

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2012

REMEDIES

(WEDNESDAY, MAY 23, 2012)

Instructions to Students

- (a) Time: **3½ 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

- (a) Briefly indicate whether, and if so, to what extent, the concept of restitutionary damages has been able to challenge successfully the dominance of the compensatory principle in the law of damages.
- (b) Ann Danté was, until she resigned two months ago, the confidential secretary to Al Legro who is the CEO of DATA INC which performed data processing services under contracts with a number of firms and companies. The company's relationship with each of its clients is governed by a complex contract which contains *inter alia* terms requiring the company and all members of staff to hold in strict confidence all "data or information" knowledge of which has been acquired during the course of the contracts between DATA INC and the contracting firms. As a result, each employee of DATA INC was required to sign an agreement with DATA INC to keep all "facts, data, and information coming to their knowledge in the course of their employment with DATA INC in the strictest confidence and to refrain from any disclosure without the written consent of DATA INC signed by the CEO and duly authenticated". Miss Ann Danté's agreement with DATA contains such a term.

Miss Danté desires to publish a book entitled "The Stresses of Data Processing" and is seeking advice on any legal problems she and her publisher could encounter from DATA INC or any of its clients.

Advise Miss Ann Danté.

QUESTION 2

Allan Carew, a boy of 13, suffered severe injuries on a construction site operated by Reliable Contractors & Builders. He spent a total of 11 months in institutional care: part of the time was spent in the Critical Care Unit of the Medical Sciences Institute and the balance in the National Children's Hospital. He is now convalescing at home but regularly attends Outpatient Care Services. His mother, Mrs. Carew, a widow, consults you. She informs you that a lawyer, Benn Kong, has written to her in respect of Allan's injuries and has invited her to visit his chambers to discuss the matter. She hands the letter to you. On perusing it you note that it is written "Without Prejudice" and that Benn Kong indicates that he is acting on behalf of Reliable Contractors and Builders. There is no admission of liability.

Mrs. Carew expressly requests your help and you have agreed to assist her.

- (i) Indicate how you intend to proceed in the circumstances.
- (ii) Prepare in draft **either** an application for a medical report **or** a letter in response to Mr. Benn Kong's letter to Mrs. Carew.

QUESTION 3

One year ago, Allissa McDarli was hired by Silica Publishers Ltd. as an Executive Secretary to the Managing Director. Her contract was for three years initially and at the end, if the circumstances so warranted, Silica Publishers Ltd. would commit themselves to extend the contract for a period of two years.

Ms. McDarli consults you. She informs you that she has been wrongfully dismissed by Silica Publishers Ltd. Her dismissal letter, she said, was handed to her one morning at 8:00 a.m. two weeks ago by the security guard. The letter, which she has furnished to you, indicates that she was “dismissed from the contracted position forthwith and with immediate effect”. There is no reference to any sum included as payment in lieu of notice.

Ms. McDarli said that when she read the letter, she experienced shock. After she recovered, she asked to see the new manager who had replaced the person with whom she had worked on taking up the job last year. However, the security guard told her in a tone of voice loud enough for all to hear that he had received orders to arrest her if she tried to enter the premises for any reason whatever. Her personal effects were delivered to her neatly packed in a box. She was asked to relinquish all the company’s keys in her possession before she was escorted from the premises to the nearby street. At the time she felt hurt, embarrassed, scandalized and demeaned. She has not been able to sleep since.

Later, however, she was able to speak with the new manager who informed her that the Human Resource Manager had discovered that one of the character references she had furnished had a forged signature. Ms. McDarli was warned “to proceed with caution”. Ms. McDarli also shows you her employment letter indicating that her entitlements under the contract were:

- Salary of \$1,000,000 per annum payable monthly
- Annual vacation leave
- Coffee and tea breaks
- Lunch at the cafeteria
- Year-end bonus if the business makes a profit
- Books at 20% discount from the company’s bookshop
- Maternity leave according to the law

Ms. McDarli says further that she had “grand plans to get married and start her family this very year”. She wants to know if she can get back her job, without going to court or an industrial tribunal/court. She also wants to know, if she cannot regain her job, what money she can recover to remedy her loss and to punish Silica Publishers Ltd.

Advise Ms. McDarli on the remedies available, the measure of damages and the approach likely to be employed in the computation of any award of damages.

QUESTION 4

Mr. Darnel Nasey was the complainant in respect of a collision which the police were prosecuting. When the matter was mentioned and the date for hearing was being set, Darnel indicated that the date suggested by defence counsel was not a convenient time. The magistrate, in a hostile tone, informed Darnel that “there are ways of getting any criminal to court whether the time is convenient or otherwise”. Darnel was annoyed and muttered in response “power has gone to your head”. The magistrate immediately made an order to imprison Darnel for a period of seven days.

Defence counsel approached the magistrate and, following a whispered dialogue, the magistrate told the police to take Darnel to the Mental Hospital for investigation instead. When the police tried to arrest Darnel, he protested vociferously and physically resisted. He was handcuffed and escorted to the mental hospital where he was admitted. On admission he was seated on a bench. Patients passed and tried to touch him. A lady approached him and tried to embrace him saying he was her “long lost husband”. A nurse who was passing him told him in a quiet voice to “keep calm”. He felt like screaming but he restrained himself when he remembered the nurse’s words. He was given some pills but an elderly patient warned him not

to wrestle with anyone and not to swallow anything he was given. He kept the pills under his tongue and disposed of them when the nurse had left.

Darnel was kept in the mental hospital for six days during which time blood was taken from him several times. He was subjected to thorough examination and given a clean bill of health and discharged.

While he was waiting outside for transportation, a passing car slowed to a stop. A person who resembled the magistrate looked out and said "so they have let you out!" He felt a sense of fear, and was tempted to run but he stood his ground and the impulse passed.

Darnel, who was an accountant employed with a bank, lost his job. He is still unable to sleep well at nights because of constant nightmares whenever he falls asleep.

Advise Darnel on any cause(s) of action open to him, the measure of damages and considerations relevant to the assessment of any monetary remedy to which he may be entitled.

QUESTION 5

Six months ago, Developers Ltd (Developers) dispatched their property scout Jamie Clearview to visit Desmond to explore the possibility of their acquiring Desmond's land at Rissvale for an upscale housing development. Jamie was instructed to spare no effort to persuade Desmond to sell. In fact, Developers have already made plans to acquire the land at Rissvale which they thought was solely owned by Desmond.

Unknown to Developers, Rissvale was owned by Desmond and his twin brother Romond. They inherited it from their late father. In accordance with instructions, Jamie Clearview visited Desmond and outlined Developers' proposal for acquisition. Desmond emphatically refused to consider entering into negotiations with Developers. Desmond told Jamie that he (Desmond) "wouldn't even consider it". In addition, Desmond expressed outrage that "people could go about casting envious and covetous glances at honest people's property". He assured Jamie that Rissvale was a coffee plantation and would remain that way. Jamie, before leaving, told Desmond to be on the watch "because Developers always get the last word".

It so happened that Desmond went to Florida on his annual vacation. While he was there he received an urgent message from Romond, urging him to fly home as soon as possible because heavy duty equipment was operating on the coffee plantation and trucks were carrying off the top soil. Furthermore it was being rumoured all about that Developers had bought the land from him.

When Desmond returned, he could hardly recognize Rissvale. A cottage and three outbuildings, previously on the site, were nowhere to be seen. The heavy duty equipment was still on the land.

Desmond consults you and asks your advice in respect of the above. He is emphatic that Developers should be severely dealt with.

Advise Desmond on the cause(s) of action, the likely remedies open to him and the basis of computation to be employed in assessment of any monetary award likely to be declared.

QUESTION 6

Douglas is a bright young attorney-at-law aged 27. For the last three years he has been employed as an associate with a firm of lawyers, Messrs. Prac Pro and Company. He used to be a member of their litigation team and earned a salary of \$195,000 per month. Douglas was keen and industrious and had been promised a junior partnership in the firm in the next three years. This would have entitled him to a ten percent share in the profits, in addition to his salary.

In August 2010, Douglas was involved in a motor-vehicle accident with John, in circumstances in which Douglas was partly to blame. Douglas was severely injured; he suffered damage to his spinal cord and has had three surgical operations, one here and two abroad at a total cost of \$1.5M. When he went abroad for surgery he was accompanied by his mother and an older brother. His convalescence lasted for a year after which he returned to work, permanently confined to a wheelchair. He can no longer play golf or football which he loved.

While he was away, Douglas was paid only half of his normal salary. And on his return to work he was assigned to the Probate department at a reduced salary of \$150,000 per month. There is now little hope of Douglas obtaining the junior partnership at Messrs. Prac Pro and Company. Under a personal "Health and Disability Risk" insurance policy effected by Douglas some time before, he has received the sum of \$2.5M. He has signed up with the Chess Foundation and is learning to play chess. He still feels pains in his back and has to undergo regular medical checks and physiotherapy which are expensive.

Advise Douglas on the measure of damages and the computation of any award of damages payable to him.

QUESTION 7

Mr. Nortone's motor car was extensively damaged on March 1, 2012 by a delivery van owned by National Pastry Ltd and driven by their agent Mick Dutton. Mr. Nortone shows you a letter addressed to him by National Pastry's insurers. The letter contains an offer to pay the sum of \$250,600 without prejudice to liability on the following basis:

Pre-accident value	\$270,000
Less Salvage value	<u>50,000</u>
Loss	220,000
Assessor's Fee	5,600
Loss of use	<u>25,000</u>
Total Loss	\$250,600

Mr. Nortone also shows you his mechanic's report indicating that the cost of repairs is \$350,000. He further tells you that he earned about \$5,000 daily operating his car as a taxi. While Mr. Nortone does not dispute the pre-accident value of his car he is not prepared to accept the offer made by National Pastry Ltd. He is prepared to take the matter to court so that he can repair his car and get justice because his car is "very special" to him.

Advise Mr. Nortone on his cause of action as well as the basis on which a court would value his losses.

QUESTION 8

Hospitality Ltd., operator of a chain of guest houses, agreed with Builders Ltd. to construct a 40-room, two-storey guest house. The parties contemplated that if the construction began on June 1, 2011 work would be finished and the building handed over so that it could be furnished in time for the 2012 summer season.

The contract contains, *inter alia*, terms requiring the contractor to use the best materials and workmanship available and complete and deliver the structure within 9 months from the commencement of the project and to adhere strictly to all building specifications.

The clause in relation to completion is as follows –

“If the contractor fails to complete and deliver the building within the contractually stipulated time said contractor is liable to pay to the owner by way of liquidated damages the sum of \$150,000 for every week of delay.”

Another clause in the contract provides as follows –

“Should the contractor fail to construct the building according to specifications said contractor shall be liable to pay the sum of \$1.5M as compensation.”

The building was completed and delivered six weeks late. Additionally, while the building was being furnished for use by Furnishing Ltd. the ceiling in all the rooms on the ground floor collapsed. Investigations revealed serious flaws in respect of the ceiling in each room. This was so throughout the entire building.

As a result of the difficulty with the ceiling, Furnishing Ltd. had to desist from their work. According to their agreement with Hospitality Ltd. this resulted in a breach of contract.

The Managing Director of Hospitality Ltd., Mr. Halliday, consults you for advice on the company’s rights and how the company should proceed in the circumstances in relation to Builders Ltd.

Advise Mr. Halliday.

END OF PAPER