It turned out that Vince had owed money on two sets of furniture and needed quick money. Vince had, it is reported, removed one set of the furniture from the address he had given to the store. However, they found them and recovered them. Mrs. Wray is of the view that Vanessa Pepperson was aware of all these matters when she wrote the recommendation.

In the meantime, Mrs. Wray had to pay two hands on Vince’s behalf in order for the partner to continue. She has been extremely stressed and her blood pressure has been elevated. As a result she had to incur medical expenses.

Mrs. Wray needs advice on what, if any, remedy she may have against Vince and Vanessa Pepperson. She also wants advice on whether she can get interest on the

money she paid on his behalf, especially since she had taken it out of the earnings from her little grocery shop.

Advise Mrs. Wray.

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### **QUESTION 3**

Maissie was employed to Safety First Airways (Safety First). After 3 months of training and a probation period of an additional 3 months, Maissie signed a written contract of employment with Safety First as a flight attendant for a period of 3 years. In the contract, Safety First reserved to itself the discretion to extend the employment period for a further 3 years. The contract was dated July 1, 2008. The terms of the contract in respect of emoluments and benefits were in respect of basic pay, holiday with pay, uniform allowance, transportation to and from work in the company's conveyance, meals while on the job, free travel for employees or close relatives twice monthly, subject to available space on aircraft.

On December 2, 2008, Maissie was summoned to the office of the managing director who told her that she was "dismissed forthwith" because Safety First had in their possession credible evidence that she had been "selling space" on the airline at ½ the fare which she was keeping for herself.

Maissie tells you that she is aware that "things" were happening at Safety First and that the airline was "trying to clean house but she is just an innocent small fry". She wants her job back. Failing that, she wants to be paid off in full for the contract and given a proper recommendation so that she can get employment. She is tired of being asked

“Where is the character appraisal from your last employer?” She is not only tired of it but she is frustrated, embarrassed and hurt because it seems that her reputation is now tarnished and she fears that she will be unable to work as a flight attendant for the balance of her working life.

Advise Maissie.

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#### **QUESTION 4**

Miss Waker consults you in respect of her 15 year old daughter Majj who was injured a year ago when a bus, owned by Transporter Limited and driven by Ed Wint, collided with a motorbike on which Majj was riding pillion and Nelton, her half-brother, was the bike rider.

Nelton was killed in the collision and Majj, who was taken to the National Hospital in an unconscious state, spent six months there. She is now out of hospital and is at home in a wheelchair. She also has an unsightly scar on her face. Miss Waker shows you a letter from Transporter Limited signed by Alice Brooks, attorney-at-law. The letter states *inter alia* that Transporter Limited was in no way negligent. Their investigations show that the rider of the bike was 100% negligent but they are prepared to work out a settlement without prejudice to liability. In the letter, Miss Waker is invited to visit the company’s head office to discuss a settlement.

Miss Waker, who complains of a sense of hopelessness, enquires whether you can do anything to help her to get compensation for Majj, who is very depressed over her own

condition and her half-brother's death. Majj has become very aggressive and destructive.

Miss Waker asks you if you can sue Transporter Limited right away because times are hard and Majj needs money.

- (i) Advise her in respect of the requirements -
    - (a) for the purpose of establishing liability; and
    - (b) in respect of assessment of damages.
  - (ii) Write a response to the letter from Alice Brooks.
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### **QUESTION 5**

Dahlia Burton and her parents agreed with the proprietor of Bridal Outfitters (Bridal) for the supply of a customized bridal outfit for Dahlia who was engaged to Mr. I. Rite. The marriage was to take place on June 25, 2008 and the bridal outfit was to be delivered one week before the marriage.

The Burtons furnished the pattern and all the necessary materials including the specially coated sewing pins. Dahlia was measured and a mannequin was adapted to her size. Notwithstanding, she had to attend a weekly fitting session, just in case she had gained or lost any weight.

The last Sunday in May 2008, Dahlia while perusing the Sunday Sun saw the photograph of a wedding party with a bride wearing a dress which had an “uncanny resemblance” to the one she had been fitting at “Bridal”. The bride was a dancehall artist Lady Midas. The caption under the photo was “This time very much a Lady”. Lady Midas it was reported won the prize for Bridal Outfit for the Month.

Bridal in accordance with the agreement delivered an outfit to the Burtons’ residence. When Dahlia and her parents saw what was delivered Mrs. Burton screamed and was heard to say, “What an outlandish costume!” before fainting. Dahlia experienced mental distress and Janice, Dahlia’s cousin, who had always accompanied Dahlia to the fitting sessions, collapsed when she saw the outfit. Janice had to be hospitalized in serious condition.

It transpires that the dress that was delivered to Dahlia was Lady Midas’ dress and that Lady Midas had indeed received and worn Dahlia’s dress.

Mr. Burton consults you on the above. Advise him.

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## **QUESTION 6**

Dorianna, an inventory clerk who is 25 years old, was injured at her workplace some time ago when she fell through the wooden floor in one of her employer’s storerooms. She experienced severe spinal injury as well as injury to her ribcage. She had written a letter to her employers, Pound Goods Limited, reporting the matter but had received no acknowledgement of the letter. She was hospitalized for 6 weeks during which time she received no wages. She took two weeks vacation leave and four weeks leave without

pay to recuperate at home. Her mother gave up her job as a paralegal clerk earning \$6,000 weekly to care for her as Dorianna was unable to attend to her personal care and household matters. Dorianna also received insurance payments from Reliable Insurers to assist with hospital and other expenses.

Dorianna, who is back at work, confesses that because of the injuries and the continuous pain she is still experiencing, she is not as efficient a worker as she used to be. She is afraid that if workers are to be laid off at this time, due to the present economic situation, she will certainly be the first to go. Her employers have recently suggested that she should have surgery done on her back but she has heard of a lady who died after back surgery. Her mother is still not working and she (Dorianna) has constant nightmares in which she dreams that she is falling through some deep space. She usually wakes up screaming and sweating.

Dorianna is very hurt and distressed over the indifference with which she has been treated by her employers who have not sat with her to discuss the problem. She had paid a lawyer some time ago to begin the case but she was afraid to have the papers served and she had told the lawyer not to worry with the matter. The lawyer made her put her instructions in writing. She thinks she should take up the matter seriously this time and she desires to have the company pay interest on any damages awarded by the court.

In your consultation, you discover that the limitation period will expire in exactly two months time.

Advise Dorianna of the basis on which damages will be assessed and any interest calculated.



## QUESTION 7

Salvati brought an action against The Daily Uncoverer Ltd. and its editor in respect of a libellous publication on the front page of one of its newspapers. The company and its editor have been found liable and the matter adjourned for the assessment of damages.

Additionally you have been informed that as a result of the publication Salvati has –

- lost his job as a Senior Auditor;
- developed depression which led to an eating disorder;
- become a recluse and refuses to venture out of his home for fear of ridicule; and
- developed hypertension and diabetes.

The defendants' defence of truth (justification) had been withdrawn during the trial on the ground that the witnesses declined to attend court out of fear of reprisals.

In cross-examination of the claimant/plaintiff, counsel for the defendants suggested to the claimant/plaintiff that "his brazenness seems to exceed his egregious dishonesty" and expressed regret that the defendants' witnesses were unavailable to expose the claimant for who he really is.

Some time after the adjournment and before the date of assessment, the defendants published an apology on the sports page of the same newspaper in which the libel had appeared.

Prepare a memorandum to Salvati's attorney-at-law indicating the bases on which damages will be assessed and advising on the propriety of using previously decided libel cases and personal injuries awards in the assessment.

## **QUESTION 8**

On New Year's Day this year, Lenny was taken from his home by a group of 5 armed policemen under the command of Inspector Krule. It was about 4:00 a.m. when he was awakened from sleep, dragged out of bed and handcuffed. As he was being ushered out of his home, one of the policemen said to the Inspector, "Supe, let the man put on some decent clothes before we carry him out, otherwise we going look too cruel man." Inspector Krule replied, "Enough Corporal, since when you turn lawyer?"

Lenny enquired what this was all about and he was told that he would soon find out. Lenny, who was wearing shorts at the time he was awakened, was taken to the police station where he was interrogated by Inspector Krule who later had him placed in a cell where two other persons were sitting on the concrete floor.

Lenny remained at the station for 10 days and during that time was regularly interrogated and beaten. As time went on, the population of the cell increased to 9. Lenny was released on the 10<sup>th</sup> day without being charged. During the period, he was allowed a telephone call to his father, who visited him and brought clothing and food.

At the time of Lenny's release, Inspector Krule saw him and said, "Sorry my youth, but you must keep out of bad company."

As a result of the ordeal, Lenny suffered anxiety, contracted dermatitis and lost his job as a clerk at the Port Authority by reason of prolonged absence.

Lenny, at the insistence of his father, wrote to the relevant authorities and Inspector Krule is now facing disciplinary charges, in addition to a number of such charges which were previously pending.

Advise Lenny on his cause of action and the basis on which a court will assess damages.