



THE UNIVERSITY OF THE WEST INDIES

EXAMINATIONS OF _____ JULY/AUGUST _____ 2000

CODE AND NAME OF COURSE: LA28B EQUITABLE REMEDIES

DATE AND TIME:

DURATION: 2 HOURS

INSTRUCTIONS TO CANDIDATES: This paper has 3 pages and 6 questions.

Answer **THREE** questions, including at least **ONE** from **EACH PART**.

Answers may be confined to the law of any jurisdiction in the Commonwealth Caribbean unless the context indicates otherwise.

PART I

1. "I think I may say that nowadays all practitioners and judges are so familiar with the *American Cyanamid* case that it is never cited at length. It is taken as read. And the judges grant or refuse interlocutory injunctions in the light of it but they come to just the same result as if the waters had never been troubled".

Discuss.

2. "The *Mareva* injunction now sails in calm waters. The principles can now properly be regarded as well settled. Its entitlement and application, its ancillary features and its purpose, its effect on third parties and its limits and dimensions, have all been clearly delineated".

Discuss.

3. "I think that the true construction of the Judicature Acts is that they confer no new rights; they only confirm the rights which previously were found existing in the Courts either of Law or of Equity; if they did more, they would alter the rights of parties, whereas in truth they only change the procedure."

Critically comment.

PLEASE TURN OVER

PART II

4. A valid contract for sale of Treasure Island had been entered into on April 1, 1993, between Abed, the vendor, and Bob, the purchaser. On January 1, 1994, Abed and Bob discussed completing the sale on January 20, 1994, but Abed failed to complete on that date. On the same day, January 20, 1994, John issued a writ claiming specific performance of the contract and damages. Completion took place on March 1, 1994, but Bob maintained a claim for damages for delay arising from Abed's failure to complete the sale on January 20, 1994. The Judge held that, according to the terms of the contract of April 1, 1993, the completion date was January 25, 1994, with the result that Bob had issued the writ prematurely at law.

damages

✓ Advise Bob whether he is entitled to maintain his action for damages against Abed and, if so, on what basis would the damages be calculated?

5. Fred is the owner of 4 acres of land in New Haven through which passes a stream which Fred uses to irrigate his land. He grows yams, dasheen, and other 'ground provisions' for sale to supermarkets in the northern areas of New Haven. Bob recently acquired two acres of land adjacent to Fred's land and higher upstream with the intention of setting up a factory to manufacture bleach. Fred has been advised by a group of experts that the effluent from the factory will devalue his land and will kill any crops with which it comes into contact whether directly or indirectly by seepage into the soil. Fred is, naturally, alarmed and seeks your legal advice.

Advise Fred.

How, if at all, would your advice differ if Fred grew only such yams and dasheen as he needs for his personal use and the effluent would have no effect on the value of the land?

6. Pat entered into an oral contract with Lee under which Lee, a seventy-year old woman, agreed to convey her house to Pat "within a reasonable time" in exchange for a promise that Pat would nurse her until her death.

Pat moved into Lee's house so as to facilitate the efficient discharge of her obligations under the agreement. A dispute between them led to a court action which was settled subsequently at the instance of the trial judge.

✓ The parties and their solicitors met and reached an oral agreement that Pat would provide the nursing care and Lee would convey her house to Pat as agreed previously, and that all expenses relating to the transfer of title to the house should be borne by Pat. She paid all the fees for the preparation and the registration of the conveyance as well as the fees charged by her solicitor and the solicitor for Lee.

PLEASE TURN OVER

At the subsequent hearing of the case, the terms of the settlement were explained to and noted by the judge who obtained Lee's confirmation of the terms of the agreement. The case was not judicially determined, but rather, was adjourned indefinitely.

After three years, however, Lee had not signed the conveyance, although Pat had provided the nursing services as agreed and paid for all the expenses relating to the transfer of the house. Another bitter quarrel resulted in Lee throwing Pat out of the house and hiring another person to provide her with nursing care. The case was relisted for hearing.

Pat now seeks your advice on her prospects of obtaining an award of specific performance of the promise to convey the house to her.

Advise Pat.

END OF PAPER