

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2010

REMEDIES

(WEDNESDAY, JUNE 2, 2010)

(ORIGINALLY TIME-TABLED FOR WEDNESDAY, MAY 26, 2010)

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.
- (f) **Where the current date is relevant in answering any question, that date is to be treated as being the date for which this examination paper was originally time-tabled as shown above.**

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Ms Ginnie Quee, an informal importer and vendor of goods, is banker for a partner comprising 12 members. The partner which was intended to run for two years started in January of 2009. All the members are informal importers and vendors and each has agreed to 'throw a hand' of \$50,000 monthly. Linda Philistyn, one of the members, requested the first draw and duly received it at the end of January 2009. Ms Quee, who is an experienced and trustworthy partner banker, only accepts as members, persons who are well recommended. Linda was recommended by Delia Grange who wrote and signed a recommendation that Linda was, among other things, "honest, trustworthy and never failed to pay her debts".

Linda has not honoured her obligation to the partner. Telephone calls to her, go to voice mail. Ms Quee, in order to keep the partner going, took \$50,000 monthly from a fixed deposit she had with Reliable Bank to pay Linda's hand. The fixed deposit was exhausted in December 2009. In January 2010, Linda Philistyn was replaced by Mikey Goodpay and things are now running smoothly.

Advise Ms Ginnie Quee who desires to know what remedy she is entitled to against –

- (i) Linda Philistyn; and

 - (ii) Delia Grange.
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QUESTION 2

At about 6:00 p.m. on Friday, February 5, 2010, Ossie Beson was driving his car along Ridgeway Road when he met upon a police road block. His 20 year old nephew, Joile,

was sitting in the passenger seat beside him with the seatbelt unfastened. Ossie duly stopped when the police signaled him to do so. Joile jumped out of the car and started hurling abuse at the officers while the Inspector was speaking with his uncle. Ossie alighted from the car at the request of the Inspector who announced that the vehicle would be searched. Joile was further enraged while the car was being searched. He attempted to re-enter the car but the officer slapped and handcuffed him. A bag containing vegetable matter, which the officer surmised was ganja, was found on the back seat.

Neither Ossie nor his nephew answered when the Inspector inquired as to its ownership. Both were arrested and taken to the police station where they were processed. After two hours at the police station, Joile told the investigating officer that the bag and its contents belonged to him and that his uncle knew nothing about it. Both were granted bail at the station and were to attend court at 10:00 a.m. the following Monday to answer charges for unlawful possession of ganja and omission to fasten seatbelt.

Ossie was handed the key to his car which an officer had driven to the station. Ossie drove away with Joile who was still far from subdued. As they drove along, Ossie was again stopped by the police. When the Inspector approached and saw Ossie, the Inspector exclaimed, "Wait, you! Who gave you bail? What you think this is? Man, give me the papers!" The Inspector took the bail bonds from Ossie and from his nephew. He returned the two of them to the station and placed them again in custody where they remained until 9 o'clock the next day when they were granted bail.

Joile was prosecuted and convicted for possession of a prohibited substance. Ossie, who was also prosecuted, was acquitted of the charges of possession of ganja and driving a vehicle while the passenger was not wearing a seatbelt. The print and electronic media published the arrest.

Joile, who was a university drop-out, was unemployed. Ossie, who was a computer specialist, had a three-year contract with Syntech Ltd. He felt so humiliated and embarrassed that he resigned although the contract had one more year to run. His resignation was readily accepted by Syntech Ltd. The readiness with which his resignation was accepted surprised Ossie who felt more deeply disturbed and distressed.

Advise Joile and Ossie.

QUESTION 3

Angelo Reynard was employed to Best Car Dealers Ltd. as the sales manager on a three-year contract which, at the time of his dismissal on January 31, 2010, had a residue of two years to run. The contract contained a term giving his employers the discretion, at the end of the three years, to continue his employment for a further three-year term if they thought it fit to do so.

Under the contract Angelo was entitled to –

- Basic monthly wage
- Commission based on car sales
- A car for his personal use

He also attended car shows and exhibitions abroad. Best Car Dealers paid his fare and all other expenses. He has attended three such exhibitions. He eats lunch daily at the company's cafeteria.

Angelo has received his basic salary, although up to the time of his dismissal, he had received no commission. He has been instrumental in selling a number of cars and helping the company to become the premier car dealer in the country.

Angelo says he has a problem with his dismissal and the way it was carried out because he was not given any notice. When he arrived at work that morning he was handed a bag containing his belongings and told that a new sales manager was occupying his desk. A week later he was offered the position of assistant sales manager without any loss of pay. He declined to accept it. He says that his reputation has been tarnished, he is still hurt and embarrassed and he “wants justice”.

Advise Angelo.

QUESTION 4

Joanna Beadle and her parents agreed with First Class Videographers Limited (First Class) that First Class would attend and videograph Joanna’s wedding at the Holy Cross Cathedral on Saturday, March 6, 2010 and the reception afterwards.

First Class dispatched Mickel to attend and do the work. While on the job, Mickel saw a young lady, Stacy, whose wedding he had videographed some weeks before. For some reason he decided to direct most of his efforts on videographing her. He occasionally focused on the bride and groom.

When the finished product was sent to Joanna and her parents, they were shocked to see that the DVD was all about Joanna’s friend Stacy and Stacy’s husband rather than

about the marriage of Joanna and her husband, Charles. Joanna's father described the product as "totally unsatisfactory, offensive and unacceptable". Mrs. Beadle experienced distress and embarrassment. Joanna was distressed, depressed and uncontrollably tearful. All she could say was "this is really too much". Both Joanna and her mother have since been receiving medical treatment for nervous shock. Charles returned to his parents' home, distressed and confused. He has not returned.

Mr Bryce, the Board Chairman of First Class, has received claims on behalf of Joanna and her parents based on the instructions indicated above. He is asking for advice on –

- (i) whether the claims are maintainable in a court of law and the extent of any liability to pay damages; and
- (ii) whether any damages paid could be recovered from Mickel who had ignored the instructions contained in the company's handbook.

QUESTION 5

On January 12, 2010, Sanford, a driver of a heavy duty vehicle, suffered a back injury in an accident on the construction site where he worked. He spent 12 weeks in a private hospital. He experienced severe pains and had to be immobile for some time. He was treated with painkillers to which he showed a violent allergic reaction. His attending physician ordered a suspension of the painkillers and prescribed physiotherapy instead. This helped somewhat. X-rays show that Sanford, who was 35 years when he was injured, was suffering from a rare spinal disease which had been latent but which the injury had activated. The medical evidence shows that the disease would have become

manifest at about age 55 even without the back injury and Sanford would at that time have become substantially, if not totally, immobile.

Sanford was told of a surgical procedure that when performed would alleviate the excruciating pain by a substantial degree. In answer to his enquiry relative to the risk and success rate, he was told that there was really no “significant scientific data available”. Sanford, in addition to feeling severe pain, is extremely distressed but does not intend to undergo the surgery. His hospital bills were paid out of an accident insurance policy which he had taken out.

- (a) Advise Sanford of the basis on which damages will be assessed.
- (b) Indicate whether, and to what extent, your advice would differ if, Sandford had no latent spinal disease, but had subsequently suffered additional injuries as a result of the negligence of one Gyasi in a later incident.

QUESTION 6

Mr Joswin James is the owner of what he considers a vintage motor car. Mr. James prizes this car greatly. It has a grand history. It had been used to transport royalty as well as United Nations representatives. He himself had used it to transport two CARICOM Ministers and recently a judge of the CCJ. His clientele, while not limited to such, includes a number of professionals as well as other members of the travelling public. For the ten years he has owned the car he has spent much time, effort and money to keep it in “mint condition”. He has changed the engine three times and has

installed air conditioning. The car was so equipped that a passenger, who so desired, could comfortably use a laptop computer, while travelling.

On February 12, 2008, while Mr. James' car was parked on the compound of the Regal Hotel, it was severely damaged when a delivery van driven by Alvan, and owned by Hotel Suppliers Ltd, collided with it.

Mr. James shows you the adjusted report by Credible Assessors Ltd. dated February 20, 2008. You peruse it and note that the pre-damage value of Mr. James' car is \$167,000 and the amount to repair the damage is \$260,000. The assessor did not order repairs. Mr. James informs you that he has ignored the report and has repaired his car.

Mr. James also rejected an offer from Hotel Suppliers Ltd of a 1990 motor car as replacement, or alternatively, to have the car repaired by their mechanic and body repair specialist. He entrusted his car to his own mechanic who did the repairs at a total cost of \$260,000. To finance the repairs, Mr. James withdrew \$100,000 from his fixed deposit account and borrowed \$160,000 from the B Bank for 2 years at 10% per annum.

Mr. James has paid off the loan and the interest. During the two months that the unit was under repairs, Mr. James lost fares as well as a number of carriage contracts valued at \$28,000.

Advise Mr. James whether he can recover the amount he spent on the repairs, the interest paid on the loan and the loss of fares generally, as well as the loss on the special contracts.

QUESTION 7

Answer **both** (a) and (b).

- (a) Indicate and discuss briefly the statutory provision governing judicial discretion to award interest.
- (b) In each of the following cases briefly indicate whether and on what basis a tribunal in your jurisdiction may award interest under the relevant discretionary statute.
- (i) The Court of Appeal unanimously allowed Jonell's appeal that the award of general damages made at first instance was inordinately low. The award was doubled. They overruled the trial judge's disallowance of special damages for loss of earnings (pre-trial). The trial judge's reason was that Jonell did not keep proper books of account. The Court of Appeal ruled that requiring Jonell, a market vendor, to do so was the 'vainest pedantry'. Further, the trial judge had refused to award interest at all, and this failure is Jonell's second ground of appeal.
- (ii) Tod was seriously injured in a collision for which Dale is entirely to blame. It is likely that Tod will receive compensation in respect of the following heads of damage:
- Pain and suffering and loss of amenities
 - Loss of earnings
 - Special damages
 - Handicap on the labour market
- (iii) Addie was tricked into leaving her rented premises by Dumbrek, her landlord, who wanted to deliver vacant possession to a purchaser without having to go through the legal procedure. Addie has claimed

damages on the footing of exemplary and aggravated damages and has succeeded in obtaining an award of exemplary damages.

- (iv) Chloe was injured sometime in June 2004 while on the job. She did nothing about the matter because she was afraid to lose her job. Last year her employers started doing what they call “resizing the firm”. Afraid that she would be one of the first to be made redundant, she sued her employers in respect of the injury. She has proved her case in court and damages will certainly be assessed and awarded.
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QUESTION 8

José Bartley was knocked down by a lorry owned by Haulage Contractors Ltd. The lorry driver was Fergus Mason. José, who was 10 years old at the time, suffered serious injuries. He was admitted to the Public Hospital for Children where he spent six months. On admission he was placed in the Intensive Care Unit where he spent about two days.

You are consulted by José’s mother, Mrs. Bartley, who was not present at the time of the incident, but nevertheless gives you the above information. Further, she hands you a letter addressed to her by Omelia Logan, attorney-at-law for Haulage Contractors Ltd. You peruse the letter and note that Mrs. Bartley has been invited to attend a meeting with Ms. Logan to discuss a “possible settlement of the matter”.

Mrs. Bartley asks your opinion on how much money she should settle for, as well as whether you would be able to attend with her to discuss the matter and work out a settlement with Ms. Logan.

- (i) Advise Mrs. Bartley what information you require in order to assist. Give reasons.

 - (ii) On behalf of Mrs. Bartley, draft a reply to Ms. Logan's letter **OR** write a request for Jose's medical report.
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