

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2011

REMEDIES

(WEDNESDAY, MAY 25, 2011)

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

Maristo Smart, who is 12 years old, was severely injured while he was a passenger in a bus which veered off the road and plunged into a ravine (gully). The bus was owned by Brissett Transport Services Limited (Brissett). Maristo was hospitalized for six months and is now at home recuperating.

Mrs. Maple Smart, Maristo's mother, after giving you the above information, shows you a letter written to her by a Miss Foresite, Brissett's Legal Officer, requesting Mrs. Smart to attend at the Legal Department to discuss and work out a settlement of Maristo's claim. On perusal of Miss Foresite's letter you notice that the invitation to settle is given "without prejudice".

Mrs. Smart instructs you to act on Maristo's behalf.

- (i) Advise Mrs. Smart as to any further information you may require, giving reasons.
- (ii) How would you proceed in preparation for any meeting with Miss Foresite?
- (iii) Draft an answer to Miss Foresite's letter.

QUESTION 2

Mr. Mike Jefferson, a 32-year-old mechanic, was injured when his motor vehicle collided with a car owned and driven by Mr. L.B. Hunter. Mr. Jefferson's medical report reveals that there was 100% permanent disability in his right hand. As a result, he is unable to work. There was no indication in the report whether this level of disability could or

could not be reduced. However, Mr. Jefferson was advised by Dr. Peter Care, Mr. Hunter's personal physician, that the disability could be reduced to 25% if he underwent a certain surgical operation costing \$125,000. Dr. Care further advised him that he should see Mr. Victor Verify, a Consultant Orthopaedic surgeon, for examination and counseling. Dr. Care made an appointment with Mr. Verify to see Mr. Jefferson.

Mr. Jefferson tells you that he discussed with his wife all that Dr. Care had told him and she expressed the view that "Dr. Care was only trying to get Mr. Hunter off the hook". Mr. Jefferson refused to meet with Mr. Verify because of his agreement with his wife's observation. On his view, he will not let Mr. Hunter avoid the responsibility of maintaining him for the rest of his life. He wants no less than \$6M and interest as compensation.

You note from your discussion with Mr. Jefferson that the limitation period in respect of his cause of action expires on May 30, 2011.

Advise Mr. Jefferson on the measure of damages and the basis on which damages may be assessed.

QUESTION 3

ANSWER (a) and (b)

- (a) Consider each of the following and briefly indicate its role and importance in the assessment of damages –
- (i) limiting factors;
 - (ii) a loss adjuster's report.

- (b) On April 2, 2011, Derrick Soledad's motor car, which he calls "Food Basket", was damaged in a collision for which he blames Alvin Boiss. Derrick used his car as a taxi although it is not a licensed public passenger vehicle. His mechanic inspected the damaged vehicle and assessed the cost of repairs inclusive of labour, at \$85,000, which is \$20,000 above the pre-accident value. The car will be undergoing repairs for about 20 days.

To verify this, Derrick shows you the mechanic's report. He tells you further that he is very attached to "Food Basket", which is a gift to him from his father, and he intends to have it repaired. Before "Food Basket" was damaged, he earned about \$4,000 per day, except on those days when the police were 'aggressive' against certain drivers. His average maintenance cost is \$2,500 per week. He is claiming from Alvin Boiss the cost of repairs and the value of 20 days loss of use.

Advise Derrick.

QUESTION 4

Dahlia Mascagni, an attorney-at-law of two years standing, was on January 2, 2010, engaged by Dossier, Mapp and Company, a prominent law firm, to work in their estate department. Under the terms of her employment, she was to receive a salary of \$35,000 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 certificate 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 the firm, 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, 2011, Dahlia was dismissed by the firm and given one month's 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 employees of the firm". The letter further indicates that her "attitude displayed either a settled insensitivity or an entrenched inability to distinguish right from wrong".

Dahlia denies the allegations in the letter. She tells you that from her first day at work one of the partners made improper advances to her. She declined his invitation to intimacy, and thereafter her relationship with him was always strained.

On the day of her dismissal, she attempted to clear her desk, but was stopped by Mr. Dossier who ordered the firm's security guard to put her belongings in a large box. She had to take the box to the car park in the company of two security guards who had orders to insist that she hand over the keys to the firm's car.

Two days after the event, Mr. Mapp 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". She refused.

Since her dismissal, Dahlia has started her own practice. She tells you that her character has been tarnished; she has been humiliated and embarrassed and word is out in legal circles that she is unprofessional and cannot be trusted. It is her view that she should be compensated and the firm should be punished.

Advise Dahlia as to her cause of action and the measure of damages.

QUESTION 5

Mr. Ivan Solano is the tenant of a house on a State owned housing scheme. In January 2011, he was served with a 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. Before the expiration of the notice to quit, three security guards from the SHA went to Mr. Solano's house to eject him.

He showed the guards receipts which indicated that his rent had been paid up-to-date and that he had never been in arrears. One of the guards threatened to arrest him for forgery and "uttering forged documents". His personal effects were removed from the house and placed on the sidewalk. Mr. Solano attempted to stop the removal of his goods whereupon the guard who had accused him of "forgery" grabbed him and handcuffed him to a rail in full view of a large crowd of onlookers, some of whom were laughing.

He was released three hours later on completion of the removal. The guards padlocked the door and left. Mr. Solano had to pay \$5,000 to transport his household effects to his mother's house which was some miles away. He was unable to work for two weeks and so he lost pay. Mr. Solano had to walk some distance to the bus stop and one morning was drenched by a heavy shower of rain. As a result, he caught a very bad cold and had to be hospitalized for a week. The cramped conditions at this mother's home retarded his recovery, and he spent quite a bit of money on prescription and over the counter drugs. He paid a lawyer \$20,000 to write a letter to the SHA.

As a result of the lawyer's intervention, the SHA discovered that they had been in error. Consequently, Mr. Solano was permitted to re-enter his premises. However, he feels humiliated. He has scars on both wrists where the handcuffs had inflicted wounds. He instructs you to take legal proceedings against the SHA.

Advise him on the cause of action and the measure of damages.

QUESTION 6

Mrs. Rose Petal consults you and seeks your advice in respect of the following facts:

Mrs. Petal is a “banker” for a partner scheme in which there are twelve members. She tells you that 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, 2010, with each member ‘throwing a hand’ of \$10,000 per month.

One of the members, Ms. Myria Candel, requested the first hand which she was granted. Thereafter, she was not heard from. Mrs. Petal learnt that she had left the jurisdiction. As a result, Mrs. Petal, “in order to keep things going and to avoid the confusion that the modern partner schemes get into”, has been paying on behalf of Ms. Candel.

Advise Mrs. Petal as to her rights against Ms. Candel, the defaulting member who apparently has returned to the jurisdiction.

QUESTION 7

Ron Invernue is a promoter of popular entertainment during festival month which is celebrated in January each year. He likes to be called Ron.

Sometime in March 2010, Ron decided to cash in on the shortage of entertainment venues by building an entertainment complex in the city centre.

On March 12, 2010, Reliable Contractors Limited (Reliable), building contractors, were awarded a contract by Ron to construct the complex. The contract provided that “the date of completion shall be December 12, 2010, failing which Reliable shall pay a penalty of \$3,000 per day for each day of delay”.

In addition, the contract provided that “should there be any deficiency in the construction, whether due to poor workmanship, use of sub-standard building materials or design defect, Reliable shall pay to Ron the sum of \$3.5M as compensation”.

Due to a severe shortage of materials, Reliable was unable to complete the construction on the date stipulated, but did so on March 1, 2011.

Furthermore, it was discovered that there was evidence of defective workmanship and that Reliable had used sub-standard materials in the construction. An assessor’s report indicated that any rectification would cost \$3M.

Ron, in addition to the above, tells you further that during festival month he was forced to hire alternative venues at exorbitant fees and as a result he suffered a severe loss. His reputation as an impresario was tarnished and it is his view that the amount he should claim is \$6,000 per day instead of \$3,000 to accord more realistically with what he paid for alternative venues.

Advise Ron.

QUESTION 8

David McSum is the owner of a four-year-old mechanical digger, which he hired out at a daily rate. On May 2, 2011, while the digger was being transported to a building site, it fell from the transporter over an embankment and crashed into a cottage. David is also the owner of the transporter.

The digger was destroyed and the cottage which was owned by Jacob Smythe was severely damaged. Jacob's neighbour, Miranda Sverson who had just left Jacob's cottage, heard the crash, turned to see, and fainted at the thought of what could have happened to her, had she delayed for a minute longer on Jacob's verandah. Miranda was hospitalized for four days and is still under sedation.

A distressed David consults you.

Advise him in respect of any liability to compensate –

- (i) Jacob Smythe the owner of the cottage; and
- (ii) Miranda who suffered nervous shock.

Advise also on the basis on which compensation will be assessed in each case.
