

COUNCIL OF LEGAL EDUCATION NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE FIRST YEAR SUPPLEMENTARY EXAMINATIONS, AUGUST 2021

LAW OF REMEDIES

MONDAY, AUGUST 02, 2021

Instructions to Students

- (a) Duration: **24 hours**
- (b) Students shall enter their Examination ID Number **only**, not their names, on the cover page, the Academic Integrity Statement and on every separate page of the examination script.
- (c) The examination should be answered on letter-sized (8.5 x 11) paper only.
- (d) The examination should be submitted in Arial font 12 line spacing 1.5.
- (e) Students should clearly indicate the names of any cases with the citation and legislative provision/s (section number and Act) on which they rely to support their arguments. Consider using italics and/or bold text to make references prominent. (For example, *Rylands v Fletcher* [1868] UK HL1; **s.69 Real Property Act**). Sufficient detail is required to allow the examiners to understand the source of law that is being cited.
- (f) Footnotes, endnotes and bibliography are not to be used
- (g) Where word limits have been given, the actual word counts must be included at the end of your answer. Students who have exceeded the word limits will be penalised.
- (h) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (i) In answering any Part, a candidate may reply in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **but must state at the beginning of the answer the name of the relevant territory.**
- (j) Each Student **must** ensure that their Anonymous ID in TWEN is changed to their four digit Examination ID Number, prior to submitting their examination script.
- (k) The examination script, with the cover page and Academic Integrity Statement saved in **ONE PDF DOCUMENT**, must be submitted in

ELECTRONIC format via the **Year I AUGUST 2021 EXAMINATIONS, LAW OF REMEDIES DROP BOX on TWEN** by **August, 03, 2021** NOT LATER THAN 9:00 a.m. (Jamaica) 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).

- (l) To upload the examination script which has been saved as one pdf document which includes the cover page and Academic Integrity Statement, you must follow these steps:
- Go to ***www.lawschool.westlaw.com***.
 - Log in using your username and password credentials and select the **TWEN** button.
 - Click on the link for **“Assignments and Quizzes”** located on the left-hand side of the navigation screen.
 - Select the relevant examination and the examination drop box as follows:
 - Year I students with Examination ID numbers between 1100 -1192 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box A Year I - 1100-1192”**.
 - Year I students with Examination ID numbers between 1193 -1283 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box B Year I - 1193-1283”**.
 - Year I students with Examination ID numbers between 1284 -1376 must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box C Year I - 1284-1376”**.

Your client, Mark Bolder, emails you with a list of concerns. He tells you that he has a business called “Mark’s Wholesale”. As part of his business, he had entered into a written contract with Easy Beans to supply him with 2,000 bags of red beans, weighing 100 pounds each. Mark indicates that he paid the purchase price of \$10,000 for the beans, in advance. He further tells you that the terms of the contract stipulated that the beans were to be fit for canning and were to be of the quality of the sample previously approved by him. The beans were to be delivered in three shipments. The first shipment arrived without issue, however, the second shipment contained a quantity of spoilt beans which also had a bad odour. Mark further tells you that he wrote to Easy Beans rejecting the entire shipment and had requested a refund. He indicates that he immediately had to place another order, as he is a major supplier of beans locally, and that there was a shortage on the market.

Mark also tells you that he is the owner of a parcel of land located at Far Far Away. In February 2021, he retained the services of an architect and construction firm, Draw Roberts Construction (Draw Roberts) to produce plans, obtain the relevant planning permissions and construct a four-storey commercial complex on his land. The contract was in writing and signed by both parties. The sum agreed under the contract was \$900,000. The complex was to comprise 15 units fitted with air-conditioning, a pool built to a depth of 12 feet, and a gym. The parties also agreed that compliance with all other specifications outlined in the plan must be met. Mark indicated that he wanted to rent, each unit to individual commercial tenants at a cost of \$3,000 per month. He also wanted to occupy one of the units for his business, as he currently pays \$20,000 each month in rent for the property he now occupies.

Draw Roberts subcontracted with Mr. Freeze to procure solar powered air-conditioners for the complex. The air-conditioners were delivered three weeks after the agreed date, resulting in Draw Roberts delivering the complex to Mark after the scheduled handover date.

After the complex was handed over, Mark noted that the specifications, as indicated in the agreed plans, had not been met. The pool had not been built to the required depth. One unit had a leaking roof and there were widespread cracks in the foundation and supporting walls of the complex. Further, a portion of the retaining wall encroaches on the adjoining property. It was later revealed that the plans had not been approved by the appropriate authorities.

The inferior quality of the workmanship and failed compliance have caused Mark great stress and embarrassment, as he had several tenants lined up to rent the offices. However, when they saw the inadequacies in the construction of the complex, they decided to rent office spaces elsewhere. Mark tells you that he wishes to recover the cost of the remedial work to be done to the complex, including, but not limited to, reconstructing the pool in accordance with the plan's specifications. He instructs you that it had cost him \$5,000 to have the pool rebuilt and \$8,000 to fix the roof. He also did not like the colour used to paint the exterior walls of the complex, and repainted it at a cost of \$4,000.

Mark is an epidemiologist who had worked for a leading pharmaceutical company, Humoida, for ten years. His annual salary was \$100,000. The terms of his contract stipulated that his employment with the company could be terminated by either party giving three months' notice in writing. The contract also stipulated that the company could treat all or part of this period as payment in lieu of notice. Also, the employee could be summarily dismissed by the company without notice, or pay in lieu of notice, if there was gross misconduct on or off the job, gross negligence or continued poor job performance or breach of contract.

Over the years, Mark had been privy to highly sensitive data in the field of infectious diseases. As part of his contract, he had signed a non-disclosure agreement which prohibited him from releasing any information obtained, in relation to his job, to any third party. While at work, he discovered research on alternate drugs that he felt should be made public. He also collected information on the workings of the pharmaceutical industry, which he uses as material for his weekly podcast and YouTube channel. His YouTube channel has over ten million subscribers and is monetised. Humoida had learnt of Mark's YouTube channel and podcasts and had written to him on July 7, 2020, threatening to sue. They subsequently terminated his employment with the company, with immediate effect, by letter dated February 1, 2021, citing breach of contract.

Mark lives in an exclusive gated community called Caribbean Commons, which consists of three blocks of apartments. He lives in Block A. Mark explains that Mr. Friday, his neighbour, has a big almond tree that has been causing damage to the apartments in the complex. The roots of the tree have penetrated the retaining wall, to the extent that it is likely to collapse. Some of the roots have extended to the block of apartments in which Mark lives and have caused damage to the foundation. Mark had an assessment of the damage to the wall carried out, and it was estimated that the cost of repair would be \$9,000.

Mark has received an offer from a purchaser who is anxious to buy his property, but Mark has become concerned about the outcome of the negotiations for the sale, given the current condition of the property.

Mark further tells you that his brother, Zadd, was the pillion rider on his Suzuki Hayabusa motorcycle which he was riding on the highway on April 10, 2021, when he was hit by Rumhead Bob. Rumhead Bob was arrested and charged by the police, under the Road Traffic Act, for careless driving and driving under the influence. Mark says that the motorcycle was his pride and joy. He parked it inside his house and kept it clean by washing it daily. As a result of the accident, the motorcycle was extensively damaged. It had to be towed to a garage by a wrecker at a cost of \$7,000 and remains there to date. The storage fee charged by the garage is \$100 per day.

Zadd sustained extensive injuries and was admitted to the Queen Alice Hospital. Mark also sustained injuries and spent one month in the hospital's Intensive Care Unit. The medical report detailed that Mark suffered a broken leg, extensive chest and head injuries and a cut on the right side of his face which disfigured him. When he was released from the hospital, he required at home nursing care, as he lived alone and could not take care of himself. He also obtained an estimate for the cost of cosmetic surgery to correct the disfigurement to his face.

The total cost of his medical expenses are as follows:

	\$
Hospital bills	- 50,000
Medication	- 5,000
Nursing Care	- 2,000
Physiotherapy	- 25,000
Wheelchair	- 500
Cost of operation	- 80,000

Mark is also a professional swimmer and was training for the Olympics. He was planning to participate in the 2021 Tokyo Olympics. He had also planned to be married later this year and had purchased a ring for his fiancée, paid a deposit on the wedding venue and purchased tickets for the honeymoon trip to Fuji. As a result of the disfigurement of his face, his fiancée has left him and has posted on her Facebook page “I am now free of the monster”. Mark is heartbroken over her leaving him and his lost opportunity to participate in the Olympics.

Zadd died one week after he was admitted to the hospital. He was 26 years of age and, at the time of his death, had one child, Susie, aged three, whom he shared with his ex-fiancée. Zadd had provided for all of Susie’s needs, monthly, to include her day care fees of \$200 and general expenses of \$1,500. Zadd worked as an actuary with Life Insurance Limited at an annual salary of \$75,000. His prospects of heading the unit in which he worked were very good and he had, on several occasions, been awarded “Employee of the Month”. Mark is the executor of Zadd’s will.

Required:

With reference to authorities, advise Mark on the causes of action, the remedies available and the bases on which any monetary award may be calculated, to resolve the issues on which he has instructed you.

Note:

Your response should not exceed **4,500 words**.

END OF PAPER