



NATIONAL COMMITTEE ON ACCREDITATION

SAMPLE EXAMINATION

REMEDIES

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Question 1 (25%)

Julie Morrison is a small time Winnipeg drug dealer. She is known to the police and has a couple of convictions for possession of hashish and amphetamines. She operates out of an apartment that she rents from a complicit slum landlord. Suppliers make deliveries to her apartment every week to ten days and a steady stream of customers come to the apartment to make purchases. Her apartment is located at the rear of the apartment building and the customers reach it by climbing a set of external stairs. She has been operating in this location since 1999.

In the Fall of 2003, unaware of these activities, Stephen Ward purchases a house which backs on to the apartment building from which Julie is operating. Within six months, however, Stephen is very familiar with what is going on. The customers come at all hours of the day and night. They are frequently noisy and offensive, and many, in order to escape possible detection by the police, use Stephen's driveway to approach Julie's apartment leaping over and causing damage to the back fence separating the two properties.

Early in 2004, Stephen contacts the police about this behaviour but gets no satisfaction. The police tell him that, while they are aware of what Julie is up to, two raids of the property over the past two years have not produced any evidence justifying a prosecution. Julie has managed to dispose of any drugs in her possession before the police have gained entry. They also tell Stephen that Julie is not worth bothering about but that they hope that eventually she will lead them to the real criminals, her suppliers.

A year later, the situation persists. Indeed, it has become worse in the sense that the number of customers has been growing as has been the level of noise. Stephen's nerves are frayed, his doctor has prescribed sedatives, and he is contemplating selling his house. However, his realtor tells him that, now that Julie's activities have become notorious, property values in the neighbourhood have gone down and he would be lucky to resell his house for \$20,000 less than he paid for it.

Stephen approaches his lawyer to inquire whether there are any steps that he can take against Julie, her customers, her landlord, or the police. You are an articling student and the lawyer asks you for an opinion on these questions and also whether there is any way of securing hard evidence of Julie's activities in support of any legal proceedings that might be available. Provide that opinion.

Question 2 (25%)

For many years, Rachel O'Meara has longed to be able to afford a custom-built house. Eventually, she saves enough money to make this ambition possible and she hires an architect to work with her on the design of her dream home. Rachel is also a lover of tropical fish and, in her discussions with the architect, she makes it clear that the house must include a tropical fish tank in the wall of the main living room, sufficient in size to house her existing collection of tropical fish (and any future replacements). In drawing up the plans, the architect complies with all Rachel's wishes and then puts Rachel in touch with a builder, Martha Stuart.

Eventually, Rachel contracts with Martha Stuart for the construction of the house. In her discussions with Martha Stuart, prior to entry into the contract, she does not say anything in particular about the fish tank. However, she does make it clear that this house is the fulfillment of a long-cherished dream and that the architect has done a marvellous job in realizing all her ambitions. "The design is just what I want. Every detail is perfect".

Over a period of six months, Martha works on building the house. In the course of that work, she encounters major problems with the incorporation of a fish tank of the size that Rachel wants. To include one of exactly those dimensions will add \$15,000 to Martha's initial projections of what it was going to cost her to fulfil the contract. As a consequence and without consulting Rachel (who is out of the country), she decides to use a slightly smaller fish tank. By doing this, she manages to meet her cost projections.

Rachel returns to Canada when the house is completed and is just delighted with the work that Martha has done until she comes upon the fish tank. She notices immediately that it is smaller than called for by the architect's plans and not as aesthetically pleasing to her as she had anticipated. Her fish supplier and consultant also tells her that it will not safely house all of her existing collection of 200 tropical fish. She will have to downsize by a dozen or so.

Rachel is furious and tells Martha that she will have to rectify the situation. Martha refuses, stating accurately that it would cost her \$35,000 or more to do so at this stage.

Rachel approaches her lawyer to see what she can do about this situation and the lawyer asks you, an articling student for an opinion on what kinds of relief might be available to Rachel against Martha. In requesting you to prepare this opinion, he provides you with an appraiser's estimate that the house's value with the current fish tank is in the range of \$5000 more than it would be with a fish tank as called for by the architect's plans. Provide the opinion.

Question 3 (25%)

Bill Hamerson owns a dairy farm known as the Canal Farm on Wolfe Island near Kingston. In December, 1990, he entered into a written lease and leased the farm to Brigit and Carl Peck for a term of five years at \$10,000 per year. This was a sensible arrangement for the Pecks who were new to farming but were sure that they could clear \$60,000 per year from working the Canal Farm. They were right and all went well for the entire five year term. The Pecks did not actually live on the farm. They lived in Marysville, the nearby village on the Island.

Two months before the end of the term, i.e. November, 1995, Brigit approached Bill to see if he was interested in selling the farm. Bill declined but agreed in writing to give the Pecks a further one year lease with two one year options to extend the term. The Pecks would rather have purchased the farm but they agreed to the lease because it gave them up to three further years of security and plenty of time to find another farm to buy.

In March, 1997 (during the first option year), Bill became seriously ill. The Pecks visited him in hospital and at that time, Bill orally agreed to sell the farm to them for \$200,000. Bill agreed to take back a mortgage for the full purchase price for eight years at 7% per annum. The sale was to close at the end of the second option year i.e. December, 1998.

The Pecks immediately began to make substantial improvements to the farm. They built a new milking barn at a cost of \$50,000 and they purchased new milking machines. They continued to pay rent under the lease as extended by the exercise of each option.

In September, 1998, Bill died. In November, 1998, Brigit approached Bill's executors with a view to closing the sale transaction on December 31, 1998. She was told that the estate denied the existence of the oral agreement and would not close. In fact, she was told that the estate intends to sell the farm to John Black for \$250,000.

Brigit and Carl have discussed their options and have investigated the possible purchase of another farm. Their best alternative is to purchase a dairy farm on the Island known as the Partridge Farm for \$200,000 but it would likely produce about \$10,000 less net income a year for five years until the Pecks were able to upgrade the efficiency of its operation.

The Pecks have come to you for advice. Their first preference would be to secure the Canal Farm. Alternatively, they would consider purchasing the Partridge Farm as long as they could obtain damages against Bill's estate. Advise them fully as to their legal position and set out your reasons and advice.

Question 4 (25%)

Alfred has been an employee of Scampbury Chocolate Limited for the past 15 years. His job was to develop new wrappers for the chocolate bars that Scampbury manufactures.

One of the fringe benefits that is provided to Scampbury's employees is that they can eat as many chocolate products as they wish that are manufactured on site without charge. Alfred always picks up a sample and has it for dessert with his lunch.

One day, Alfred unwrapped his daily treat only to find that the tip of a human finger was embedded in the chocolate. He was unbelievably upset by what he found and he began to scream and cry. His fellow employees tried to restrain him but couldn't as Alfred ran through the plant floor screaming invectives at his employer. He was criticizing Scampbury's products using extremely foul language. The general manager of Scampbury, Jo Rample, ran onto the plant floor and tried to calm Alfred down but Alfred turned his upset on Jo and accused him of gross neglect in producing disgusting candy. A public school class was touring the plant at the time and heard everything that was happening. Jo felt that he had no choice but to fire Alfred on the spot.

Alfred was finally restrained by three security guards who escorted him off the property. An ambulance was called and Alfred was taken to hospital where he was admitted for what appeared to be a major behaviour disorder. After several days, a firm diagnosis was made that Alfred was suffering from a recognized psychiatric ailment bought about by the 'finger in the chocolate' incident.

Alfred was kept in hospital for three weeks and finally released to his home. He was advised by his doctors that he could try to go back to work but Alfred has said that he will never return to Scampbury after the way he was treated and as a result of what he thought must be negligent and unsanitary practices in the plant in permitting something as gross as a part of a finger to find its way into a candy bar.

Scampbury sent its director of human resources to visit Alfred and apologize for the mishap. Alfred was advised that the incident must have been caused by sabotage as Scampbury was in a furious marketing war with Purity Chocolates, its major competitor. Scampbury offered to continue Alfred's employment and to pay all of his medical expenses and salary during the time he was in hospital but Alfred has refused.

Alfred has come to you for legal advice as to whether he is entitled to any damage remedies against Scampbury. Advise him fully and explain your reasoning for any conclusions that you reach.