

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2015

LAW OF REMEDIES

(WEDNESDAY, MAY 20, 2015)

**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 black or dark blue ink.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## QUESTION 1

Seven months ago Angie Cumberbatch was dismissed from her employment as personal assistant and executive secretary to Colonel Farisee, the Managing Director of Leaders In Fashion Inc. which operate a chain of clothing stores. They have a thriving market amongst “professional women and university graduates who desire to dress with grace, flair and dignity”.

At her pre-employment interview, Angie expressed approval of the store brand and said that she had no problem with the dress code for employees. When she was hired in 2013, she did her best to conform to Leaders’ dress code for employees. However, she got tired and decided to “dress as she pleased”. Furthermore, it was discovered that the signatory to one of her references was a fictitious person. Angie was dismissed with immediate effect.

The contents of Angie’s employment letter which formed the basis of the employment arrangement are *inter alia*:

- Three months’ probation, followed by tenure for one year with enlargement of two additional years at employer’s discretion
- Salary
- Clothing allowance
- Annual subscription to a professional women’s fashion magazine
- Lunch at the store cafeteria
- Coffee and tea breaks (a.m. and p.m.)
- A recommendation on resignation or amicable release from employment
- Discount on purchases at any of the stores
- Travel with manager at fashion fairs if the need arises
- Annual vacation
- Maternity leave

Angie further states that she has never been selected for travel to any fashion fair. She says she is annoyed, upset and distressed because she is being held out as a “blot on Leaders’ brand”.

Angie believes that she has been wrongfully dismissed. She consults you for advice in relation to her rights against Colonel Farisee and Leaders in Fashion Inc.

Advise her.

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## **QUESTION 2**

- (a) Discuss the coherence or otherwise of the rules applicable to the determination of the difference between liquidated damages and penalties.
- (b) Lansworth agreed with Suave Builders to build a block of one-bedroom apartments in close proximity to National University Campus. He had held discussions with a number of persons, including the President of the Guild of Students, who had informed him that this would go “a far way in providing safe and reliable accommodation for students”.

In April last year, after months of negotiation, Lansworth and Suave entered into a contract in respect of the construction. It was agreed *inter alia*, that the building would be completed and delivered to Lansworth by the end of April 2015, so that Furnishers and Decorators Ltd could start their work of interior decoration.

Landscape work had already been contracted for and Lawn Scapers and Associates would start their work sometime after. It was provided in the contract that “should Suave Builders fail, omit or refuse to complete and deliver the structure on or before

the contract date, Suave would pay to Lansworth \$150,000 as compensation for every day the breach of contract continues.”

Suave delivered the building on May 11, 2015.

Advise Lansworth.

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### **QUESTION 3**

It was midnight on Easter Monday when Raleigh Borden was arrested at his home at High Vale. It was his birthday and he was celebrating with family and friends. There was much food and drink and things were somewhat noisy. The police came, stopped the party and took away Raleigh Borden. They threw him into the police vehicle which sped away with much fanfare.

While at the station his four very expensive phones were taken from him “for investigation”. One officer asked “How is it you don’t have any visible means of earning a living and you have these smart phones ... man we need to talk with you.”

Raleigh Borden said he wanted to telephone his mother. The officer said “Don’t worry she knows where you are.” When he asked for permission to call his lawyer, the officer said “You will do that in three days’ time after you tell us a few things, deportee-scammer.”

He was placed in a small cell with nearly a dozen inmates. Raleigh Borden was threatened and taunted. One inmate said “Welcome to crocodile cage scammer bwoy or child molester. Is in here they put scammers and child molesters for pre-trial discipline. Guilty or not guilty actually or technically.”

Raleigh Borden was interrogated by the police for three nights and then released without charge. He sought medical attention and was treated with pain killers and anti-inflammatory drugs. Some of his friends who were at the party are avoiding him and he is quite distressed. He consults you relative to the above. He acknowledged that he had been deported from the USA, but for domestic violence and that he had been prosecuted and convicted before, but he was acquitted by the Court of Appeal.

Advise Raleigh Borden.

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#### **QUESTION 4**

Vashtinie agreed to sell Magellan her townhouse at a price of \$2.5m. The contract provided that an initial payment of 12½ percent of the purchase price was payable as a deposit which was to be retained by Vashtinie if Magellan did not complete the transaction within the stipulated time. Magellan did not complete as contracted. By letter to Magellan, Vashtinie indicated that she has “cancelled the contract and the deposit is hereby forfeited”. Twenty-one days after receipt of the letter Magellan wrote to Vashtinie stating that he has “just received some funds and is now willing and able to complete.”

Magellan informs you further that since the signing of the agreement the value of the townhouse has appreciated significantly.

Advise Magellan who says that he cannot afford to lose so much money for nothing.

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## **QUESTION 5**

Allegretta has recently resigned from her job as executive secretary and personal assistant to the manager of a branch of Worldwide Credit and Data Processors Ltd (Data). The branch processes data for hundreds of clients. It stores confidential data for several financial and credit agencies.

At the commencement of her employment Allegretta was required to sign a multiparty agreement covenanting “to refrain from disclosing to any person or persons any information of whatever kind that she would acquire during her tenure with Worldwide Credit and Data Processors Ltd.” The contract stated that the covenant of confidentiality was between her and Data which signed on behalf of itself and as agent for all its clients. The covenant was an “evergreen” covenant which was binding on Allegretta even after leaving the company.

At her exit interview the H.R. manager reminded Allegretta of the covenant.

Allegretta has written a book entitled “Data Processing or Data Stressing.” She is minded to publish it soon and wants legal advice on the implications of the covenant she had signed with Data.

She consults you. Advise her on the legal impact, if any, of the covenant, the remedial alternatives that a court may be required to consider, and which of these will be the least favourable to her.

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## **QUESTION 6**

Two years ago, Jerome suffered severe injuries to his spine in a collision for which he thinks Josh, the servant or agent of Caljon Ltd (Caljon), is entirely to blame.

Caljon has not accepted liability but is prepared to enter “without prejudice” negotiations.

The negotiations are at present deadlocked because Caljon’s legal advisers find some items of the claim submitted by Jerome (who is acting in person) to be “to say the least, preposterous.” In their letter to Jerome they urge him to overcome his suspicion of lawyers and instruct learned counsel on the matter. They also request supporting evidence of his claims as submitted to Caljon.

Jerome consults you and you note that he is claiming damages for:

- Pain and suffering;
- Disability for life and loss of ability to work;
- Personality change resulting in a continuing violent attitude to females;
- Cost of a house suitably equipped for occupation by a paraplegic;
- Cost of nursing care provided by his wife Carla, a registered nurse who has resigned her job at a private hospital. The nursing services are to be valued according to salary scales in force at Carla’s recent employment;
- Hospital and out-patient expenses to date and continuing;
- Two Hundred Thousand Dollars paid to female practical nurse whom he had assaulted.

Advise Jerome on the measure of damages, the viability of his claims and whether, in Jerome’s circumstances, there are any other claims that may be made on his behalf.

### QUESTION 7

You are an associate in the law firm of North Mason Lindhurt Soloman. You work under the supervision of Senior Partner Abe North Jr. who instructs you to prepare a checklist of questions in preparation for an interview with a client whose husband was killed in a building construction mishap two months ago.

Prepare the checklist of questions, giving reasons.

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### QUESTION 8

Jasper Codellie and his sister, Jasmine, are owners as joint tenants of Diamond Site, comprising 10 acres of land situate in a location adjoining a low-income area. Three months ago, Jasper was approached by Mid-Income Builders (Mid-Income) with a proposal whereby Mid-Income would buy and Jasper would sell Diamond Site for the purpose of development. Jensen, Mid-Income's agent, showed Jasper plans of the housing scheme that they planned to establish on Diamond Site after the sale. He informed Jasper that they also had plans to remove the "few persons who are squatting on the land **when**, not **if**, Mid-Income acquires Diamond Site."

Jasper said that he had plans to resume horticulture on Diamond Site and refused Jensen's invitation to negotiate.

Jensen said that he is not in the habit of taking 'no' for an answer and he is not about to start such a habit. Jasper's retort to him was "such is the motto of a rapist."



Three months after this conversation and while Jasper had been out of the jurisdiction on business, Jensen moved in a number of bulldozers and started preparing the land for Mid-Income's development.

When Jasper returned, he noted that a disused building and two sheds which were on the land were demolished. The squatters' structures were also demolished. The top soil was completely removed. The squatters had relocated themselves.

Two of the squatters have approached Jasper to demand "reparation" for themselves and six others.

Advise Jasper on the cause of action, remedy and mode of computation of any damages awardable.

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**END OF PAPER**