

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, JULY 2020**

LAW OF REMEDIES

MONDAY, JULY 20, 2020

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 required.
- (g) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (h) In answering the question, 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.**
- (i) 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.
- (j) 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 JULY 2020 EXAMINATIONS, LAW OF REMEDIES DROP BOX on TWEN** by **Tuesday, July 21, 2020**, **NOT LATER THAN** 9:00 a.m. (Jamaica) 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).

(k) 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 -1176 must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box A Year I - 1100-1176**”.
 - Year I students with Examination ID numbers between 1177 -1252 must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box B Year I - 1177-1252**”.
 - Year I students with Examination ID numbers between 1253 -1326 must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box C Year I - 1253-1326**”.

In a virtual interview, Nathan Magnus Leopold Simith (NMLS) requests advice in relation to a number of matters facing his principal, the NMLS Enterprises Limited, (“the Company”), of which he is the major shareholder and CEO. The Company is duly incorporated under the laws of your jurisdiction.

The Company is planning to expand its retail business by building and operating a supermarket in New Elsmore, an underserved area in the jurisdiction. The Company already owns a parcel of land of about two acres, in the area. As part of the preparation for the building project, a land surveyor was employed to check on the boundaries. The survey report has revealed that the adjoining owner, Warehousing Limited (Warehousing), which completed their building in August last year, has encroached on the land to the extent of 36 feet. Warehousing is using the land as a dump and for parking delivery trucks.

NMLS considers this to be something of a setback at this time, but nonetheless has decided to plan ahead. To that end, the Company plans to go ahead and acquire another parcel of land for the purpose of constructing a building to house its newest supermarket.

This change of plan requires an outlay of funds for this year which had not been anticipated by the board of directors of the Company. However, the Company has now identified land and is assured of a loan to finance the acquisition.

The Company had found it profitable to operate out of rented premises in the past and in deciding to construct the supermarket, intended to have its own premises which it could occupy in time for upcoming Christmas season. With all that has happened the Company, as an interim measure, has now taken a suitable lease of appropriate premises so that it can secure its foothold in the targeted community.

In the meantime, although the plans for the construction have been re-scheduled, some preparatory work has to be pursued, at this time, so that construction could begin at the earliest time. The Company wishes to be ready to move into its own premises before or as soon as the lease expires.

The Company is in touch with a contractor and intends to start negotiating the terms of the contract for the construction of the premises. The Company would not want to be involved in litigation as a first step if anything goes wrong. A quantity surveyor has been identified. In the meantime, the Company would also wish to be aware of any special terms to be included, as well as the legal ramifications of any such terms.

The Company's workforce is a sizable one. It operates a janitorial service as well as a petrol station, in addition to its retail business, which is its main concentration. The Company also operates a small laboratory, led by a professional chemist, where the staff has been trained to blend high quality cleaning and sanitizing products for its own use.

The Company took a sizeable financial blow recently during the SAARS-c2 pandemic. It did not throw any of its workers under the SAARS-c2 bus. However, going forward with the lessons learnt from this pandemic the Company is of the view that there is a need for a new approach to its employment policy and may require new strategies. To this end new terms of employment may be required.

In fact, at a virtual town hall meeting with all staff, the majority of staff agreed that in consideration of receipt of their full salary/wages and no lay off of workers, the Company could incorporate such reasonable terms that would be applicable to all circumstances going forward. In view of this, the Company is of the view that in addition to the basic terms there is need for additional terms, which would permit flexibility in matters pertaining to, *inter alia*, remuneration adjustments in cases of epidemics, pandemics or other periods of national or corporate emergencies, the deployment of staff in relation to its several enterprises, the matter of confidentiality, limitation on competition, non-contractual staff incentives, disciplinary considerations including on the job personal and physical interactions, appropriate use of the Company's facilities and property, wearing of personal protective clothing etc. In fact, the Board of directors has unanimously decided that failure to wear personal protective clothing properly, or at all, should attract summary dismissal as the penalty. The above considerations are not in any hierarchical order and may need to be incorporated in a handbook at some convenient time.

In relation to employment matters, the Company is, right now, considering a claim from a former employee, Kenton Bane, for wrongful dismissal. Mr. Bane was dismissed last December with immediate effect, when he was caught by a security guard exiting the supermarket with a trolley loaded with groceries, for which he had not paid. A cashier who had been implicated, and who had been dismissed with pay in lieu of notice, gave a statement that she had permitted him to pass with the groceries because he had threatened to harm her and she was fearful.

Mr. Bane is now represented by an attorney-at-law, Ms. Toobritt Jones, who is claiming damages, on Mr. Bane's behalf, for loss of wages, holiday pay, payment in lieu of paternity leave (because his spouse gave birth to a son three weeks before the date of the dismissal), end of year bonus, loss of tips from customers, and damage to employment prospects. The Company, as a matter of goodwill, and for no other reason, tries to assist all staff to enjoy something extra at holiday seasons by giving the end of year bonus.

In February this year, the Company received a report from one of its clients, Swift Turnabout Limited (Swift), that a boy of about 10 years of age had slipped and fallen on the floor of their foyer, shortly after it was cleaned by the Company's No. 2 cleaning crew. Investigation has revealed that the cleaning crew had taken all the normal, necessary and customary precautions during and after the cleaning operations. The boy, Disnie Wafton, is a son of one of Swift's workers. At the time of the incident there was some "leggo beese" music being played over the client's system, and the boy was doing one of the matching "leggo beese" dance moves when he fell backwards and hit his head on the floor. He was unconscious when they took him to the National Hospital.

Swift has come to the conclusion that the Company is liable to compensate the boy for the head injuries and the resulting consequences. Further, the boy's mother, Ms. Dellah Comfie has contacted the Company, at Swift's suggestion she stated, and is asking for the matter to be settled quickly because she is a single parent. Ms Comfie claims that Disnie is at home recuperating, but he is not making any progress. In fact, she expressed the view that Disnie has lost his mind. She further claims that during the school lockdown and while she was at home under quarantine she was trying to teach him but he is unable to remember anything. The Company has suggested that she consult with an attorney-at-law. In the ten years the Company has been providing this type of service, this is the first such complaint.

As If these troubles were not enough, on March 20, 2020, one of the Company's service vans was involved in a collision with a truck owned by Haulage Limited (Haulage). Allie, the Company's driver, is adamant that he was not at fault "in any shape or form" and it was the other driver who was totally to blame. Haulage is claiming from the Company, the cost of repairing their truck, loss of use for 21 days, and loss of two lucrative haulage contracts. Interest is claimed on the sums.

Allie has informed that the truck has not been repaired, and that Haulage has sold the damaged truck to one of its former drivers, who is a friend of Allie's brother. Haulage has bought a new truck, which is up and running. Haulage is threatening to sue the Company as well as Allie, who, at this time, is extremely frightened. The Company's van is still not yet repaired, and the Company has hired a far better and more adequately equipped replacement, at a weekly rate. The Company may also lose its no-claim bonus this year.

Required:

- (i) With regard to the circumstances surrounding the actions of Warehousing Limited, indicate your client's likely cause(s) of action, claims and remedies and indicate the basis on which a tribunal is likely to decline or grant any available remedy.
- (ii) Advise the Company on the contractual terms suitable for incorporation in the building contract and the legal implications of these terms. Indicate, giving reasons, the extent to which the Quantity Surveyor (QS) could be of assistance in the structuring of any of these terms.
- (iii) Advise the Company on any additional terms that would meet its concerns and the legal implication(s) of each. Specifically, address the sustainability of the claims being presented by Ms. Toobritt Jones on behalf of Mr. Bane and the Company's likelihood of successfully resisting Mr. Bane's cause of action, if it is pursued.
- (iv) Having regard to the conclusion by Swift Turnaround Limited that the Company is liable in the circumstances, advise the Company generally on its rights and liabilities. In addition, indicate the likely claims that could be made on behalf of Disnie Wafton and what evidence the Company should insist on, in any event.
- (v) Advise the Company on the issues arising in relation to the claims being made by Haulage Limited as well as the Company's losses and expenses in the circumstances. Advise also whether Allie could face liability for damages, in any event.

NOTE:

Your answer on each individual part, (i) – (v), should not exceed **850 WORDS**.

END OF PAPER