



Federation of
Law Societies
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NCA National Committee
on Accreditation

SAMPLE

Examination for Remedies

Candidate No.: _____

(To ensure your anonymity, please do not print or sign your name)

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Examination for Remedies

January 2021

General conditions of the exam:

The examination will be graded on a pass/fail basis (50% is a pass).

The contents of the examination, including the exam questions,
must not be disclosed or discussed with others.

Instructions specific to this exam:

1. This examination contains **FIVE (5) questions, each worth 20 marks, for a total of 100 marks.**
2. You will be assessed primarily on your capacity (a) to recognize the legal issues raised by the fact patterns in each question, (b) to analyze and assess the competing arguments relevant to each of those issues, and (c) to be clear and concise in your legal analysis.
3. Remember that this is an examination in the law of remedies. Unless otherwise instructed, you should assume that the relevant cause of action or legal wrong is established and examine only the remedial consequences. No points will be earned by discussing whether a contract was formed, or breached, whether a duty of care was violated, whether a statutory action is available, or any other substantive principles governing the creation of legal liability.
4. Unless you are relying on cases or statutes not covered by the syllabus, there is no need to include full citations when referring to a case or statute. The name of the case and the name and relevant section of the statute will suffice.
5. When quoting from any source – a case, a text, an online source of any kind – you **MUST** use quotation marks and identify the source. Failure to do so will result in mark of zero on that question and, in egregious instances, automatic failure.



QUESTION ONE 20 marks, 36 minutes

In October 2019, P agreed to buy a commercial building in Barrie, Ontario from V for \$1.2 million. The agreed closing date was March 1, 2020. In January 2020, P agreed to sell the property to B for \$1.7 million, with a closing date of June 1, 2020. P and B agreed that the sale by P to B would be conditional on the agreement between P and V closing as scheduled on March 1.

In early February, V repudiated the agreement with P. P immediately initiated an action against V for specific performance or, alternatively, damages in lieu of specific performance or, in the further alternative, damages at common law. A short time later P learned that V had sold the property to a third party, T, for \$1.8 million. (T had no notice of V's agreement with P, or of P's agreement with B.) Upon learning of the sale to T, P amended his statement of claim by dropping his request for specific performance.

The market value of the property as of March 1, 2020 was \$1.9 million. Its value as of June 1, 2020 was \$2.1 million. In September 2020, when the action came to trial, the property was worth \$2.4 million.

- a) Discuss, clearly and concisely, how the trial judge is likely to assess the damages payable by V.
- b) How, if at all, would your answer in (a) differ if P had never agreed to sell the land to anyone else? Explain, clearly and concisely.

QUESTION TWO 20 marks, 36 minutes

Phillip and Doris own neighbouring properties in Saskatoon, Saskatchewan. Two summers ago, Phillip built a fence just to the east of his house, on what he believed to be the eastern boundary of his land. Last summer, while preparing to do some renovations to his house, Phillip commissioned a survey of his lot. The survey revealed that the eastern boundary of his land is a mere 12 inches from the eaves of his house, and that the fence he built encroaches 15 inches onto Doris's land. Phillip shredded the survey and proceeded with his renovations, which included extending the eaves of his house by 2.5 feet on the eastern side.

Doris recently commissioned a survey of her land. She discovered that the fence encroaches on her land by 15 inches and that the eaves on Phillip's house encroach by 1.5 feet. Phillip has refused to remove either the fence or the eaves, claiming that Doris never uses or even sets foot on the affected part of her property.

Doris wants the offending structures removed immediately, and she wants damages. She seeks your advice as to the remedy a court is likely to award her. Advise Doris.

QUESTION THREE 20 marks, 36 minutes

Pria owns a home in Ottawa with an inground pool in the backyard. She replaced the pool liner in July 2019 with a liner that she purchased from Vinylex Ltd ("Vinylex"). She had the liner installed by Poolboyz Ltd ("Poolboyz"). New pool liners cost \$4000 to purchase and \$6000 to install. Vinylex guarantees its liners for 10 years, but in July 2020 Pria discovered that her liner is leaking. The chlorinated pool water drained into a nearby storm sewer. Pria lives beside a



cranky bylaw enforcement officer who happened to notice the drainage and fined Pria \$500 for violating a local sewage ordinance. Pria sues Vinylex for breach. How will her damages be assessed? Explain, making your calculations clear.

QUESTION FOUR 20 marks, 36 minutes

In *Mooney v Orr* [1994] B.C.J. No. 2652 (SC) Huddart J held that “Mareva injunctions are available not only to restrain the active dissipation of assets, but also as a form of security,” that is, a form of security for an anticipated judgment. This understanding of and approach to Mareva awards is controversial. Make an argument that what Huddart J says here is incorrect. (Note: reciting general principles governing Mareva orders will not earn a passing mark. You must address the specific question asked.)

QUESTION FIVE 20 marks, 36 minutes

In their article “The Reliance Interest in Contract Damages” Fuller and Perdue wrote that when the law moves from awarding damages in the reliance measure to awarding damages for lost expectation, it:

“no longer seeks merely to heal a disturbed status quo, but to bring into being a new situation. It ceases to act defensively or restoratively, and assumes a more active role. With the transition, the justification for legal relief loses its self-evident quality. It is as a matter of fact no easy thing to explain why the normal rule of contract recovery should be that which measures damages by the value of the promised performance”.

Explain in your own words, without further quotations from the article, what the authors meant by this.