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LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1987

LEGAL DRAFTING AND INTERPRETATION
(Wednesday, August 12, 1987)

Instructions to students

- a) Time: 3½ hours
- b) Answer FIVE (5) questions only.
- 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.

QUESTION 1

Comment on the following dictum made by Mr. Justice Campbell J.A. (Ag.) in McQuick v L. & V. Realities Ltd. R.M. Civil Appeal No. 13/82, that:-

"...the true legal principle is that if the legislature by clear words imposes fetters however onerous on the disposition of property by individuals it must be construed as a matter of policy originated by the Executive and given expression to by the legislature. It is not part of a Court's function to say that the fetters are onerous and because they are onerous there resides in it an inherent power not to give effect to the clear legislative intent".

QUESTION 2

An accused person was charged with unlawfully keeping liquor for sale, contrary to s. 56(1) of the Intoxicating Liquor Act. He pleaded not guilty. The only evidence offered by the prosecution was that the accused had a quantity of liquor in his residence. The accused did not offer any defence. The magistrate convicted the accused because he had not rebutted the presumption established by section 108(1).

The relevant sections of the Intoxicating Liquor Act are as follows:

- "32. Liquor purchased in accordance with this Chapter or the regulations, may be kept, had, given or consumed, only in the residence in which the purchaser resides, except as otherwise provided by this Chapter and the regulations."
- "56. (1) Except as provided by this Chapter, or the regulations, no person shall, by himself, his clerk, employee or agent expose, or keep for sale, or directly or indirectly or upon any pretence, or upon any device, sell or offer to sell, or buy or offer to buy, liquor or in consideration of the purchase or transfer of any property, of for any other consideration, or at the time of the transfer of any property, give to any other person liquor."
- "108. (1) If, on the prosecution of a person charged with selling or keeping for sale (r giving, keeping, having, purchasing or receiving of liquor, prima facie proof is given that such person had in his possession, charge or control liquor in respect of which he is being prosecuted, then, unless such person proves that he did not commit the offence with which he is so charged, he may be convicted of the offence."

Section 32 and subsection (1) of section 56 mention exceptions, but there are none for the purposes of this case.

The accused has sought your advice as to whether he should appeal this decision.

What is your advice? Give reasons.

QUESTION 3

A statute, the Married Women's Act, provides as follows:

- "1. This Act may be cited as the Married Women's Act, 1982.
2. The widow of a man who dies leaving a Will by the terms of which the widow would, in the opinion of the judge before whom the application is made, receive less than if he had died intestate may apply to the High Court for relief.
3. On any such application the Court may make such allowance to the applicant out of the estate of her husband disposed of by Will as may be just and equitable in the circumstances.
4. Any such allowance may be by way of an amount payable annually or otherwise or of a lump sum to be paid."

The Intestate Succession Act 1900 of the same country provides that where a person dies intestate leaving a widow and no children one half of his estate shall go to his widow.

A wealthy businessman, Gayblade, died in 1985 leaving an estate of one million dollars. By his Will dated 8th October, 1981 he left \$100,000 to his widow and the balance of his estate to his faithful private secretary, Miss Zada Ebony. He left no children. The widow applied to the High Court for relief under the Married Women's Act and the judge at first instance, believing that the testator must have made a mistake, ordered that the estate be divided in reverse, that is to say, \$900,000 to Mrs. Gayblade, and \$100,000 to Miss Ebony, which he considered to be a just and equitable division, particularly since Miss Ebony had inherited half a million dollars from a previous employer, and Gayblade had made his fortune through stock-market tips given to him by the father of his widow.

Miss Ebony has appealed to the Court of Appeal for the provisions of the Will to stand and in the alternative she claims a greater share in the estate than was awarded her by the trial judge.

As a judge of the Court of Appeal, what judgement would you hand down? Give reasons.

QUESTION 4

On July, 15, 1984, a crowd in excess of fifty persons, some armed with sticks, stones and bottles gathered on Barbaric Road. After some time the crowd became very belligerent and began throwing stones and bottles. Some persons then went into premises at Number 100, the property of Meek Mild and damaged the doors and windows to the house and the furniture inside it. They also set on fire his two motor trucks which were on the premises.

Mr. Mild subsequently sought compensation for the resulting damage from the Riot Compensation Authority. The Authority while accepting that there had been a riot, refused to award him compensation for the damage done either to the trucks or the house, on the ground that section 8 of the Riot Act which was enacted in 1866, did not apply to the circumstances of his case. Section 8 of the Riot Act states as follows:-

"Where any machinery, or any house, shop or building, (including any premises appurtenant to the house, shop or building) has wholly or partly been demolished or pulled down by persons riotously and tumultuously assembled together, compensation shall be payable subject to and in accordance with the provisions of this Act."

In arriving at their decision the Authority had also considered the definition of "machinery" as stated in the Concise Oxford Dictionary, to wit -

"machines; works of a machine, mechanism; organised system, means arranged for doing; group of contrivances, esp. supernatural persons and incidents, used in literary work."

"machine" is defined as

"Apparatus for applying mechanical power, having several parts each with definite functions; bicycle, motor cycle etc; aircraft; computer; person who acts mechanically; controlling system of an organisation (party, war, machine)."

Mr. Mild wishes to appeal the decision of the Riot Compensation Authority and has sought your advice in this regard.

What is your advice? Give reasons.

QUESTION 5

Adella Adams, a grocer, delivered to the residence of Joseph Touchstone a night watchman employed at Bustamante Port consignments of coffee amounting in all to 666 lbs. Touchstone sold the coffee to American seamen, who took it on board their ships and either consumed it there and then or exported it. He accounted to the grocer, Miss Adams, for those sales, and was paid commission on them. The export of coffee without a licence is prohibited by the Export of Goods (Control) (Consolidation) Order, 1979, but, as a matter of grace, the customs authorities allow seamen to take on board small quantities of coffee for their own consumption. Informations were preferred against Touchstone, as agent of the exporter, for contravening Section 3, subsection 1, of the Import, Export and Customs Powers Act, which subsection imposes penalties on the exporter or his agent of 'any goods... brought to any quay or other place for the purpose of being exported in contravention of an order made under the Act'. Informations were also preferred against the grocer for aiding and abetting the night watchman.

The Magistrate dismissed the informations on the grounds that the words "or other place" in the section must be construed as ejusdem generis with "quay", and that the night watchman's residence was not ejusdem generis with a quay.

Section 3(1) states as follows:

"If any goods-

- (a) are imported or exported in contravention of an order under this Act, or

(b) are brought to any quay or other place, or waterborne, for the purpose of being exported in contravention of an order under this Act those goods shall be deemed to be prohibited goods and shall be forfeited; and the exporter of the goods or his agent shall be liable to a penalty of five hundred dollars."

The Director of Public Prosecutions wishes to appeal this decision. What advice would you give him? Give reasons.

QUESTION 6

Art Dealers Ltd., who were suppliers of art equipment, had insured their stock-in-trade against fire with Reliable Insurance Company and in order to secure a loan which the firm had borrowed from National Bank the policy contained the following provisions:

- "(a) Loss, if any, payable to the National Bank".
- "(b) ...the company agree with the assured (subject to the terms and conditions enclosed hereon which are to be taken as part of this policy) that if after payment of the premium the property above described, or any part thereof, shall be destroyed or damaged by fire at any time between July 10, 1985 and July 9, 1986, the company will make good by payment or reinstatement or repair all such loss or damage not exceeding the sum set out in this policy".

The blank endorsement printed on the back of the policy was filed in and executed.

On September 15, 1985 the building in which Art Dealers Ltd. carried on business was destroyed by fire and its stock-in-trade destroyed. National Bank sought to recover the sum due under the insurance policy but other creditors of Art Dealers Ltd. sought to prevent this on the basis that the Bank had acted contrary to section 15 of the Bank Act. Section 15 states as follows:-

- "15. The Bank may
 - (a) open branches, agencies and offices;
 - (b) engage in and carry on business as dealers in gold and silver coin and bullion;

- (c) deal in, discount and lend money and make advances upon the security of, and take as collateral security for any loan made by it, bills of exchange, promissory notes and other negotiable securities, or the stock, bonds, debentures and obligations of municipal and other corporations, whether secured by mortgage or otherwise, or national, British, foreign, and other public securities;
- (d) lend money or make advances upon the security of and take as collateral security for any loan or advance made by it, lien or other notes, conditional sales contracts or any other instruments or agreements made or entered into respecting the sale of goods wares and merchandise, or moneys payable thereunder; and
- (e) engage in and carry on such business generally as appertains to the business of banking."

The National Bank has sought your advice. What is your advice?

Give reasons.

QUESTION 7

Comment on the following quotations taken from Sedgwick's Statutory Construction and Constitutional Law:-

"A statute which takes away or impairs any vested right acquired under existing laws or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions already past, is deemed to be retrospective or retroactive."

QUESTION 8

The Income Tax Act of 1983 came into force on January 15, 1984. On that date the previous Act (Act 2 of 1964) was repealed. James White died in April 1983. In June 1983 his executors were informed by Bank of Commerce Ltd. that they had on deposit a sum of \$10,000 standing to the credit of his estate. In August 1983 the executors reported the fact of this account to the Commissioner of Income Tax in order to ascertain whether this sum was liable to Income Tax.

In February 1986 the Commissioner advised the executors that an assessment of income tax has been made on the interest earned on the account for the years 1977 - 1983 inclusive. The executors sought the advice of counsel who challenged the assessment for the years 1977 - 1983 citing Section 6 of Act 2 of 1964 and Section 40 of the Income Tax Act 1983.

Section 6 of Act 2 of 1964 provides as follows:

"6. Where the Assessment Committee discover that any person liable to income tax has not been assessed in respect thereof or has been assessed at a less amount than that which ought to have been charged, they may, within the year of the assessment or within three years after the expiration thereof, assess such person at such amount of additional amount as according to their judgment ought to have been charged, and the provisions of this Act as to notice of assessment, appeal, payment and recovery of income tax shall apply to such assessment or additional assessment."

Section 40 of the Income Tax Act 1983 provides as follows:

"40 Notwithstanding the repeal of the Acts mentioned in the Fifth Schedule to this Act (hereinafter called "repealed Acts") or the revocation of the rules and regulations made thereunder, the provisions contained therein shall apply to all actions, appeals and legal proceedings which are pending at the coming into operation of this Act or may, thereafter be taken into relation to such matters arising out of the repealed Act."

The Commissioner on the other hand cited Section 20 of the Act of 1983 as a basis for assessing the taxes due over a six year period.

Section 20 provides as follows:

"20.(1) Where it appears to the Commissioner that any person liable to tax has not been assessed or has been assessed to a less amount than that which ought to have been charged the Commissioner may, within the year of assessment or within six years after the expiration thereof assess such person at such amount or surcharge, as according to his judgment ought to have been charged."

The matter has now come before you as the Judge of the Revenue Court. What is your decision? Give reasons.
